

The true and fair requirement in the European Union

A summary of research in France, Italy,
the Netherlands and Spain



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Introduction

Financial statements are a fundamental element in the operation of a market economy, serving the essential purpose of providing financial information about a company that is useful to existing and potential investors, lenders and other creditors in making decisions related to providing resources to the entity. The requirement for a company to produce annual financial statements is a general requirement in Company Law across the European Union (EU). Central to the EU's approach is Directive 2013/34, which includes the requirement that financial statements must present a "true and fair view" of the company's financial position. Article 4 of this Directive specifically interprets this true and fair requirement, which serves as an overriding principle rather than an optional extra.

The requirement predates the existence of both national or international accounting standards, and the specifics of what should be included in the annual financial accounts has developed over time. In general terms, the current requirement includes a duty for directors to approve accounts that meet both the accounting standards in force, and that give a true and fair view of the financial position of the company.

While the requirements for compliance with accounting standards is well understood, there is little guidance from regulatory bodies and few examples of what circumstances may require changes to the financial statements in order to give a true and fair view.

The true and fair requirement means that the directors, in complying with company legislation to present financial statements, have a duty to consider whether those statements prepared in accordance with accounting standards provide a true and fair view. This view should provide "financial information about the reporting entity that is useful to existing and potential investors, lenders and other creditors in making decisions relating to providing resources to the entity"¹.

In 2024, Social Value International (SVI) commissioned a legal opinion on this requirement in the UK in the context of rapidly emerging sustainability challenges faced by businesses and investors. SVI subsequently produced a [guide for UK company directors](#) that provides detail of the true and fair requirement in the context of sustainability issues and specifically carbon use. The guidance covers additional information being required in the notes but also includes one adjustment: the possibility of recognising the cost of doing business arising from impacts and dependencies, which can be made within existing accounting standards as a constructive obligation.

¹ See paragraph 1.2 of the IFRS Foundation's [Conceptual Framework for Financial Reporting](#)

The [2024 UK legal opinion](#), authored by George Bompas KC, concludes by urging directors to “exert themselves” in fulfilling the true and fair requirement in the context of sustainability. As they do so, further examples are likely to arise, both as notes to the accounts and as constructive obligations reflected in the profit and loss account².

This report builds on that work by providing examples of how Article 4 of Directive 2013/34 is interpreted in Italy, the Netherlands, France and Spain. While there are variations in how the principle is applied across these jurisdictions, the core requirement remains consistent: the true and fair view obligation is fundamental and non-negotiable. Social Value International is currently developing tailored guidance for company directors in each of these countries. This report was prepared with inputs from:

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Several of these lawyers are members of the [Global Alliance of Impact Lawyers](#) (GAIL), which has been instrumental in coordinating research efforts and connecting SVI to regional experts.

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² Examples are tracked and collated [here](#).

Context: The “True and Fair” Requirement in the EU Directive

The concept of "true and fair" is central to the European Union (EU) Directive 2013/34 on a company's annual financial statements. This directive sets out the minimum requirements for the content and format of annual financial statements for companies operating in the EU.

In the context of the Directive, "true and fair" refers to the requirement that a company's financial statements should accurately and fairly represent its financial position and performance. This means that the financial statements should not contain any material misstatements or omissions, and that they should be presented in a manner that provides a clear and comprehensive picture of the company's financial situation.

The "true and fair" requirement applies to all aspects of the financial statements, including the balance sheet, income statement, cash flow statement and notes to the financial statements. The objective is to ensure that the financial statements are reliable and provide stakeholders with the information they need to make informed decisions about the company.

The legal requirement means that directors must add additional information to conform with relevant accounting standards, if necessary to give a true and fair view. Article 4 of the Directive differentiates between adding information that would be necessary as a note and recognises that changes to the balance sheet or the profit and loss may be necessary in exceptional circumstances.

“Article 4

General provisions

- 1. The annual financial statements shall constitute a composite whole and shall for all undertakings comprise, as a minimum, the balance sheet, the profit and loss account and the notes to the financial statements.*

Member States may require undertakings other than small undertakings to include other statements in the annual financial statements in addition to the documents referred to in the first subparagraph.

The annual financial statements shall be drawn up clearly and in accordance with the provisions of this Directive.

- 2. The annual financial statements shall give a true and fair view of the undertaking's assets, liabilities, financial position and profit or loss. Where the application of this Directive would not be sufficient to give a true and fair view of the undertaking's*

assets, liabilities, financial position and profit or loss, such additional information as is necessary to comply with that requirement shall be given in the notes to the financial statements.

- 3. Where in exceptional cases the application of a provision of this Directive is incompatible with the obligation laid down in paragraph 3, that provision shall be disapplied in order to give a true and fair view of the undertaking's assets, liabilities, financial position and profit or loss. The disapplication of any such provision shall be disclosed in the notes to the financial statements together with an explanation of the reasons for it and of its effect on the undertaking's assets, liabilities, financial position and profit or loss."*

Despite this, the term "true and fair" is not defined in the Directive and its interpretation can vary slightly between EU member states. This is important, because although accounting standards promote consistency and comparability, they still involve subjective judgements. Providing a "true and fair" view requires interpretation, not only of the standards themselves but also of how to best summarise complex underlying economic phenomena. The following sections spotlight the interpretation of the requirement across select EU member states.

Italy

By Roberto Randazzo, Legance

1 Where does the true and fair concept exist within your legal framework?

The concept of "true and fair" was introduced into the Italian legal system by the Fourth Directive No. 78/660/EEC³. Initially translated as "true and fair picture" ("quadro fedele") within the Italian version of the said directive, it was later modified in "principle of true and fair representation" ("True and Fair" or "Principle") ("principio di rappresentazione veritiera e corretta") by Legislative Decree 127/1991, which amended Article 2423⁴ of the Civil Code (previously referring to the concept of "clarity and precision."

True and Fair is one of the so-called "general clauses" that preside over the preparation of financial statements. Such general clauses have an override function in relation to the norms detailing the drafting of financial statements, seeing as they are rules to which each accounting standards must conform. More specifically, the application of the general clauses is threefold:

1. in all cases in which the specific accounting standard is missing or unclear;
2. in all cases in which, although there is a detailed standard, the information required by that standard is not sufficient to give a true and fair representation, so that additional information must be provided;

³ Directive No. 78/660/EEC was later repealed by Directive No. 34 of 26/06/2013, which Italy implemented with Law Decree No. 139 of August 18, 2015.

⁴ "The directors must prepare financial statements, consisting of the balance sheet [2424], income statement [2425], cash flow statement, and notes to the financial statements [2427].

The financial statements must be prepared clearly and give a true and fair representation of the company's financial position and results of operations for the year.

If the information required by specific legal provisions is not sufficient to give a true and fair representation, additional information necessary for the purpose must be provided.

There is no need to comply with recognition, measurement, presentation and disclosure requirements when compliance with them would have an insignificant effect on giving a true and fair representation. Obligations regarding the regular maintenance of accounting records remain unaffected. Companies shall explain in the notes to the financial statements the criteria by which they have implemented this provision.

If, in exceptional cases, the application of a provision of the following articles is incompatible with true and fair representation, the provision shall not be applied. The notes to the financial statements must give reasons for the derogation and must indicate its influence on the representation of the financial position and results of operations. Any profits arising from the waiver must be placed in a reserve that cannot be distributed except to the extent of the amount recovered.

The financial statements must be prepared in units of euros, without decimal places, except for the notes to the financial statements, which may be prepared in thousands of euros."

3. in exceptional cases in which the application of a detailed provision is incompatible with True and Fair, so that the specific detailed provision should not be applied and general clauses will, instead, find application.

In addition, it worth be noting that the Accounting Principles (“Principi Contabili Nazionali”)⁵ drawn up by the Italian Accounting Institute (Organismo Italiano di Contabilità – “OIC”) provide interpretative guidance on the Principle. True and Fair should be intended in terms of “neutrality” – as also clarified, among others, by OIC’s *“Purposes and Postulates of the Annual Financial Statements”*⁶ – meaning the absence of *“preconceived distortions in the application of accounting principles or from informational inequalities that benefit only some of the primary recipients of the financial statements”*.

- 2 Are there any alternative legal terms or concepts that are similar to true and fair?

As mentioned above, True and Fair exists as such in the Italian legal framework and there are no other legal terms or concepts that are similar to the Principle.

- 3 How is true and fair currently interpreted? For example, is it an “override” principle in relation to accounting standards? Is there any case law relating to how True and Fair has been implemented?

True and Fair is commonly interpreted in Italian law as a means to ensure reasonableness and reliability of the evaluations reported in the financial statements.

Compliance with the Principle, therefore, is intended to make sure, on the one hand, that the financial statements fulfil their informational function, ensuring a representation of facts and data that, while obviously not being able to be considered “objectively” true, is, nevertheless, free from discretionary evaluations that could mislead the reader’s judgment. On the other hand, the truthfulness of the representation in the financial statements is closely related to the latter’s organisational function, since the contents of financial statements drive fundamental choices regarding the company’s financial structure and activities. The principle of fairness entertains a complementary relationship with the principle of truthfulness, translating, according to the most accredited interpretation, into the duty to correctly identify the accounting principles and legal provisions governing the recognition or assessment of the items reported in the document.

⁵ OIC’s Accounting Principles provide interpretative guidance on the application of the articles of the Civil Code governing the drafting of annual financial statements.

⁶ 4OIC’s Accounting Principle 11 (<https://www.fondazioneoic.eu/wp-content/uploads/2011/02/2018-03-OIC-11>)

True and Fair, together with the principle of clarity (principio di chiarezza), plays a key role in the drafting of the annual financial statements, which may result, depending on the circumstances, in additional or different information than what is expressly requested by the law. Indeed, the law requires that the content of the financial statements be supplemented by additional information beyond what is expressly required, or that, in preparing the financial statements, the rules in question be departed from where their strict application would prevent the financial statements from providing clear, true and fair information.

The consistent interpretation of case law⁷ with respect to the Principle moves first from the identification of the autonomy between True and Fair and the principle of clarity. Thus, in order for the shareholders' resolution approving the financial statements to be considered valid, it is necessary not only that the financial statement offers a representation of the result for the year consistent with what has actually been achieved, but also that this representation is suitable in order to convey all the information that the law requires to be conveyed by it to the reader. This approach should be understood in the substantive meaning of broad and widespread illustration of the company's situation, and not as observance of purely formal rules. This is coherent with how the Italian Supreme Court ("Corte di Cassazione") has interpreted the right of the shareholders to be informed: the information - states the Supreme Court - must have such content as to "give an account of the logical path by which that result is reached and the criteria of accounting followed" and "explain the manner of increasing the asset value and the capitalisation of the expense with regard to the concrete phenomenon required to take place in terms of work done, costs incurred and causal relatives"⁸. This means that the information cannot stop at conclusive data alone, but must include individual items and the manner of their formation, so that the reader of the financial statements is put in a position to retrace the logical process that guided the drafters of the document in the necessary choices and evaluations and is able to know in sufficient detail the composition of the company's assets and individual elements that determined a certain economic result.

