

**REPORT ON THE CERTIFICATION OF QUALITY AND
SAFETY STANDARDS**

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Certification of quality and safety standards plays an important role in the economy, since it provides assurance that products and services conform to certain standards and specifications.

During the last decade, certification services have been subject to several Resolutions of the Spanish Competition Commission and the former Spanish Competition Tribunal.

This Report analyses the regulatory framework of these services and explores to what extent certain practices which have been subject to Resolutions still pose relevant problems in terms of competition. In addition, it identifies several factors which may restrict competition and proposes some recommendations to overcome these deficiencies.

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EXECUTIVE SUMMARY

1. The establishment of quality and safety standards contributes to making the economy function more efficiently to the extent those standards provide information on the characteristics of goods and services that consumers regard as relevant to their purchasing decisions at a reasonable cost.
2. Certification consists in assessing how products, processes, services, persons or business management systems conform to the terms of the relevant technical specifications and standards, in order to offer consumers greater assurances that what they are purchasing complies with certain quality and safety requirements. Like standardisation processes, certification can contribute to making markets function more efficiently by helping information flow more fluidly between consumers and producers and between market participants in general, provided that certification activities are carried on in a context that does not constrain effective competition between the operators who compete in the markets for the goods and services that are subject to standardisation and certification.
3. The real impact of certification on the economy, however, will depend on how well certification services respond to the need to correct market failures. Excessive or indiscriminate recourse to certification can hinder competitiveness; for example, an insufficiently justified demand that certificates of quality be submitted in government procurement procedures introduces administrative burdens that could perhaps be avoided. Similarly, certification can in some cases contribute to the erection of entry barriers and restrict effective competition in markets for goods and services which are subject certification. In particular, certification may lead to an increase in the degree of product differentiation, which, though it has positive effects in terms of a broader diversity of products offered to consumers, can also be used as an instrument for restricting competition.
4. In general, the risk of certification leading to inefficiencies in markets is greater if there is no competition in the provision of certification services. In this sense, increasing competition in the certification markets will reduce the potential negative effects this activity may have on the economy as a whole.
5. The CNC and the former Competition Tribunal (TDC) have on several occasions issued pronouncements regarding potentially anticompetitive practices both in the markets of goods and services subject to certification and in the certification markets, such as what is known as "cascading certification", or certain characteristics in the composition of product certification technical committees that may distort competition in the

markets for the certified products. In one of those pronouncements, specifically in the resolution of 28 July 2009 regarding case S/0143/09 AENOR, the CNC Council requested the Advocacy Division to carry out a report regarding competition in this sector.

6. Certification activities may be carried on in a very broad range of areas. This Report focuses on the provision of certification services in relation to three types of standards: technical quality standards, industrial safety regulations, and the requirements of the Community eco-management and audit scheme (EMAS). Although legally speaking there are important differences between the different type of agencies that operate in the certification field, the enterprises or corporate groups operating in each of these three areas are often the same. These standards, in turn, refer to certain properties and characteristics of three different segments: products, management systems and persons.
7. The Report pays special attention to the certification of the product specifications for Wine Designations of Origin (WDO). Those specifications may be regarded as voluntary quality standards—even though they are not drawn up by the Spanish standardisation and certification body, the Asociación Española de Normalización y Certificación (AENOR)— as they set down the parameters that must be satisfied by a wine in order for it to qualify for inclusion in the designation of origin.
8. The group of standards cited above spans the great majority of standards that are certified in Spain. The paucity of quantitative information on essential aspects of the certification sector has made it difficult to carry out precise analysis of the state of competition in certification markets. In fact, the revenue figures used have been requested directly by the CNC from the main certification bodies. The data thus obtained contribute to filling the statistical gaps that hinder progress in the quantitative analysis of this sector.
9. In the standardisation process, a decisive role is played by AENOR, the only entity in Spain that produces Spanish standards or UNE standards, which are far and away the most widely used of voluntary standards. Other standards that are commonly applied, such as the industrial safety regulations (mandatory) and the EMAS environmental protection regulations, are approved by the public administrations.
10. The assessment of conformity to these standards is carried out by the certification bodies, which can be broken down into three categories according to the sector's regulations: certification entities, which certify the technical quality standards and can certify the wine DO specifications, environmental verifiers, which certify the requirements of the EMAS Regulations, and control bodies, which certify the Industrial Safety

Regulations. It is common practice for certification entities to provide their services in different categories of standards, for example, quality and environmental standards.

