

The background of the entire page is a photograph of a horse in a field, partially obscured by a vertical blue and white striped pattern. The horse is facing right, and the field is green with some trees in the distance. The stripes are vertical and vary in width and color, creating a textured effect.

Report supporting the
amendments to the Endesa, S.A.
Board of Directors Regulations

endesa



**REPORT SUPPORTING THE AMENDMENTS TO THE
ENDESA, S.A. BOARD OF DIRECTORS REGULATIONS**

19 March 2018
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1. INTRODUCTION

The purpose of this Explanatory Report is to present the reasons for and scope of the amendments to the Board of Directors Regulations of ENDESA, S.A. ("**Endesa**" or the "**Company**"), which, at the proposal of the Appointments and Compensation Committee, were approved by its Board of Directors on 18 December 2017 and 26 February 2018, under the terms provided in Article 4 of said Regulations.

Taking into account, primarily, the new EU and Spanish regulations on account auditing, i.e. Royal Decree-Law 18/2017, of 24 November, on non-financial information; approval by the Spanish Securities Market Commission (*Comisión Nacional del Mercado de Valores - CNMV*) on 27 June 2017 of Technical Guidelines 3/2017 on Audit Committees of Public Interest Companies (the "**Technical Guidelines**"); and with a view to implementing various technical improvements to bring the text of the Regulations into line with the diversity of nationalities represented by the Board members, and to ensure no margin for misinterpretation, amendment of the Board of Directors Regulations has been deemed appropriate for the purpose of adapting the content thereof to said standards and documents, as well as to introduce certain technical upgrades and improve alignment thereof with other internal regulatory texts of the Company.

On the basis of the foregoing, and in light of the ongoing commitment of Endesa's Board of Directors to applying best corporate governance practices and striving for the most effective business management, the Board agreed to seek approval of both amendments to the Board of Directors Regulations, under the terms specified herein below.

2. DETAILS ON THE PROPOSED AMENDMENTS TO THE BOARD OF DIRECTORS REGULATIONS

The following paragraphs provide a detailed description of the key amendments to the Regulations, the approval of which was submitted to the Board of Directors, omitting those minor changes to the current text that are considered mere drafting or strictly technical improvements.

These key amendments are discussed herein below and grouped by Title of the Regulations:

2.1 Preliminary Title (Articles 1 to 4)

Article 4 was amended to expressly acknowledge the power of the Appointments and Compensation Committee to propose to the Board amendments to the Board of Directors Regulations, as well as to submit favorable reports as so required on such amendments prior to approval thereof by the Board, all within the framework of the powers already attributed to said Committee to regularly assess the adequacy of the Company's corporate governance system.

2.2 Title One (Articles 5 and 6): General Duties and Powers of the Board of Directors

In **Article 5**, reference to the "environment" was replaced with a broader reference to "sustainable development," in line with the wording already used in the action policy of the Company and its Board of Directors.

In **Article 6**, the subsidiary attribution of powers not held by the General Shareholders' Meeting to the Board of Directors was removed in light of the legal provisions attributing certain powers to the internal Committees of the Board.

The following amendments regarding the specific powers attributed to the Board of Directors were made:

- As relates to the general policies and strategies of the Company: the text of Article 6.5.2. G) was amended to adapt said regulatory provision to the express wording of Article 529 (3) of the Capital Corporations Law.
- As relates to management of the Company: the text of Articles 6.5.3. D) and E) was amended to improve the wording thereof and to adapt said provisions to Article 529 (3) of the Capital Corporations Law.
- As relates to the organization and proceedings of the Board: the reference in Article 6.5.4. B) to the monitoring by the Board of the proceedings of the internal committees was removed.
- As relates to financial information, annual financial statements, the management report and the corporate governance report: express references to non-financial information were added, bringing the provisions in line with Royal Decree-Law 18/2017, of 24 November, on non-financial information.
- As relates to Directors and Senior Executives: certain drafting improvements were made and express authorization was granted to the Board to approve, following a report from the Appointments and Compensation Committee, the Succession Plan for the Board Chairman and for the CEO, establishing the basic terms for initiating the contingency plans or for implementing the relevant succession plan in an organized manner.
- Assessment of the Board: reference to the external consultant was amended to clarify that the independence thereof must be verified by the Appointments and Compensation Committee, in line with the provisions of Recommendation 36 of the Corporate Governance Code for Listed Companies, approved by the Spanish Securities Market Commission.
- Advisory Boards: authorization to create Advisory Boards as established in Article 6.8 was removed, in line with the Board of Directors resolution dated 24 July 2017, resolving on removal of said provision.

- As relates to the clause on limited powers: the wording of Article 6.8 was simplified to clarify that the list of Board duties laid out therein is a non-exhaustive list; and to specify that, for the purposes of exercising such powers, the Board of Directors may approve not only rules, but also policies and manuals, as it was already doing in practice.

2.3 Title Two (Articles 7 and 8): Composition of the Board of Directors

In **Article 8**, which governs the types of directors, the definition of independent director was further refined, including some of the cases set forth in Article 529 (12) of the Capital Corporations Law, in line with current market practice of listed companies.