⁷ Cassazione 21st February 2000, n. 27: "The principle of clarity must be accorded, both before and after the legislative innovations of 1991, independent relevance, not subordinate to that of the principle of true (and fair representation). Its violation undermines the general interests protected by the rules governing the preparation of financial statements, resulting in the nullity of the shareholders' meeting resolution approving it"; Cassazione sez. I, 7th March 2006, n. 4874: "The principle of clarity is by no means subordinate to that of true and fair representation of the financial statements themselves, but is endowed with autonomous value, the fundamental objective of the legislator being to ensure not only the truthfulness and fairness of accounting results, but also the broadest transparency of the financial statement data that lead to those results, in an information system that postulates, precisely, the suitability of the financial statements to ensure that all the information that the law requires them to provide is effectively accessible to shareholders and third parties."

⁸ Cassazione 21st February 2000, n. 27.

According to the case law above mentioned, the violation of True and Fair and the principle of clarity entails the declaration of nullity of the shareholders' resolution that adopted the financial statements. Failure to comply with the general clauses results, in fact, in a breach likely to prejudice the general interest, generating uncertainties and erroneous beliefs about the company's financial and income situation.

It is to be noted that Italian courts have a long-standing position on the capacity of the Principle to ensure that the financial statements provide a reliable and trustworthy picture of both the economic result for the year and the company's assets. The principle of truthfulness, on one hand, is understood to mean disclosure of all actual assets and liabilities, as well as compliance with the rules governing individual financial statement items and the manner in which they are posted. The fairness of financial statements, on the other hand, requires that the preparation of the financial statements complies with the requirements of structure, form and content identified by the relevant accounting standards.

For example, in ruling No. 1601 of July 11, 2019, issued by the court of Bologna, the judges found that True and Fair was violated due to an estimate of real estate assets recorded in the financial statements higher by about 4 million euro than the value reported in the technical assessment. According to the Accounting Principle OIC 9, in fact, in the presence of an indicator of potential impairment, the latter is reported where the recoverable amount of the asset is lower than its book value, with the result that the asset is recognised in the financial statements at the lower recoverable amount. In the present case, the technical report had not shown the existence of any indicator of potential impairment with respect to the relevant assets. Therefore, the lower amount of the assets reported in the financial statements did not provide a true and fair representation, seeing as even just one item incorrectly reported can impair the validity of the whole document.

4 What is the body that oversees corporate governance, and do they have guidance on true and fair?

Within a company, the board of directors (in the traditional or monistic model) or the management board (in the dualistic model) are responsible for corporate governance. The Civil Code identifies the duties of the directors in article 2381⁹, which include

⁹ "Unless the bylaws provide otherwise, the chairman convenes the board of directors, sets the agenda, coordinates its work, and ensures that adequate information on the matters on the agenda is provided to all directors. If the bylaws or the shareholders' meeting permit, the board of directors [2388, 2392, 2446] may delegate its powers to an executive committee composed of some of its members, or to one or more of its members. The board of directors determines the content, limits, and any manner of exercising the delegation [2405, 2421, No. 6]; it can always issue directives to the delegated bodies

ensuring the adequacy of organisational, administrative and accounting arrangements. In turn, the accounting system implemented must guarantee that the preparation of the annual financial statements occurs in compliance with the principles and rules of law (including the Principle).

5 Is there any guidance on true and fair within the context of companies reporting on sustainability information?

Italian jurisdiction has repealed Directive 2014/95/UE through the adoption of Legislative Decree 254/2016 ("DNF"). The DNF, which governed the drafting of the Non-financial Statement by public-interest entities, has been replaced by the Legislative Decree 125/2024 ("Decree") transposing the Corporate Sustainability Reporting Directive 2022/2464 ("CSRD"). Companies falling within the scope of the Decree must report on their environmental, social and governance impact within the financial statement. It should be noted that the CSRD is currently under review by the EU legislator.

and endorse to itself operations covered by the delegation. On the basis of the information received, it assesses the adequacy of the company's organizational, administrative and accounting structure; when prepared, it examines the company's strategic, industrial and financial plans; it assesses, on the basis of the report of the delegated bodies, the general management performance. The powers specified in Articles 2420b, 2423, 2443, 2446, 2447, 2501b and 2506a cannot be delegated. The delegated bodies see to it that the organizational, administrative and accounting structure is appropriate to the nature and size of the enterprise and report to the board of directors and the board of auditors, with the frequency established by the bylaws and in any case at least every six months, on the general performance of operations and its foreseeable evolution as well as on the most significant operations, due to their size or characteristics, carried out by the company and its subsidiaries. The directors are required to act in an informed manner; each director may request the delegated bodies to provide the board with information regarding the company's management."

The Netherlands

By Bas Visée and Anouk Oosterom, Rutgers & Posch

1 Where does the true and fair concept exist within the legal framework of the Netherlands?

(a) Title 9 of Book 2 of the Dutch Civil Code (in Dutch: "*Burgerlijk Wetboek*"; the "DCC") is the Dutch reflection of European directives in relation to annual accounts. In article 4(3) of the EU Annual Accounts Directive¹⁰ reference is made to the "*true and fair view of the assets, financial position and profit or loss of the company*" that the annual accounts must provide. This purpose statement is implemented in section 2:362 paragraph 1 DCC¹¹, referred to as the insight requirement (in Dutch: "*inzichtsvereiste*"), and further elaborated on in section 2:362 paragraph 2 DCC (for the balance sheet with the explanatory notes) and in section 2:362 paragraph 3 DCC (for the profit and loss account with the explanatory notes). Pursuant to section 2:393 paragraph 3 DCC, the external accountant must investigate whether the annual accounts provide the insight as required under section 2:362 paragraph 1 DCC.

(b) Title 9 of Book 2 of the Dutch Civil Code is part of the Dutch Generally Accepted Accounting Principles (the "Dutch GAAP"), together with case law on reporting in combination with the RJ Guidelines (as defined below).

2 Are there any alternative Dutch legal terms or concepts that are similar to true and fair?

(a) In the implementation of the European annual accounts directives, the Dutch legislator has given the principle of "true and fair view" (in Dutch: "*getrouw beeld*") a different interpretation that is not entirely compatible with European Union law. The formulation 'true and fair view' as such does not appear in Dutch legislation regarding annual accounts¹²; instead, the insight requirement is used. The main principle, as formulated in section 2:362 paragraph 1 DCC, is that the annual accounts, in accordance with standards that are considered acceptable in society, provide such insight that a responsible judgment can be formed regarding the assets and the result, as well as, to

¹⁰ Please note that the Fourth EEC Directive and Seventh EEC Directive were repealed and therefore only article 4(3) of the EU Annual Accounts Directive is relevant.

¹¹ Section 2:362 paragraph 1 DCC states: "De jaarrekening geeft volgens normen die in het maatschappelijk verkeer als aanvaardbaar worden beschouwd een zodanig inzicht dat een verantwoord oordeel kan worden gevormd omtrent het vermogen en het resultaat, alsmede voor zover de aard van een jaarrekening dat toelaat, omtrent de solvabiliteit en de liquiditeit van de rechtspersoon".

¹² However, the concept of 'true and fair view' (*getrouw beeld*) is used in Dutch legislation in relation to the management report.

the extent that the nature of the annual accounts this allows, regarding the solvency and liquidity of the legal entity.

(b) The concept of “faithful” (in Dutch: “*getrouw*”) does appear elsewhere in Dutch legislation. Pursuant to section 2:362 paragraphs 2 and 3 DCC, the balance sheet and profit and loss account with the explanatory notes must faithfully, clearly and systematically reflect the size and composition of the assets at the end of the financial year. The requirement of faithful implies that valuing should not be too high or too low. Although this provision is not based on unitary law, the word faithful is similar to the concept of the “(true and) fair view” in the Anglo-Saxon approach. Furthermore, the accountant must, pursuant to section 2:393 paragraph 5 DCC, present the results of his investigation in a statement regarding the fairness (in Dutch: “*getrouwheid*”) of the annual accounts.

(c) Although the literature on this subject is not entirely unambiguous, the vast majority seems to be of the view that it can be assumed that the insight requirement, as used in section 2:362 paragraph 1 DCC, and the true and fair view, as used in the European annual accounts directives and the IFRS, mean the same thing. Sufficient insight must be provided so that the annual accounts provide a true and fair view.

3 How is true and fair currently interpreted? For example, is it an ‘override’ principle in relation to accounting standards? Is there any case law relating to how true & fair has been implemented?

Socially acceptable standards

(a) As set out in paragraph 1(a) above, the insight requirement is linked to standards that are considered acceptable in society (in Dutch: “*normen die in het maatschappelijk verkeer als aanvaardbaar worden beschouwd*”). These standards must lead to such insight that a responsible judgment can be made. Acceptable standards include legal standards, jurisprudential standards and extra-legal standards. The most important extra-legal standards are the guidelines (the “RJ Guidelines”) of the private organisation the Council for Annual Reporting (in Dutch: “*Raad voor de Jaarverslaggeving*”; the “RJ”). The RJ Guidelines should be regarded as recommendations that express evolved social views regarding the further detailing of Title 9 of Book 2. This does not mean that the RJ has legislative powers or that compliance with the RJ Guidelines automatically means that the insight requirement has been satisfied, or that no other lines of conduct are possible (as is sometimes stated by experts not specialised in annual accounts law).

Complementary and dehydrating effect

(b) Pursuant to section 2:362 paragraph 4 DCC, the insight requirement can have a supplementary or derogatory effect. The first sentence of this statutory provision states that if it is necessary for the insight to be provided, such information must be provided in the annual accounts in addition to what is required in the special regulations of Title 9 of Book 2 DCC. In such a case, simply following the laws and regulations is not sufficient.

(c) The second sentence of section 2:362 paragraph 4 DCC states that, if it is necessary for the insight to be provided, the special provisions of Title 9 of Book 2 DCC must be deviated from, stating the reason and the influence on the assets and results in the explanatory notes. This is comparable to the Anglo-Saxon "true and fair view override" principle. The annual accounts must provide a true and fair view, but if an override from the reporting rules is required to provide this true and fair view, then this must be deviated from and the deviation must be explained. However, the actual meaning of this provision is limited and is hardly applied in practice. The condition that deviation from the specific provisions is necessary (not merely desirable) to provide insight is rarely satisfied, also because additional information can often prevent possible incorrect judgements based on the primary figures.