11. The independence, impartiality and technical competence of certification bodies is verified by the accreditation entities on the basis of different regulations. Accreditation is a necessary prerequisite for operating as an environmental verifier or as a control body. Accreditation is not mandatory in general for certification entities, but in practice is demanded by the market. ENAC is the Spanish accreditation entity and its functioning is supervised by the Administration.
12. The information obtained from a consultation process with the main certification bodies in the Spanish market supports the conclusion that certification of management systems is the sector's biggest business in terms of revenue, followed by certification of products and, lastly, of persons, which is of only marginal importance.
13. The principle revenue source for certification entities is the certification of management systems, specifically to the ISO 9001 and ISO 14001 standards, for which Spain ranks third in the world in number of certificates issued. According to available information sources, AENOR is the leading Spanish certification entity for management systems in terms of revenue, although Bureau Veritas issues a greater number of certificates in that category.
14. A small number of certification entities handle the certification of a fairly large set of industrial products, partly because the costs associated with certification in these cases are relatively high in relation to the size of the market that demands those services. In the specific case of certification of WDO specifications, the actions of the competent authorities, with the exception of the Castilla-La Mancha region, have prevented certification from being conducted on a competitive basis.
15. The two main restrictions on competition in the certification markets analysed in this Report are the position of AENOR as standardiser and certifier, and the restrictions on the entry of competitors in the certification of WDO product specifications.
16. The analysis of the risks for competition posed by AENOR's dual role as sole national standardisation agency and the leading certification agency in the Spanish market has been conducted considering various aspects: its privileged access to the standards that are certified; the establishment and formation of special ties with the groups of users that participate in its certification technical committees, which are responsible for preparing and adopting the standards; its utilisation in the certification activity of the same name that distinguishes it as the sole standardisation agency existing in

Spain, inasmuch as its prestige as standards body can be decisive in the decision of the users of certification services; and the considerable influence that government bodies involved in the field of industrial safety and quality wield in AENOR's activity, given the risk this implies that the drafting of the standards and design of the regulation benefit AENOR in certification markets.

17. Regarding the certification of WDO product specifications, the final configuration of the system determined for each WDO depends on the decision adopted by the relevant competent authority —the Ministry of the Environment and Rural and Marine Affairs (MARM), for WDO that span the territories of more than one region, or the regional government of the territory in which the WDO is wholly contained— as the authority that approves or rejects the WDO regulation that establishes the system of certification. In general, the competent authorities have approved regulations stipulating that this service will be provided by the competent authority itself, or by an office of the *Consejo Regulador* (Regulatory Board) for the WDO, or by a single certification entity. Only in one case, in the region of Castilla La Mancha, has the competent authority made use of the possibility envisaged in the current regulatory framework to have several certification entities compete against each other to offer these services.
18. In the cases of the Autonomous Communities of Valencia and of Catalonia, the actions carried out by the competent authorities have even gone so far as to convert the WDO Regulatory Boards into competent authorities, so that they can do the certification without having to be accredited as a certification entity and without having to separate their management and control functions, as required by Act 24/2003 of 10 July 2003 on Grapevines and Wine. This decision also entails the risk of eliminating the supervision that the competent authority might otherwise exercise over the *Consejo Regulador*.
19. The Report also analyses other aspects of certification markets that lend themselves to restricting competition to a greater or lesser degree, including the composition and functioning of the product Certification Technical Committees (CTCs), the role of the public administration as a user of certification services and the lack of mutual recognition in the certification of products.
20. In relation to the CTCs, the presence of industry representatives on those committees appears to give rise to certain efficiencies that may partly explain why several certification entities choose to function in this way. However, the existence of a certification entity with strong market power, such as AENOR, lends added importance to the need that the composition and functioning of its CTCs does not contribute to hindering competition in

the relevant certification-related markets. In this sense, the presence of companies or industry associations on these committees can raise problems. For one, that presence will give a comparative advantage over companies that wish to obtain a certificate but are not represented on the committee. Also, the actions of the companies with seats on the CTCs in an environment lacking in explicit protocols on how to treat commercially sensitive information can spawn horizontal agreements between competitors.