2.4 Title Three (Articles 9 to 12): Appointment and Removal of Directors

In **Article 10**, governing the incompatibility of directors, an additional grounds for incompatibility was added for those persons who, during the two years prior to their potential appointment, held a senior management position in any Spanish government agency that is incompatible with the performance of the duties of Director, in accordance with legislation in force, in line with the existing provisions of Endesa's Director Selection Policy; and amendments were also made to clarify the wording thereof, expressly addressing the maximum number of Boards on which the Directors of Endesa, S.A. may sit (*"four boards of directors of listed companies, or eight in total; membership on various boards for companies within the same group shall, for these purposes, count as one board for each corporate group"*), not including their position as a Director of Endesa, S.A.

2.5 Title Four (Articles 13 to 16): Board Officers

In **Article 16**, on the Board Secretary, two technical improvements were introduced: on the one hand, the words "acting as a single body" were removed as referring to the procedure for appointment of the Secretary by the Board of Directors, with a view to unifying the text of this provision with the text of the remaining provisions of the Regulations, without in any way whatsoever altering its legal meaning; and, on the other hand, adapting the wording to the provisions of Article 529 *octies* of the Capital Corporations Law, referencing the duty of the Secretary to ensure that all conduct of the Board is in line with applicable regulations.

2.6 Title Six (Articles 21 to 24): Board Committees

In **Article 21**, the general regime applicable to the Board Committees was developed, specifying that said Committees shall have the power to advise the Board, as well as to monitor, control, study and make proposals on matters falling within their purview, and expressly clarifying that said Committees shall be governed on a supplemental basis by the operating rules established in the Corporate Bylaws and in the Regulations as relates to the Board of Directors.

In **Article 23**, on the Audit and Compliance Committee, several amendments were introduced for the main purpose of adapting the content thereof to the CNMV Technical Guidelines. Thus, on the one hand, amendments were made to the regime governing

composition of the Committee (specifying that, in line with applicable legal requirements, the Committee shall be comprised of a majority of independent directors, as compared to the requirement of at least two) and to the regime governing the knowledge and experience of the members (both individually and collectively). Furthermore, amendments were made to the provisions governing the primary function of the Committee (stating that said function shall be the advising of the Board of Directors and monitoring and control of the procedures for the preparation and presentation of financial and non-financial information, of the statutory auditor's independence and of the effectiveness of the internal control and risk management systems, as well as to report any related-party transactions to the Board of Directors) and to regulation of the specific duties of the Committee, in relation to which the wording was simplified, because a full description thereof was to be included in the Audit and Compliance Committee Regulations. The content thereof was also adapted to the Technical Guidelines and to the effective functioning and organizational structure of the Company. Finally, amendments were made to clarify that attendance by the senior executives and employees at Committee sessions shall require a prior invitation from the Committee Chairman.

In **Article 24**, governing the Appointments and Compensation Committee, several minor technical drafting changes were introduced, including the addition of an express reference to its duty to report to the Board of Directors on the organization of the Company in accordance with the general principles established by the Board, and which the Committee has already been carrying out in practice.

2.7 Title Seven: Duties of Directors

A new Article 28 bis (**Duty of Disclosure**) was added, comprising sections 28.1 bis to 28.3 bis, which were in force until the first amendments to the Regulations were made:

- In **Article 28.3 (Conflict of Interest)** (new 28.1 bis): *"The Directors shall disclose to the Board of Directors, through the Board Secretary, any direct or indirect conflict of interest between them and the Company."*
- In **Article 12.3 (Appointment and Removal of Directors)**: *"The Directors shall notify the Company, through the Board Secretary, of all criminal cases and proceedings in which they are defendants, as well as of all developments in said cases and proceedings."* Nevertheless, in this case, technical improvements were made to, taking into account the diversity of nationalities of the Directors, explicitly and analogously consider foreign criminal cases and proceedings, albeit in a generic way. In this regard, the following wording was proposed (new Article 28.2 bis):

"The Directors shall notify the Company, through the Board Secretary, of any domestic or foreign investigation opened or criminal claim filed in which they are defendants, as well as of all developments in said cases and proceedings. The Appointments and Compensation Committee shall analyze the information available, presented by the Director through the Secretary, to determine if the situation could damage the credit or reputation of the company."

In the event the investigation or criminal claim results in any director being indicted or if an order to proceed to trial against him/her is issued, for a corporate crime, the Board of Directors shall analyze the circumstances as soon as possible and, following a report from the Appointments and Compensation Committee, shall adopt the decision most appropriate in light of the corporate interests. If such criminal proceedings are maintained in a jurisdiction other than Spain, the legal concepts or categories of analogous meaning to those under Spanish law shall apply."

- In the **Final Provision** (new Article 28.3 bis): *"The Directors shall execute and annually renew a declaration stating the activities performed and securities owned thereby and, where appropriate, by any persons related thereto, which may be relevant to the performance of their duties."*

2.8 Title Nine (Article 30): Director Compensation

In **Article 30**, a new section 4 was added to unify the provisions of said article, governing director compensation, with the provisions of Article 41.3 of the Corporate Bylaws (added in the amended version of 26 April 2016), and to thus incorporate compensation linked to share value as part of the compensation calculations for executive directors.

2.9 Title Ten (Articles 31 to 34): Relationships of the Board of Directors

In **Article 31**, section 2 was amended to specify that the monitoring by the Board of Directors of the information systems for the different groups of shareholders shall be carried out through the Audit and Compliance Committee.

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