(d) The Dutch legislator has adopted this "true and fair view override" principle from the European annual accounts guidelines somewhat broadly. The basic principle in the Annual Accounts Directive is that compliance with the special provisions generally provides a true and fair view and that deviations from a directive provision may only be made in exceptional cases. Pursuant to section 2:362 paragraph 4 DCC, the legal entity must deviate from the special provisions if this is necessary to provide the legally required insight; i.e., there do not have to be "exceptional circumstances". Furthermore, Dutch law limits the obligation to provide explanations to the influence of the deviation on assets and results, while the Annual Accounts Directive also requires disclosure of the influence on the financial position of the legal entity. Despite all this, the Dutch provisions will have to be interpreted in accordance with the Annual Accounts Directive.

4 What is the body that oversees corporate governance, and do they have guidance on true and fair?

(a) The Enterprise Chamber of the Amsterdam Court of Appeal (in Dutch: *Ondernemingskamer*) is the judicial body that adjudicates on certain disputes in Dutch companies. Amongst others, the Enterprise Chamber monitors compliance with Title 9 of Book 2 DCC and assesses whether the annual accounts meet the legally required insight under section 2:362 DCC, when an interested party so requests. Please note that through an annual accounts procedure, interested parties in a company can have the annual accounts of that company assessed by the Enterprise Chamber and any corrections enforced.

(b) The RJ is an advisory body whose objective is to improve the quality of external reporting by non-listed organisations and companies in the Netherlands.

(c) The Monitoring Committee Corporate Governance Code monitors compliance with the Dutch Corporate Governance Code by listed companies. This Code is silent about reporting rules, but it does contain provisions regarding risk management, the internal audit function and the assessment of the functioning of the external auditor. In March

2025, the Corporate Governance Code was updated. The provisions relating to the risk management statement (in Dutch: *verklaring omtrent risicobeheersing*; the “VOR”) that need to be included in the management report (in Dutch: *bestuursverslag*) were amended¹³. The management board should state in the amended VOR, with clear substantiation, that the internal risk management and control systems provide at least limited assurance that the sustainability reporting does not contain any material inaccuracies.

(d) The Dutch Authority for the Financial Markets (in Dutch: *Autoriteit Financiële Markten*) monitors compliance with reporting rules by listed companies based on the Dutch Financial Reporting Supervision Act (in Dutch: *Wet toezicht financiële verslaggeving*).

5 Is there any guidance on true and fair within the context of companies reporting on sustainability information?

No (as far as we know).

¹³ Best practice provisions 1.4.2 and 1.4.3. Listed companies must include the amended VOR in their management report for the first time in the financial year 2025. This will enable listed companies to adjust their risk management in 2025 in such a way that they could comply with the new VOR.

France

By Alissa Pelatan, AMP Avocats

1 Where does the true and fair concept exist within the French legal framework?

As France is a civil law country, the true and fair concept is mostly implemented within the French legal framework through the French Commercial Code, therefore referring to corporate law and more precisely commercial company law.

The main legal reference would be articles L123-14 and L123-15 of the French Commercial Code, which state as follows:

- Article L123-14 of the French Commercial Code¹⁴: *"The annual financial statements must be consistent and accurate and give a true and fair view of the company's assets and liabilities, financial position and results.*

Where the application of an accounting requirement is not sufficient to give the true and fair view referred to in this article, additional information must be disclosed in the notes to the financial statements.

If, in an exceptional case, the application of an accounting requirement proves unable to give a true and fair view of the assets and liabilities, financial position or profit or loss, it must be departed from. Any such derogation must be disclosed in the notes of the accounts, together with the reasons for the derogation and an indication of its impact on the assets and liabilities, financial position and profit or loss of the company."

- Article L123-15 of the French Commercial Code¹⁵: *"The balance sheet, profit and loss account and notes must include as many headings and items as are necessary*

¹⁴ "Les comptes annuels doivent être réguliers, sincères et donner une image fidèle du patrimoine, de la situation financière et du résultat de l'entreprise. Lorsque l'application d'une prescription comptable ne suffit pas pour donner l'image fidèle mentionnée au présent article, des informations complémentaires doivent être fournies dans l'annexe. Si, dans un cas exceptionnel, l'application d'une prescription comptable se révèle impropre à donner une image fidèle du patrimoine, de la situation financière ou du résultat, il doit y être dérogé. Cette dérogation est mentionnée à l'annexe et dûment motivée, avec l'indication de son influence sur le patrimoine, la situation financière et le résultat de l'entreprise."

¹⁵ "Le bilan, le compte de résultat et l'annexe doivent comprendre autant de rubriques et de postes qu'il est nécessaire pour donner une image fidèle du patrimoine, de la situation financière et du résultat de l'entreprise. Chacun des postes du bilan et du compte de résultat comporte l'indication du chiffre relatif

to give a true and fair view of the company's assets and liabilities, financial position and results. Each item in the balance sheet and profit and loss account must show the figures relating to the corresponding item in the previous financial year.

The components of shareholder equity are set by decree. The classification of balance sheet and income statement items and the information to be included in the notes to the financial statements shall be determined by a regulation of the French Accounting Standards Authority (Autorité des normes comptables)."

Because of the aforementioned, and as said notion refers to accounting principles, the French "General Chart of Accounts" (hereinafter "GCA") (Plan comptable general 2024) provides that:

- Article 121-1¹⁶: *"Accounting is a system for organising financial information in such a way as to [...] present statements that give a true and fair view of the assets and liabilities, financial position and profit or loss of an entity at the balance sheet date."*
- And Article 810-1¹⁷: *"Summary documents, which must include the balance sheet, income statement and notes, highlight all relevant facts, i.e. those likely to have an influence on the judgement that their recipients may make about the assets, financial situation and results of the entity, as well as on the decisions that they may be led to take."*

While auditing a company's financial accounts, *"the External Auditors certify that the annual financial statements give a true and fair view of the results of operations for the year just ended, and of the financial position and assets and liabilities of the person or entity at the end of that year and justify their assessments"*¹⁸. In most company forms, the directors

au poste correspondant de l'exercice précédent. Les éléments composant les capitaux propres sont fixés par décret. Le classement des éléments du bilan et du compte de résultat ainsi que les mentions à inclure dans l'annexe sont fixés par un règlement de l'Autorité des normes comptables."

¹⁶ *"La comptabilité est un système d'organisation de l'information financière permettant de [...] présenter des états reflétant une image fidèle du patrimoine, de la situation financière et du résultat de l'entité à la date de clôture."*

¹⁷ *"Les documents de synthèse, qui comprennent nécessairement le bilan, le compte de résultat et une annexe mettent en évidence tout fait pertinent, c'est-à-dire susceptible d'avoir une influence sur le jugement que leurs destinataires peuvent porter sur le patrimoine, la situation financière et le résultat de l'entité ainsi que sur les décisions qu'ils peuvent être amenés à prendre."*

¹⁸ Article L821-53 of the French commercial code : *" Les commissaires aux comptes certifient, en justifiant de leurs appréciations, que les comptes annuels sont réguliers et sincères et donnent une image fidèle du résultat des opérations de l'exercice écoulé ainsi que de la situation financière et du patrimoine de la personne ou de l'entité à la fin de cet exercice."*

validate the accounts, and the general assembly of shareholders approve such accounts each year.

In this sense, the "true and fair" concept in France seems to refer to whether the accounting professional (be it internal or external to the entity itself) has respected the GCA principles when preparing the financial statements rather than a director's positive duty to apply the concept to his company's situation when approving such accounts.

2 Are there any alternative legal terms or concepts that are similar to "true and fair"?

In France, the principle of "*image fidèle*" (fair view of assets), which is not clearly defined as such by the French Code de commerce, is intertwined with the principles of "*sincérité et régularité comptable*" (as sincere and consistent accountability) as provided for in the above-mentioned Article L 123-14 of the French Commercial code.

A consistent and sincere accountability of a company allows, therefore, to give an "*image sincère*" (sincere view) of the company's assets, financial position, and results, which can be translated as "*accurate view*", and, by extension "*true and fair view*".

Some additional information can be found in the French GCA which states in its article 121-3¹⁹ related to the notion of "*régularité et sincérité*" (conformity and sincerity) that "*accountability is consistent with rules and procedures in force, which are applied fairly in order to reflect the knowledge that those responsible for drawing up the accounts have of the reality and materiality of the recorded events. In the exceptional case where the application of an accounting rule proves to be inadequate to give a true and fair view, it is departed from. The justification and consequences of the deviation are disclosed in the notes to the financial statements.*"

In addition to the true and fair principle, but without being an alternative, the French accounting principles²⁰ also require showing "caution" in accounting to avoid transferring uncertainties to financial periods to come. The question remains as to whether the professional responsible for preparing the accounts has much leeway to depart from general principles exceptionally given that the accounting rule has been proven to be

¹⁹ " La comptabilité est conforme aux règles et procédures en vigueur qui sont appliquées avec sincérité afin de traduire la connaissance que les responsables de l'établissement des comptes ont de la réalité et de l'importance relative des événements enregistrés. Dans le cas exceptionnel où l'application d'une règle comptable se révèle impropre à donner une image fidèle, il y est dérogé. La justification et les conséquences de la dérogation sont mentionnées dans l'annexe.

²⁰ 7Article 121-4 of the French "General Chart of Accounts" : " La comptabilité est établie sur la base d'appréciations prudentes, pour éviter le risque de transfert, sur des périodes à venir, d'incertitudes présentes susceptibles de grever le patrimoine et le résultat de l'entité. "

"*inadequate to give a true and fair view*". This is a subjective decision that must be considered; however, in practice, the professional responsible for preparing the accounts generally does not deviate from the accounting principles and rules.

3 How is true and fair currently interpreted? Is there any case law relating to how true and fair has been implemented?

1. Doctrine

In France, "doctrine" is a database of articles and opinion letters written by specialists, lawyers, and other legal professionals. Doctrine may not be as strong as case law, but it does hold legal weight especially in defending an argument in court. Given the importance of "doctrine" in French law, we have shared the main legal opinions we found in the "doctrine" with regards to the interpretation of "true and fair".

As per French doctrine, the concept of a "true and fair" view is more a question of assessing the objective of all accounting rather than a fundamental accounting principle and is added to the principles of regularity and fairness, of which it is a complement²¹.

The concept of a true and fair view therefore refers to the concrete result of all the financial items that make up the balance sheet, income statement and notes to the accounts. These financial statements must give a true and fair view of the company's assets and liabilities, financial position, and results²².