21. The composition and functioning of AENOR's CTCs has been the object of several CNC probes for possible breach of competition rules. The CNC believes that the recent reform of the AENOR CTC Regulation, in order to avoid having business associations be appointed to run the Secretariats of those committees, should in principle contribute to enhancing the impartiality of the decisions and to reducing the likelihood of discrimination between companies that request a certificate.
22. In the context of the AENOR CTCs, the Report has also focused on analysing the available data on the extent to which AENOR may have unduly favoured the use of its own laboratories, thereby distorting competition in this market.
23. The conduct of government bodies, major customers for certification services, given the current legal system's emphasis on the use of standardised products by the public administration, may also vitiate competition if the public sector's activities do not comply with the principles of necessity and proportionality, or if favourable treatment is dispensed to a given certifier. The Report analyses the evolution seen in recent years regarding cases in which government agencies have required or mentioned a specific certifier in the procurement specifications and determine whether such instances are the result of a systematic or widespread practice.
24. Another aspect of the certification market that is analysed in this report, given its possible anti-competitive effects, is the refusal of certification entities to recognise certificates issued by other operators in the market. This problem mainly arises in relation to the certification of the raw materials used in a product, and can be used as an argument for unduly making acceptance of the product certificate issued by a competitor conditional on the entity's own certification of the component materials. When these practices are carried on by entities with major market power in the certification of a product, the distortion of competition can affect competition in the provision of the raw material certification services, in the markets for the products being certified and in the raw material production markets themselves. In fact, the denial of mutual recognition has been the

subject of several Resolutions by the Spanish competition authority in relation to what is known as “cascading certification”.

25. Based on the information analysed, the Report underscores the principal conclusions on the current state of competition in the certification markets examined and makes recommendations to the public administrations for amendments to the current rules which the CNC regards as necessary if certification services are to be provided in a context marked by greater competitive pressure.

I. INTRODUCTION.

26. The purpose of certifying quality and safety standards is to ensure that the goods and services produced in an economy conform to the specifications established in the relevant rules and standards. This allows buyers to have more detailed and reliable information on the properties of the goods they acquire and can help markets function more efficiently, provided the process is carried on in a competitive context. Certification is an important activity in the Spanish economy, as witnessed by Spain's high position in the global ranking by number of quality certifications issued, especially in the management systems area.
27. The public sector has played a key role in promoting these practices by other economic agents from the very outset. More recently, in laws with such a far-reaching impact for the Spanish economy as the transposition of the Services Directive¹ or the draft bill for the Sustainable Economy Act, public administrations have reiterated their commitment to encouraging service providers to voluntarily ensure the quality of their services by using independent bodies to certify their quality.
28. Nevertheless, the promotion of standardisation and certification does not necessarily imply greater efficiency in the economy. The establishment of mandatory standards or the requirement to obtain quality certificates, especially in government procurement procedures, can give rise to excessive administrative burdens and unjustified constraints on competition.
29. The certification activity itself may also have a negative effect on the level of competition in the markets for goods and services that demand those services, as well as in other related markets such as the laboratories that take part in performing certification services. This is more than likely when the certification bodies are not subject to competition, or are influenced by select groups of the companies that operate in the markets for the goods and services certified. These situations can give rise to a lack of impartiality in the decisions certifiers make in relation to the buyers of their services and can be used by the dominant certification entities to restrict competition, for example, by using the product certification committees to discriminate against a specific operator in the market or to raise entry barriers against potential competitors. And lastly, certification can be used as an instrument for increasing the degree of product differentiation, which, despite its positive effects, can also serve to restrict competition and thus have a negative impact on prices and quality.