The CNCC (Compagnie Nationale des Commissaires aux Comptes²³) emphasizes²⁴ that the concept of true and fair view must be understood in accordance with the accounting principles and rules in force. In other words, a "true and fair view" cannot be assessed in relation to a reality that does not exist outside (or in addition to) the accounting principle and rules currently in force. The "true and fair view" results from the applying accounting rules in good faith. We should therefore not speak of a true and fair view but rather of a true and fair view considering the principles and methods used and adopted by accounting professionals currently in effect.

Subsidiarity of the true and fair view: according to part of French doctrine, some scholars believe that the concept of the true and fair view would only come into play when there is no rule laid down by law or by the French GCA to define good practice intended to solve a problem or when a choice must be made between various applicable rules.

²¹ F. PASQUALINI, Le principe de l'image fidèle en droit comptable, 1992, Litec

²² Répertoire de droit commercial §92

²³ French external auditor national association

²⁴ bulletin CNCC (No. 73, March 1989, EC 88-62, p. 128)

In other words, the concept of a true and fair view is not positive law and would only apply when:

- there are no rules laid down by the financial community to resolve a given problem, as law or competent authorities have not defined good practice in this area (one could even say 'fair play')
- there are several applicable rules, for example several valuation methods; a choice is therefore necessary.
- the rule exists but its strict application would be misleading (exceptional case); it is in fact possible to depart from an accounting requirement to achieve a true and fair view.

Furthermore, the concept of a true and fair view serves as a reference for those who prepare (and audit) financial accounts. Once they have applied the rules, they will have to ask themselves whether the solutions they have implemented is the one that gives readers the least distorted view possible of the company and enables them to accurately assess the company in relation to the financial market. The true and fair view concept will serve as a test.²⁵

2. Related criminal sanctions

It is interesting to note that breach of the true and fair view concept may lead to criminal liability of the company directors, leading to significant sanctions. Below are examples of legal grounds applicable as regards to commercial companies.

- Art L241-3§3 of the French commercial code²⁶: *"It is punishable by five years' imprisonment and a fine of 375,000 euros for managers, even in the absence of any dividend distribution, to present annual financial statements to shareholders that do not give a true and fair view, for each financial year, of the results of operations for the year, the financial position and the assets and liabilities at the end of that period, with a view to concealing the true position of the company"*.
- Art L242-6 §2 of the French commercial code²⁷: *"It is punishable by five years' imprisonment and a fine of 375,000 euros for the chairman, directors or managing*

²⁵ Mémento comptable Francis Lefebvre 2024 §8300

²⁶ Article L241-3§3 du Code de commerce relativement aux SARL : *"Est puni d'un emprisonnement de cinq ans et d'une amende de 375 000 euros le fait pour les gérants, même en l'absence de toute distribution de dividendes, de présenter aux associés des comptes annuels ne donnant pas, pour chaque exercice, une image fidèle du résultat des opérations de l'exercice, de la situation financière et du patrimoine à l'expiration de cette période en vue de dissimuler la véritable situation de la société."*

²⁷ Article L242-6§2 du Code de commerce relativement aux SA: *"Est puni d'un emprisonnement de cinq ans et d'une amende de 375 000 euros le fait pour le président, les administrateurs ou les*

directors of a public limited company to publish or present to shareholders, even in the absence of any dividend distribution, annual financial statements that do not give a true and fair view of the results of operations for the financial year, the financial position and the assets and liabilities at the end of that period, with a view to concealing the true position of the company."

3. Case law examples showing breach of the "true and fair principle"

a) Quantitative breaches of the "true and fair" principle

- Fictive debt: By using a fictitious services agreement, the defendants were able to have the amount of invoices unpaid by a third company added on the assets side of their company's balance sheet. These accounting inaccuracies led to misuse of corporate assets, as the fictitious debt enabled them to acquire shares in this company by offsetting the price of the shares against the amount of the alleged debts (Cass.crim., 1 Dec. 2010, no. 09-86.125).
- Real estate or fictitious property: The increase in assets may arise from the fact that a company still includes on its balance sheet shares in a subsidiary that were previously sold (Cass.crim., 26 June 1978, no. 77-92.833).
- Fictitious capital gains: The judges held, among other things, that an unrealised profit on a future company should be included under sundry debtors (CA Paris, 2 Dec. 1938: Journ. Sociétés 1939)
- Hidden losses: a breach will be found in the event the losses have been overlooked thanks to the magic of accounting tricks, in particular by carrying them forward to the next financial year (CA Paris, 9 Jan. 1888: DP 1889, 2, p. 71. - CA Paris, 28 July 1937).

Other kinds of breaches can be found such as hidden debts, lack of amortisation or provision.

b) Qualitative breaches of the "true and fair" principle

- Fraudulent distribution: transfer of an item from liabilities to assets through the unjustified incorporation of certain costs into fixed assets (CA Paris, 28 July 1937).

directeurs généraux d'une société anonyme de publier ou présenter aux actionnaires, même en l'absence de toute distribution de dividendes, des comptes annuels ne donnant pas, pour chaque exercice, une image fidèle du résultat des opérations de l'exercice, de la situation financière et du patrimoine, à l'expiration de cette période, en vue de dissimuler la véritable situation de la société".

Other kinds of qualitative breaches can be found such as equity valuation, property or other (current) assets valuation, valuation of current liabilities and commitments.

To summarise, true and fair refers, from a legal perspective, to the accurate view of the financial situation of a company with regards to the adopted general accounting principles in France. If a professional accountant (or a company director liable for the truthfulness and fairness of accounts) decides to reinterpret the concept of true and fair so as to include social and environmental liabilities in the company's financial statements, this might in fact constitute a breach in his duty to apply to currently applicable accounting standards which do not take into account social and environmental liabilities at this point in time. The court would probably conclude that a positive application of a "true and fair view" would cause distortion in the financial accounts thereby reducing the amount of corporate income tax paid on the profit. If change is to be made in France, it would first be necessary to change the applicable general accounting standards used in preparing the financial statements to give professionals the option to consider the social and environmental factors and liabilities or allow them to use a new accounting standard/method.

As a side note and in this respect, in France, the laws and regulations around social and environmental liabilities and reporting is moving slowly in the direction of holding directors liable for their negative impacts on society. For example, large French companies (of more than 300 employees) must produce a social audit "bilan social" each year on multiple subjects including an employee's quality of work life. Companies must also produce and submit annually: (i) an index for equality between men and women (with a score of at least 75 points); and (ii) a report on comparative situation between men and women. The information is stored in the BDESE (social database). This database can be consulted by the employee representatives along with the work inspector upon request. For certain companies, the social audit must be sent to the shareholders. Even though these reports are not annexed to the annual accounts, they could serve as an open door to quantify (through accounting standards) the potential negative social impact and include these numbers in the yearly financial statement.

Finally, large companies must also report on their negative environmental impact (Grenelle II law of 2010, climat et resilience law of 2021, AGEC law of 2023, anti-greenwashing law of 2023). These laws could also be open doors for moving the debate from mere transparency and reporting, to quantifying and measuring these negative impacts and including such numbers as an annex to the financial statements.

4 What is the body that oversees corporate governance, and do they have guidance on true and fair?

Corporate governance rules are not set out in legislative or regulatory texts, but only in codes drawn up by corporate representative bodies (MEDEF, AFEP). What's more, reference to a corporate governance code is currently only an option for listed companies, as stipulated in Article L225-37 of the Code de Commerce.

There are two codes of corporate governance in France: the "AFEP-MEDEF" code and the "Middlenext" code.

In France, "l'Autorité des marchés financiers" (AMF) is the governmental body in charge of overseeing corporate governance in listed companies.

Each year, the AMF publishes a report on corporate governance and executive compensation, based on information published by companies listed on a regulated market and having their registered office in France (article L621-18-3 of the Monetary and Financial Code).

In addition, the AMF issues recommendations applicable to companies declaring themselves to be bound by the AFEP-MEDEF Code, as well as ideas for consideration by professional associations.

AMF recommendation DOC-2012-02 brings together all the recommendations applicable to companies declaring that they refer to the AFEP-MEDEF code, and the ideas put forward to professional associations. But there are no references to the principle of "image fidèle" in this recommendation nor in the codes.

Also, and as mentioned above, the French GCA established guidelines to be followed by chartered accountants which are a regulated professional activity with their own ethics and rules (Association of Chartered Accountants of France / Ordre des experts-comptables).

Likewise, external auditors ("*commissaires aux comptes*"), as a regulated professional activity, have their own ethics and rules and shall follow general guidance from their organisation. They may be liable in case of breach of the "true and fair" view, by the AMF but also by judges as well as their internal jurisdiction (disciplinary sanctions).

5 Is there any guidance on true and fair within the context of companies reporting on sustainability information?

1. Financial reporting

The Notat/Senard report entitled "*L'entreprise objet d'intérêt collectif, 2018*" (The company as a collective interest item), which was drafted to inform reflections on the PACTE legislation (2019 law that came into force²⁸ in 2020), states as follows:

²⁸ "*Recommandation n°10: engager une étude concertée sur les conditions auxquelles les normes comptables doivent répondre pour servir l'intérêt général et la considération des enjeux sociaux et*

"Recommendation no. 10: undertake a concerted study of the conditions that accounting standards must meet in order to serve the public interest and take social and environmental and environmental issues. Accounting is the key to any understanding of a company. Yet the social and environmental issues that need to be considered are absent. In the same way that company law may have appeared out of step with reality, strictly financial accounting does not give a true picture of business practice. A study could therefore be undertaken on this subject."

It shall be underlined that this statement only was a recommendation remained while drafting the "Pacte" law of 2019 and that no reference to sustainability as regards financial reporting has been implemented so far in French law. However, this law did modify articles 1833 and 1835 of the civil code (applicable to all civil and commercial companies) to include a director's duty to consider social and environmental factors in making decisions on behalf of the company. While not relevant to accounting, it does show that the French government is moving towards holding companies to a higher degree of scrutiny for their social and environmental impact.

2. Extra-financial reporting

Although the present research is focused on "True and Fair" in financial reporting, we researched the application of extra-financial reporting in France based on the EU applicable regulations. In summary, we have not found any reference to the true and fair principle within the context of companies reporting on sustainability information, apart from what has been mentioned above.

environnementaux. Toute compréhension de l'entreprise passe par sa comptabilité. Or les enjeux sociaux et environnementaux qui doivent être considérés, en sont absents. De même que le droit des sociétés a pu apparaître décalé avec la réalité, la comptabilité strictement financière ne donne pas une image fidèle de la pratique des entreprises. Une étude pourrait donc être engagée sur ce sujet."

Spain

By Marianne Leyte, Ignacio Ramos, Blanca Manuel and José Antonio Vega, Insight4

1 Introduction

Brief overview of the importance of "imagen fiel" representation in accounting practices.

The concept of *imagen fiel* (fair image or fair representation), which is the translation into Spanish of the English concept "true and fair", is key from a structural perspective in the information to be provided by companies to stakeholders in Spain.

The concept has its origin in the adaptation of Spanish companies' regulation to the companies' EU Directives, with a seminal triple legislative pack:

1. Law 19/1989, of 25 July, of partial reform and adaptation of business legislation to the Directives of the EEC on matters related to companies²⁹;
2. Royal Legislative Decree 1564/1989, of 22 December, approving the consolidated text of the Limited Liability Companies Law³⁰; and
3. Royal Decree 1643/1990, of 20 December, approving the General Accounting Plan³¹ ("GAP").

This legislative pack implemented in Spain the First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community, and the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies.

The referred legal instruments have been further updated. Current versions of said regulations are addressed below.

Development of the concept under Spanish regulation

Imagen fiel concept is complex³², as it is not legally defined. Further, it is not:

²⁹ Ley 19/1989, de 25 de julio, de reforma parcial y adaptación de la legislación mercantil a las Directivas de la comunidad Económica Europea (CEE) en materia de Sociedades

³⁰ Real Decreto Legislativo 1564/1989, de 22 de diciembre, por el que se aprueba el texto refundido de la Ley de Sociedades Anónimas

³¹ Real Decreto 1643/1990, de 20 de diciembre, por el que se aprueba el Plan General de Contabilidad

³² We will use the Spanish term *imagen fiel* throughout this report in order to state clearly the difference between the British "true and fair" concept.

1. an exact translation of the “true and fair view” concept- [“true” is not explicitly stated in the concept [the exact translation should have been “imagen verdadera y justa”]. The translation of the “true and fair view” concept by *Imagen fiel* (fair view) already appears in the Spanish version of the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies;
2. static, but dynamic. The interpretation may, therefore, vary depending on the evolving legal, economic and (even) social context;
3. closed, but open. Following scholars, there are at least four possible interpretations of the expression *Imagen fiel*, depending on the focus emphasized:
 - focus on the legal perspective: As compliance with the legal regulations dealing with accounting principles. This is the approach traditionally followed by accounting and audit professionals;
 - focus on the economic perspective: As pre-eminence of substance over form. This approach emphasizes that information shall be presented attending to the economic perspective, over the legal [and tax] perspective;
 - focus on the content: As synonym of accuracy, objectivity and trueness. This approach emphasizes that the information shall contain all relevant data, without errors and in a clear manner;
 - focus on the receiver: As synonym of useful information for the receivers of it.

The above four interpretations are not incompatible between them.

The obligation

It is clear that the obligation to provide an *imagen fiel* is a statutory obligation. However, it is necessary to clarify that the *imagen fiel* concept has at least three dimensions: financial; legal; and taxation.

Above all, the concept is of particular relevance in supervised segments, such as in credit, capital and insurance markets.

2 Regulations Applicable in Spain

- Explanation of regulations addressing "imagen fiel" in Spain
- Detailed exploration of how these regulations are structured and enforced
- Discussion on the liability regime concerning adherence to "true and fair" principles

A first consideration is that Spanish law currently addresses the *imagen fiel* requirement in both general business law (the Code of Commerce³³ and the Companies Law³⁴) and specific regulations (such as the GAP). According to the Code of Commerce (art. 34-2):

2. The annual accounts should be written clearly and present the imagen fiel of the assets, financial position and results of the company, per prevailing legislation. For that purpose, transactions shall be accounted for in accordance with their economic reality and not merely their legal form³⁵.

This concept is reproduced in the Companies Law which states in its Article 254 (Content of the annual accounts), after having established that the annual accounts comprise the balance sheet, the profit and loss account, a statement reflecting the changes in equity, a statement of cash flows and the Management Report, that:

2. These documents, which constitute a unit, should be written clearly and present the imagen fiel of the assets, financial position and results of the company, in accordance with this Law and the Code of Commerce³⁶.

Article 253 of the same Law has a similar scope and states that it is the responsibility of the directors of the company to draw up the annual accounts, mentioning as well the obligation of including the statement of non-financial information³⁷.

These provisions of the Code of Commerce and the Companies Law have been further developed in the GAP, which states that in its first article that

The annual accounts must be written clearly, so that the information provided is understandable and useful for users when making their economic decisions, and must show the imagen fiel of the company's assets, financial situation and results, in accordance with the legal provisions³⁸.

³³ Real Decreto de 22 de agosto de 1885 por el que se publica el Código de Comercio

³⁴ Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital

³⁵ See Annex attached for the text of article 34 Code of Commerce

³⁶ See Annex attached for the text of article 254 of the Companies Law

³⁷ See Annex attached for the text of article 253 of the Companies Law

³⁸ See Annex attached for the text of article 1 of the GAP

It further states that *"the systematic and methodical application of the accounting requirements, principles and criteria set out below should ensure the presentation of the imagen fiel of the assets, financial position and results of the company in its annual accounts."* As well as that *"(T)ransactions shall be accounted for in accordance with their economic reality and not merely their legal form."*

Moreover, the article explicitly states that when compliance with the accounting requirements, principles and criteria set out in the GAP is not considered sufficient to ensure the presentation of an *imagen fiel*, the additional information necessary shall be included in the management report.

Finally, it states that *"In those exceptional cases in which such compliance is incompatible with the imagen fiel that the annual accounts must provide, such application will be considered inappropriate. In such cases, the management report shall provide sufficient reasons for this circumstance and explain its influence on the company's assets, financial situation and results."*

It should be noted that the concept of *imagen fiel* has been expanded from a legal perspective to include also non-financial information, including specifically on ESG matters. An example of this would be Article 262 of the Companies Law.

Article 262 of the Companies Law deals with the content of the Management Report and provides that such report must contain a faithful presentation of the evolution of the business and situation of the company, as well as a description of the main risks and uncertainties it faces. To the extent necessary to understand the developments, results or situation of the company, the analysis will also include non-financial key indicators relevant to the specific business activities³⁹.

The GAP dedicates a specific section relating to environment, stating the criteria, in its article 15, relating to the data to be disclosed regarding to environmental information, and (art. 13) detailing the information to be provided with regard to assets or liabilities of an environmental nature⁴⁰.

Finally, as we describe the legal framework of the *"imagen fiel"* concept we must also pay attention to specific regulations dealing with newly created categories of companies. In this regard, of the utmost relevance is the tenth Additional Provision of Law 18/2022, of September 28, on the creation and growth of companies⁴¹, which creates the figure of the so called "societies of benefit and common interest" (*Sociedades de Beneficio e Interés*

³⁹ See Annex attached for the text of article 262 of the Companies Law

⁴⁰ See Annex attached for the text of article 13 of the GAP

⁴¹ Ley 18/2022, de 28 de septiembre, de creación y crecimiento de empresas

Común, SBIC), which are those capital companies that voluntarily decide to include in its bylaws (and, therefore, creating of both a legal obligation):

1. its commitment to the explicit generation of positive social and environmental impact through its activity; and
2. its submission to higher levels of transparency and accountability in the performance of said positive social and environmental goals, and the consideration of relevant interest groups in its decisions.

The recognition of the SBICs responds to some of the changes that have occurred in recent years in relation to the ideas of corporate social responsibility, sustainability and the establishment of a purpose by companies. The SDGs recognised in the 2030 Agenda are representative of the existing global consensus on the social and environmental challenges that States face, and on the values that they have committed to preserving, such as peace, social equality or the energy transition. towards an ecological and fair economy.

As a result of the aforementioned regulation, companies have also positioned themselves as key agents of change. Notably, some large business entities have explicitly embraced a vision of new capitalism, moving beyond the exclusive primacy of shareholder interests.

It is in this environment that these Common Benefit and Interest Societies have emerged: a mercantile company that not only has a responsible social or environmental performance but also, its purpose as a company is to generate a positive impact at a social level. or environmental through its activity. *"As regards SBICs, it is foreseen that a further law will state the criteria and methodology to validate the qualification as an SBIC. The same will include the verification of the performance of the company."* In our opinion, the regulation of the legal regime of SBICs would be a good scenario to extend the *imagen fiel* concept to ESG matters considering that:

1. it is explicitly stated in the law that "transparency and accountability" in the performance of positive social and environmental goals shall play a key role;
2. it is explicitly stated in the law that the "consideration of relevant interest groups" (in addition to shareholders) shall play a key role in the decisions of the SBIC.
3. under these new regulations and social change, Spanish legislators would have a good opportunity to:
 - a. take the lead on these matters, as the figure of the SBICs is specific to Spanish law (and not dependant on EU legislation);
 - b. align with anti-greenwashing legislative initiatives already taking place in Spain (going therefore beyond mere company labelling) Proposal for a Directive of the European Parliament and of the Council on substantiation

and communication of explicit environmental claims (Green Claims Directive);

- c. ensure that independent verification is established.
- d. ensure alignment with the *imagen fiel* concept enshrined in Spanish law for the last 40 years; extending it to include specifically and from a statutory perspective the social and environmental factors in the accounts;
- e. ensure that a specific liability regime is developed, to avoid the risk of ESG washing.

How regulations are structured and enforced

Pursuant to the GAP, generally accepted accounting principles are considered to be those set out in the following:

1. Business Law: Code of Commerce and other prevailing legislation (including Companies and European Law)
2. Accounting Law: General Accounting Plan and sector-specific adaptations
3. Implementation standards approved by the Institute of Accounting and Account Audits⁴² (ICAC) (which is an autonomous public body depending on the Ministry of Economy, Trade and Enterprise)
4. Other rules which are of application (other specifically applicable Spanish legislation).

In case of conflict between these principles, the higher-ranking principle prevails, but the grey areas in interpretation and application exist and must be managed properly. Principles and practices established by professional institutions – such as the Spanish Accounting and Business Administration Association (AECA)⁴³ – or international accounting [organisations/associations -international accounting standards] are of a subsidiary nature, to complement the generally accepted accounting principles. In this regard, the ICAC has publicly stated (in the context of audit) that:

“When there are operations or economic events not contemplated in the previous regulations, the auditor will base his professional opinion on optional accounting standards issued by solvent national or international organizations, provided that they meet each and every one of the following conditions:

- *They are not contrary to mandatory accounting principles and standards.*
- *They have been generally accepted by professionals through express declarations of the organizations to which they are part.*

⁴² Instituto de Contabilidad y Auditoría de Cuentas

⁴³ Asociación Española de Contabilidad y Administración de Empresas

- *Its application allows obtaining a fair image of the assets, financial situation and results of the audited entity"*

Supervision and enforcement

Compliance with the aforementioned rules is supervised by the relevant internal and external stakeholders whose mandates are focused on preserving the security of the mercantile practice and protect the stakeholders in a final point. Ultimate enforcement relies on Spanish judges.

Definition of the concept relies on the Spanish Parliament (following generally EU initiatives), and interpretation relies on the ICAC and, ultimately, on Spanish judges.

3 Impact of Sustainability Disclosures on Accounts

The annual accounts under Spanish legislation

Under the Spanish Commercial Code, different types of companies are mandatorily required to publish their annual accounts: the so-called *Sociedades Anónimas*, *Sociedades de responsabilidad limitada* and the *Sociedades comanditarias por acciones*⁴⁴. Also, public enterprises are obliged to publish their annual accounts. They must comply with the same accounting standards and regulatory requirements as privately owned companies.

Those companies that are not legally obliged to publish their accounts (mainly non-mercantile enterprises) can choose to do so voluntarily. This voluntary publication must still adhere to Spanish legislation, ensuring accuracy, transparency, and compliance with accounting standards.

The scope of annual accounts in Spain is comprehensive, covering a range of financial and non-financial information that should provide a clear and accurate picture of a company's financial position and performance, an *imagen fiel*. Traditionally, from a legal perspective, the scope of the accounts was focused on financial information. However, as we have seen, this scope changes depending on the social context and in recent times so-called non-financial information is gaining in importance, and, in certain cases, such non-financial information must be included in the accounts⁴⁵.

⁴⁴ The Sociedad Anónima would be similar to the British Public Limited Company, while the Sociedad de Responsabilidad limitada and the Sociedad comanditaria por acciones would be similar to the Private Limited Company and the Limited Partnership, respectively.

⁴⁵ It is clear though that also the so-called "non-financial information" has financial and economic implications. Therefore, the concept non-financial information is not correct. However, since Spanish legislation is still referring to this concept, we have also used it in this report.

The size of the company determines whether a company may present abridged accounts. It is also the size of non-listed companies (the size of their assets, net turnover, and number of employees) which determines whether they must publish a management report. This management report should provide an "*exposición fiel*", a fair view of the company's business development and current situation, including the main risks and uncertainties that the company faces and is the document in which the sustainability policy, measures, etc. of a company are being published. These regulations ensure that larger companies, with significant economic impact, maintain transparency and accountability by disclosing their financial and non-financial performance to the public and regulatory authorities.

What such "*imagen fiel*" is, can be interpreted in different ways, as we have explained above. One factor that must be taken into account when considering whether the financial statements represent the *imagen fiel*, is the nature of the company. For example, companies that commit to generating a positive environmental impact can be expected to include information on such commitment in the accounts. An example of such a company would be the previously commented *Sociedad de Beneficio e Interés Común* (SBIC), a recently legislated company that, as we have seen above, voluntarily commits to generating positive social and environmental impact alongside economic profits. These companies embed sustainability into their core operations. In its decision-making processes, an SBIC considers all stakeholders, particularly those directly benefiting from its purpose.

The main principles governing the preparation of these accounts are the principles of prudence, going concern, consistency, accrual basis, and materiality. The principle of prudence dictates that companies should not overestimate income or underestimate expenses. The going concern principle assumes that the company will continue its operations in the foreseeable future. Consistency ensures that the same accounting methods are applied from one period to the next. The accrual basis principle requires that transactions are recorded when they occur, not when cash is exchanged. Materiality involves disclosing all information that is relevant and thus that could influence the economic decisions of users.

Annual accounts must be prepared and approved by the company's management within three months after the end of the fiscal year. They must then be submitted to the shareholders for approval at the annual general meeting, which must be held within six months after the fiscal year-end. Once approved, the accounts must be filed with the Commercial Registry within one month, ensuring they are available for public scrutiny and meet regulatory compliance.

The accountability for the publication and content of annual accounts primarily lies with the company and its directors. Directors are responsible for ensuring that the annual accounts provide an *imagen fiel* of the company's financial situation and comply with the relevant legal and regulatory requirements. The director's accountability includes the

accuracy, completeness, and transparency of the financial information presented. They can be held liable for any inaccuracies or omissions that may mislead stakeholders or fail to comply with statutory requirements. This liability encompasses both civil and, in some cases, criminal consequences.

The responsibility of the external accounting firm is to conduct an audit of the annual accounts, providing an objective assessment of whether the accounts are free from material misstatement and have been prepared following applicable accounting standards. Thus, accountants must ensure, on the one hand, that the accounts comply with the Spanish Accountability Plan and at the same time that the accounts are accurate and reliable, and that they reflect the *imagen fiel* of the financial situation of the company. The liability of the external auditors is generally limited to professional negligence or failure to perform their duties with due diligence and care, and in no way do they share the same level of liability as the company's directors. Thus, accountants must ensure, on the one hand, that the accounts comply with the Spanish Accountability Plan and at the same time that the accounts are accurate and reliable, and that they reflect a true and fair image of the financial situation of the company.

The annual accounts serve as a crucial tool for transparency and accountability for all interested parties. They are directed to a broad range of stakeholders who have an interest in the financial health and performance of the company. The GAP states that the accounts must be understandable and useful for the users when making financial decisions. Therefore, the accounting rules do not impose any restrictions or specific requirements regarding the type of person for whom the accounts are intended. Instead, they mandate that these accounts must be understandable and useful for any user when making financial decisions. Nonetheless, in practical terms, primarily, they are aimed at the company's shareholders, providing them with essential information to make informed decisions about their investments. Additionally, any other party can use the accounts to assess the company's creditworthiness, and financial stability. Notably, in recent years, the understanding of who may be interested in a company's financial situation has broadened. It is now recognised that not only shareholders, but anyone with a stake in the company, may be interested in its financial situation. These stakeholders might seek the annual accounts for reasons beyond financial performance.

Regulatory authorities may review the accounts to ensure compliance with legal and tax requirements. Additionally, local communities and environmental groups might be interested in the financial reports to assess the company's social and environmental impact.

Annual accounts and responsibility

The publication of annual accounts entails significant responsibility, not only regarding the content but also regarding the formal obligations of approval by the shareholders' meeting and filing with the Spanish mercantile registry. In Spanish legislation, there is a difference between the extent of civil liability that can be demanded from an executive

depending on their role and responsibilities within the company. Generally speaking, directors must act in the best interest of the company and its shareholders, ensuring transparency and accountability.

What are directors accountable for regarding the financial statements of the company? When considering the accountability of directors, the concept of *imagen fiel* is crucial. However, Spanish legislation sometimes requires administrators to ensure the *veracity* (*veracidad*) of the accounts according to legal standards rather than the *imagen fiel*. These concepts are related but not identical. From a legal standpoint, there is a distinction between administrators being responsible for presenting accounts that reflect the *imagen fiel* of the company and being accountable for the veracity of the statements. Accounts may be accurate (*veraces*) yet omit certain information, thus failing to provide the *imagen fiel*, a true and fair view.

The concept *imagen fiel* is prominently used in the Code of Commerce. As stated above, article 34.2 specifies that annual accounts must be clearly drafted to reflect the *imagen fiel* of the company's assets, financial situation, and results, considering the economic reality beyond mere legal form. Article 34.3 adds that if legal provisions are insufficient for this purpose, additional information should be provided in the management report. Similarly, the Companies Law in Article 254.2 requires annual accounts to present an *imagen fiel* in accordance with the law and the Code of Commerce. The GAP also emphasizes this principle. It mandates that financial statements must be prepared clearly to provide a true and fair view of the company's assets, financial position, and results. If standard accounting principles are insufficient, additional information must be included in the notes.

On the other hand, the term "*veracidad*" is only used in those cases in which it is stated that administrators must sign the financial statements. For example, Article 37 of the Code of Commerce mandates that annual accounts be signed by the entrepreneur or administrators, who are then responsible for their veracity. This is reiterated in Article 253.2 of the Companies Law which requires all administrators to sign the annual accounts and management report, explicitly holding them accountable for the truthfulness of these documents. Additionally, the GAP specifies that administrators are responsible for the veracity of the accounts and must sign them, noting any missing signatures and the reasons for such absences.

Given that the concept *veracidad* is used exclusively in contexts related to the signing of accounts, while *imagen fiel* is used in all other contexts, we can infer a nuanced hierarchy between these concepts. Thus, when interpreting these texts, it is reasonable to conclude that the concept of *imagen fiel* holds greater significance than *veracidad* and that administrators can be held accountable in case the accounts do not represent an *imagen fiel* even if they are *veraces*. This interpretation, while subtle, aligns with the broader emphasis on comprehensive and accurate financial representation in both Spanish and European regulatory frameworks.

The Code of Commerce and the Companies Law primarily regulate the civil responsibility of directors. These codes comprehend general rules for accountability for directors. Article 297 of the Code of Commerce holds managers liable for any damage caused to the company's interests due to negligence or violation of orders or instructions received. Not only members of the Board of Administration can be held responsible. Article 236 of the Companies Law extends the responsibilities and duties of directors to any individual with top management powers in the company, regardless of their formal title. Specifically, article 236.4 stipulates that in the absence of a permanent delegation of powers to managing directors, the general manager will be held responsible. Article 236.5 further extends liability to directors who have acted under the authorisation of the general meeting. This legal framework indicates a trend toward broadening the scope of liability to include senior executives and individuals with high-level management authority.

The law distinguishes between corporate and individual liability actions based on whether the harm is done to the company or directly to shareholders or third parties. Article 238 of the Companies Law governs corporate liability actions, which the company, shareholders, and creditors can pursue. Individual liability actions address direct harm to shareholders or third parties due to the administrators' acts. Specific conditions include direct damage, unlawful acts or omissions by the administrators, and a causal link between the administrator's conduct and the harm suffered. Additionally, administrators can be held personally liable for the company's debts.

Regarding criminal liability, the Spanish Criminal Code⁴⁶ (art. 31 bis) establishes certain "corporate offenses" that directors can commit, such as accounting fraud or failure to deposit annual accounts. The criminal liability of directors is independent of the company's criminal liability and can result in fines or even prison sentences. An illustrative case is the Supreme Court ruling on July 13, 2010 (STS 13 July 2010), which highlights the critical importance of the truthfulness and accuracy of financial information reflected in annual accounts, as these documents must provide an *imagen fiel* of the company's assets and economic situation.

It is important to note that this liability is not confined to Spain. Companies operating internationally may face similar responsibilities in other countries particularly if there are points of connection such as the issuance of debt or listing on a foreign stock exchange.

[Influence of Sustainability Disclosures on Accounting Practices in Spain](#)

After establishing the Spanish legal framework surrounding financial accounts, we delve into analysing the influence of sustainability disclosures on accounting practices in Spain.

⁴⁶ Ley Orgánica 10/1995, del Código Penal

This influence extends far beyond mere regulatory compliance, impacting various facets that resonate with companies and accounting practices in general.

Primarily, companies will consider competitiveness when contemplating sustainability accounting. Understanding how sustainability initiatives affect its competitiveness and financial performance is essential. While these initiatives often lead to tangible benefits such as cost savings, operational efficiencies, and bolstered brand reputation, it's important to acknowledge that initial implementation typically incurs expenses rather than (immediate) returns and companies may perceive sustainability initiatives as costs rather than investments.

Furthermore, integrating sustainability disclosures into financial accounts can significantly impact companies' tax obligations, especially in Spain where tax authorities scrutinise financial statements to determine taxable assets. Sustainability disclosures, particularly those with quantifiable metrics, may trigger tax implications. A comprehensive analysis of these implications is imperative to understand their full impact on the company's tax position. Uncertainty regarding the effect of these disclosures on tax treatment may lead companies to hesitate in their inclusion.

Impact on Obligations and Notes to the Annual Accounts

Incorporating sustainability disclosures into obligations and notes to the annual accounts presents both challenges and opportunities for Spanish companies. The principle of prudence guides accounting practices, mandating consistent criteria application annually, ensuring transparency and reporting consistency over time. Once sustainability disclosures are included, ongoing reporting becomes obligatory in subsequent years. Thus, this decision holds considerable weight.

Regarding constructive obligations, sustainability disclosures may be viewed as such—emerging from past events but not recognised as liabilities in financial statements. Though they may not immediately impact finances, companies must quantify and disclose them, offering stakeholders insight into potential future liabilities and commitments linked to sustainability initiatives. Quantifying these disclosures can impact tax treatment and competitive standing, as discussed earlier.

When sustainability disclosures are noted in financial accounts, there is no automatic obligation to integrate them into the main body of the accounts in subsequent years. The decision to include sustainability disclosures in the actual financial statements rather than in the accompanying notes depends on various factors. These factors may include the materiality of the information, the relevance to stakeholders, and the impact on the company's financial position and performance. Although there is no mandated requirement to incorporate these disclosures into the primary statements, doing so can enhance transparency and demonstrate a commitment to sustainable practices.

4 Integration of Imagen fiel Requirement with IAS37

- Exploration of how company directors can use "true and fair" requirements in conjunction with IAS37
- Discussion on incorporating additional information in the accounts or constructing obligations related to sustainability issues

The principle of an *imagen fiel* representation is fundamental in financial reporting, ensuring that financial statements provide an accurate and impartial view of a company's financial position. IAS 37, which deals with provisions, contingent liabilities, and contingent assets, is crucial in how organisations recognise and measure these elements. Company directors can use the *imagen fiel* requirement to enhance transparency and accountability by leveraging the guidelines provided in there.

Using imagen fiel with IAS 37

IAS 37 requires companies to recognise a provision when there is a present obligation (legal or constructive) as a result of a past event, an outflow of resources is probable, and the amount can be reliably estimated. Directors must ensure compliance with these requirements to maintain an "*imagen fiel*" presentation. This involves a thorough assessment of whether an obligation exists and whether it meets the criteria set out in IAS 37, with a focus on the substance over form. Once these criteria have been properly funded, provisions should be measured at the best estimate of the expenditure required to settle the obligation, supported by evidence and reasonable assumptions. This ensures that the financial statements reflect an *imagen fiel* view of potential liabilities. Contingent liabilities and assets, while not recognised on the balance sheet, should be disclosed unless the possibility of an outflow or inflow is remote, providing stakeholders with a comprehensive picture of potential financial impacts.

In situations where strict adherence to IAS 37 may not fully capture the economic reality of obligations or risks, directors can make "*Imagen fiel*" adjustments, recognising additional liabilities or adjusting estimates to better reflect the company's financial position.

In practice, making *imagen fiel* adjustments involves a rigorous process of assessment and justification starting with a detailed analysis where directors must conduct a thorough analysis of the obligation, considering all relevant factors, including legal advice, expert valuations, and economic forecasts. The rationale for any adjustments must be well-documented, providing clear evidence and reasoning for the decision. This includes documenting the assumptions made, the data used, and the potential impact on the financial statements. But the internal analysis must be completed with a stakeholder communication. Clear communication with stakeholders, including auditors, regulators, and investors, is essential and directors should explain the nature of the adjustments and how they contribute to a more accurate and fair presentation of the company's financial position. Finally, it will require an ongoing review where adjustments should be reviewed on predetermined basis to ensure they remain appropriate in light of

new information or changing circumstances. This ongoing review helps maintain the integrity and reliability of the financial statements.

Global Applicability and Adaptation

Although IAS 37 is a global standard, its application can vary due to differing national regulations and accounting practices. For multinational corporations, harmonising these differences is crucial to maintain consistency and transparency and local accounting rules and practices must be considered while aligning them with IAS 37 and "*imagen fiel*" requirements. This is the reason for proposing a common criterion for recognising and measuring provisions across different jurisdictions to ensure comparability and consistency in financial reporting. But as that could take time a first step would be to define and commit with a company framework to comply with and give orientation in the corporate environment.

Incorporating Sustainability Issues in Financial Reporting

IAS 37 allows for the recognition of generic responsibilities related to sustainability, providing a framework for incorporating environmental and social obligations into financial reporting. These responsibilities can support the implementation of an "*imagen fiel*" approach by ensuring that sustainability commitments are transparently reported.

The management report is crucial for formal communication within a company. It can be strategically used to present information on sustainability obligations, enhancing transparency and accountability. Incorporating IAS 37 into the management report can minimise the scope of responsibility within the management report compared to the more standardised financial report, which adheres to strict accounting parameters. The placement of such information affects the associated liability, including toward third parties.

According to Spanish by-laws and corporate regulations, the management report is an essential document that complements the annual accounts, providing detailed information on the company's financial situation, risk management, and significant events. Directors can leverage this report to include provisions and contingent liabilities related to sustainability, thus aligning with both IAS 37 and the "*imagen fiel*" requirement.

Initially, companies can acknowledge their commitment to sustainability principles, identifying and disclosing relevant sustainability issues and potential obligations. This is followed by establishing provisions for specific sustainability-related obligations, such as environmental remediation or social impact initiatives, setting aside funds and recognising these obligations in the financial statements. Effective management and utilisation of funds dedicated to sustainability provisions are crucial, involving ongoing monitoring, reporting on the use of provisions, and assessing the impact of sustainability initiatives.

Standards are essential in guiding and managing the transition from sustainability commitments to actionable results. This process involves developing comprehensive sustainability frameworks that outline principles and guidelines for recognising and measuring sustainability obligations, implementing regulatory requirements that mandate the disclosure and management of sustainability issues, and establishing detailed standards, such as ISO 53001 for Environmental, Social, and Governance (ESG)-under development⁴⁷ and ISO 55001 for asset management⁴⁸, to provide clear guidance on sustainability practices. Certification processes can verify adherence to standards and build trust among stakeholders, with certified audits providing assurance of compliance and the effectiveness of sustainability measures.

A cornerstone for highlighting the importance of this recognition is the concept of double materiality which emphasizes the importance of considering both financial and non-financial impacts of sustainability issues. Directors must ensure comprehensive reporting of sustainability issues, reflecting their significance to both the company and its stakeholders. Transparent and accurate reporting fosters trust among stakeholders, highlighting the company's commitment to sustainability and its impact on broader societal goals. Evaluating who benefits from sustainability initiatives and how these benefits align with corporate strategy and stakeholder expectations is also crucial. As a final recommendation, sustainability obligations should be integrated into the corporate strategy and management systems what implies aligning sustainability goals with the corporate strategy to drive long-term value creation and incorporating sustainability considerations into existing management systems to ensure cohesive and effective implementation across the organisation.

In summary, company directors have a crucial role in ensuring that financial statements provide an *imagen fiel* presentation, particularly when incorporating sustainability obligations. By leveraging IAS 37 and adhering to evolving standards, directors can enhance transparency, accountability, and trust, ultimately contributing to sustainable business practices and long-term value creation. The strategic use of the management report for communicating these obligations, along with the differentiation in responsibility regimes, can further strengthen the company's commitment to sustainability.

⁴⁷ <https://www.iso.org/standard/86672.html>

⁴⁸ <https://www.iso.org/obp/ui/#iso:std:iso:55001:ed-1:v1:es>

5 Examples of Departure from Accounting Standards

- Identification of examples where departure from accounting standards, especially IAS37, may occur
- Examination of instances where departure relates to sustainability concerns to maintain true and fair representation

Departures from accounting standards, such as IAS 37, can be warranted when the strict application of these standards does not fully reflect the economic reality of a company's financial situation. Such departures are made to ensure an *imagen fiel* representation of the company's financial position.

For instance, in cases involving environmental liabilities, a company engaged in industrial operations may anticipate future environmental cleanup costs due to past contamination. IAS 37 stipulates that a provision should be recognised only if there is a present obligation and a reliable estimate can be made. However, when the exact costs are highly uncertain but potentially significant, directors might elect to depart from IAS 37 by recognising a higher provision based on reasonable estimates of future regulatory changes and environmental impacts, rather than waiting until a more precise figure is available. By contrast, if the company can manage and anticipate a better result than the standard there would be a potential benefit to be considered and eventually recognised.

Similarly, in the context of litigation settlements, a pharmaceutical company involved in multiple lawsuits related to the side effects of one of its drugs faces unpredictable potential settlements and reputational risks. While IAS 37 requires a provision when it is probable that an outflow of resources will be required and the amount can be reliably estimated, directors might choose to recognise a larger provision to more accurately reflect the potential financial impact. Complementarily if the company determines actions that generate an added value to the stakeholders by improving the quality of life or general welfare, shouldn't be recognised as a provision for the stakeholders and reuse that surplus in other stakeholders related actions?

Another example is found in product warranty obligations. An electronics manufacturer providing warranties on its products must create provisions for warranty costs based on past experience and future expectations as required by IAS 37. If the company anticipates higher than usual warranty claims due to a known defect not yet publicly acknowledged, directors might create a larger provision to cover the anticipated costs, ensuring the financial statements reflect the true potential liability.

IAS 37 underscores the principle of prudence, ensuring that provisions, contingent liabilities, and contingent assets are recognised based on reliable estimates and present obligations. This cautious approach aims to prevent overstatement of financial health and protect stakeholders' interests by recognising potential liabilities and uncertain outcomes conservatively. However, a critical consideration arises: if adhering to the principle of prudence results in additional societal value, such as through sustainable initiatives or

social programs, this added value should arguably be recognised in some manner. Recognising this value could facilitate the reinvestment of the generated surplus into further beneficial projects. By establishing a predefined and precise framework for this recognition, companies can ensure that these reinvestments are strategically allocated to rebalance and enhance their activities, ultimately fostering a positive cycle of sustainable development and corporate responsibility. This approach not only aligns with the principle of prudence but also amplifies its benefits, extending its impact beyond mere financial reporting to broader societal contributions.

Departures from IAS 37 can also be driven by sustainability concerns, where adhering strictly to the standard might not present an accurate picture of a company's environmental or social obligations.

In the context of climate change obligations, a utility company committed to reducing its carbon footprint may foresee substantial future costs to decommission coal-fired plants and invest in renewable energy sources. IAS 37 may not require a provision if these future costs are not clearly defined or legally mandated at the reporting date. However, to provide an "*imagen fiel*" view, directors might recognise a provision reflecting the anticipated costs of these sustainability commitments, acknowledging the company's strategic direction and the economic reality of its environmental responsibilities.

Furthermore, multinational corporations operating in developing countries often undertake social programs such as building schools or healthcare facilities as part of their corporate social responsibility (CSR) initiatives. While IAS 37 might not necessitate a provision unless there is a present obligation, directors could decide to recognise these future expenditures as a provision to reflect the company's commitment to these sustainability projects, providing a clearer picture of the financial resources dedicated to social impact.

Additionally, in ensuring a sustainable supply chain, a fashion retailer that pledges to maintain a supply chain free from labour exploitation may face significant future costs for audits, supplier training, and potential supplier transitions. Although IAS 37 might not require recognising these future costs, directors could include a provision in the financial statements to cover these anticipated expenses, reflecting the company's genuine commitment to sustainable practices and the likely economic impact.

In summary, departures from IAS 37 and other accounting standards can be justified when they lead to a more accurate and fair representation of a company's financial position, particularly in the context of significant uncertainties or sustainability commitments. These departures should be carefully documented, transparently communicated, and regularly reviewed to ensure they align with the *imagen fiel* principle and provide stakeholders with a realistic understanding of the company's obligations and financial health.

6 Possibility of Amendment

- Delve into the potential for amending regulations to address evolving accounting needs, including sustainability considerations

The potential for amendment is contingent upon the origin of the regulation.

As noted above, accounting regulations are dispersed across various laws within both the European and Spanish regulatory frameworks. Regarding the European laws, any amendment must be implemented at the European level. However, core aspects affecting accounting are regulated and developed under Spanish laws. Consequently, it is possible to amend these regulations following the general legislative procedure that we will later comment.

It is important to consider that these laws provide a general framework and, consequently, are generic in nature. As a result, there may be opportunities to adapt their implementation to address evolving accounting needs through complementary regulatory development, without the necessity to amend the existing regulations. For example, concerning SBICs, it is anticipated that further regulation will establish the criteria and methodology for validating the qualification as an SBIC. This will include the verification of the company's performance. In our opinion, regulating the legal regime of SBICs would be an appropriate context to extend the *imagen fiel* concept to ESG matters, as:

1. The law explicitly states that "transparency and accountability" in the achievement of positive social and environmental goals shall play a key role;
2. The law explicitly states that "consideration of relevant interest groups" (in addition to shareholders) shall play a key role in the decisions of the SBIC.
3. By doing so, the Spanish legislator would have a significant opportunity to:
4. Lead on these matters, as the SBIC framework is specific to Spanish law and not dependent on EU legislation;
5. Align with anti-greenwashing legislative initiatives already underway in Spain, thereby going beyond mere company labelling;
6. Ensure that independent verification is established;
7. Ensure alignment with the Imagen fiel concept enshrined in Spanish law for the last 40 years, extending it statutorily to include social and environmental factors in the accounts;
8. Ensure the development of a specific liability regime for directors, to mitigate the risk of ESG washing.

The cooperation to support the fulfilment of these aspects should be done by engaging with key stakeholders and open procedures dedicated to orientating further developments.

7 Process for Amending Regulations

As discussed, accounting regulations in Spain are in the form of laws and royal decrees and consequently, any new law, amendment of current ones or regulatory development will be subject to the regular legislative procedure.

This procedure is regulated in articles 81-91 of the Spanish Constitution and developed by articles 108 et seq of the Regulation of the Congress and articles 104 et seq of the Regulation of the Senate.

The procedure, which has three main stages, can be initiated by the Government (governmental bill) or by either Congress, Senate, a Self-Governing Community or a popular initiative brought up by at least 500,000 citizens (non-governmental bill).

During the initial stage, non-governmental bills must be presented before Congress (or Senate, if the bill was originated there), and published in the Parliament Bulletin. After this, a period of fifteen business days is given to present other alternative non-governmental bills. Once this period has expired, the non-governmental bill or bills are included in the agenda of a plenary sitting to be taken into consideration. At the Plenary Sitting, one of the proponents defends the bill, followed by two turns in favour and two against, as well as one turn from the Spokespersons of the Parliamentary Groups. Then, the matter is put to a vote and must be approved by simple majority to move on to the Constituent stage.

Governmental bills are exempt from this requisite. Instead, the relevant Ministry should present it for its approval by the Ministers Council, then, it has to be presented to the official consultative bodies such as the State Council or the Economic and Social Council.

After considering the comments of these bodies and making the appropriate modifications, the governmental bill must be approved by the Ministers Council to move on to the Constituent stage.

The Constituent stage is aimed at determining the content of the future law, which is carried out through successive deliberation and voting processes, which take place in the Parliament. However, during the Constituent stage, there are other stakeholders that generally assist and advise Congressmen and that play a key role in determining the content and reach of the law such as sub commissions and working groups here financial supervisory authorities (such as the Bank of Spain, the securities (CNMV) and insurance authority (DGSyFP) as well as the national accounting institutes ICAC and AECA are key).

At the Constituent stage, the bill is submitted by the Bureau to the relevant Committee, publication and opening of a period of 15 working days for the presentation of amendments. If amendments to the whole bill have been presented, a first reading and

voting takes place in the Plenary Sitting. Then, there is a meeting of the Reporting Body, which issues a report with its proposal, which might include variations in the wording.

After that, the bill is subject to debate and voting in the relevant Committee, which concludes with the passing of a ruling that might also bring variations into the initial text.

The amendments not accepted by the Committee are then presented at the Plenary Sitting for debate and voting, with the possibility of introducing new modifications. The approved text is sent to the Senate.

A similar procedure is followed in the Senate but always limited by the period of two months established by the Constitution, which is reduced to just twenty days for bills classed as urgent. During this procedure, the Senate can approve the bill as it is, introduce amendments, or approve a veto, in which case, the Senate must count with an absolute majority for the veto. However, this veto can be easily lifted by Congress. If the bill is approved by the Senate with amendments, it is returned to Congress for a vote. They can either approve the text with amendments by a simple majority or reject them. In case of veto, the Congress can lift it with an absolute majority immediately or by simple majority after two months.

The final stage encompasses the endorsement, enactment and publication of the law. The endorsement and enactment by the King are formal acts, which must take place during the following fifteen days, without the King or Government being able to vary the content of the act, suspend the process or return it to Parliament for reconsideration. Finally, the act is published in the Official State Bulletin and will enter into force after 20 days, unless the law indicates otherwise.

8 Final remarks

- [Summary of key points discussed](#)
- [Reflection on the importance of maintaining *imagen fiel* representation amidst evolving accounting practices, including sustainability considerations](#)

The principle of *imagen fiel* representation in accounting practices is indispensable for ensuring the accuracy and impartiality of financial statements. This principle, fundamental to financial reporting, provides stakeholders - including investors, regulators, and the public - with reliable and transparent information regarding a company's financial status. In Spain, the significance of this principle is underscored by a comprehensive regulatory framework that mandates its application across various sectors, including finance, commerce, and ecological transition. These regulations aim to enhance the trustworthiness of financial disclosures, thereby promoting economic stability and investor confidence.

Spain's regulatory landscape encompasses various legal instruments such as the Code of Commerce, Companies Law, and the General Accounting Plan. These laws embed the

imagen fiel requirement, emphasizing the need for an accurate representation of financial conditions. The enforcement of these regulations is overseen by authorities such as the Bank of Spain, the Ministry of Economy, the National Securities Market Commission (CNMV), and the Directorate-General for Insurance and Pension Funds (DGSFP). Compliance with these regulations is critical, as deviations can lead to significant legal and financial repercussions for companies and their directors.

Sustainability disclosures have become increasingly relevant in accounting practices, influenced by global standards like IAS 37, which deals with provisions, contingent liabilities, and contingent assets. Spanish regulations encourage the incorporation of sustainability issues into financial reporting to ensure a comprehensive view of a company's obligations and risks. This approach aligns with the *imagen fiel* principle by recognising the broader impact of corporate activities on society and the environment. Directors play a pivotal role in this process, as they must assess and disclose sustainability-related obligations, balancing legal requirements with the need for transparency and accountability.

Integration of *imagen fiel* requirements with IAS 37 allows directors to make adjustments that better reflect the economic reality of a company's financial position. In situations where strict adherence to IAS 37 might not fully capture certain risks or obligations, directors can recognise additional liabilities or adjust estimates to provide a more accurate representation. This practice requires a rigorous assessment process, clear documentation, and regular review to maintain the integrity of financial statements. It also highlights the need for a harmonised approach across different jurisdictions to ensure consistency and comparability in financial reporting.

The *imagen fiel* principle is a cornerstone of reporting, essential for ensuring the accuracy and transparency of financial statements. In Spain, a robust regulatory framework supports this principle, encompassing various laws and enforced by key authorities. The integration of sustainability disclosures and the flexibility to adjust financial reporting practices under IAS 37 further enhance the relevance and reliability of financial information. Directors must navigate these requirements carefully to maintain stakeholder trust and uphold the integrity of financial reporting, ultimately contributing to sustainable and responsible business practices.

Four working lines for extending the *imagen fiel* view" in Spain to include sustainability in financial statements (and which are not dependant on amending EU legislation) should be considered:

1. Spanish Companies Law already obliges to include certain ESG matters on the public information to be provided by certain categories of companies.
2. Spain has created a specific legal category of companies (the so-called "companies of common benefit and interest") which should provide detailed

information in their financial statements on ESG matters. The manner of doing so is being discussed at Parliament.

3. The imagen fiel concept in Spain is not static. The content may, therefore, vary depending on the evolving legal, economic and (even) social context (we put emphasis on the social context, where society is claiming more information on ESG data from companies).
4. The imagen fiel concept in Spain has at least four interpretations. One of these focuses on the information being useful to the receivers of it – which are now not solely the traditional internal stakeholders (i.e., shareholders), but also other stakeholders. Said stakeholders will not focus only on traditional (economic) information.