¹ Act 17/2009 of 23 November 2003 on free access to and exercise of service activities.

Fostering competition in the certification market and enforcing the principles of efficient regulation is therefore necessary, not just for ensuring that this sector functions efficiently, but also for avoiding the possible negative effects that would otherwise arise for effective competition in other sectors of the economy as well.

30. The restrictions on competition in certification markets and in the markets for the goods and services subject to certification have been addressed by several Resolutions of the National Competition Commission (Comisión Nacional de la Competencia or CNC) and the former Competition Tribunal (TDC). The Resolution of 4 September 2000 on case 469/99 AENOR, and the Resolution of 5 May 2009 on case S/0087/08 AENOR, dealt with competition problems relating to the so-called “cascading certification”, which arises in the certification of products and their raw materials when one certification entity declines to recognise the certificates issued by other certification entities.
31. Also, the Resolution of 3 March 2009 on case S/0010/07 AENOR-1 and the Resolution of 28 July 2009 on case S/0143/09 AENOR, stemmed from investigations initiated pursuant to complaints filed by companies that had been denied renewal of a previously granted AENOR certificate. Those decisions addressed problems regarding the composition of the product certification technical committees and their impact on competition.
32. Indeed, it was precisely in the ruling on case S/0143/09 AENOR that the CNC Council, *“in view of the reiteration of complaints relating to this and other issues of the certification systems that may have an impact on competition in the markets”*, asked the Advocacy Division of the CNC to prepare a report on competition in this sector.
33. The Report has focused on analysing possible constraints on competition in the certification of quality and safety standards, a sector which, because it was already examined by the CNC in the past in the exercise of its function of investigating conducts contrary to the Competition Act, also allows an assessment as to the degree to which some of the conducts investigated in the past continue to pose problems for agents in the sector and check if the warnings issued by the TDC and CNC in the past have had the desired effect on these markets.
34. The Report is arranged as follows. Part II defines the scope of the study, analysing which standards are examined and what the certification activity involves. This is followed in part III by an examination of the various restrictions on competition that exist in the certification sector. Lastly, after the analysis has been expounded, parts V and VI set out the conclusions

of the Report and a series of recommendations to enhance competitive pressure in certification markets.

II. THE CERTIFICATION ACTIVITY

35. The purpose of certification is to establish the conformity of products, processes, services, persons or enterprises with the requirements stipulated in standards and technical specifications. Given that the concept of standard or technical specifications spans a very broad spectrum of certifiable objects, this activity is carried on in a likewise very broad arena.
36. Nevertheless, this Report is confined to certification of certain quality and environmental standards and of safety standards by certification entities, with special focus on the so-called third-party certification,² which is the most widespread form of certification. The activity of certification of the standards included within the scope of this Report is done by certification bodies, which, depending on their field of action are called certification entities, control bodies or environmental verifiers. The Report also analyses the certification of the Wine Designations of Origin. The reasons for selecting this scope of analysis are discussed further ahead.
37. These bodies are primarily regulated in the Spanish Industry Act 21/1992 of 16 July 1992, and in Royal Decree 2200/1995 of 28 December 1995, which approved the Regulation on Industrial Safety and Quality Infrastructure (Royal Decree 2200/1995).

II.1 Standards

38. Article 8.3 of the Industry Act defines standard as *“the technical specification of repetitive or continuous application the observance of which is not mandatory, which is established with the participation of all interested parties and which is approved by a body officially recognised at the national or international level for its standards making activity”*.
39. In this report, however, the concept of standard is understood in a broader sense, to include everything capable of being the object of certification.
40. Quality and safety standards can generate positive effects in the economy when they contribute to resolving market failures that arise from problems of incomplete and asymmetrical information between producers and consumers, so as to reduce the costs of searches and transactions and

² In this type of certification, the conformity assessment is done by an independent third party, unlike first and second-party certifications, which are carried out by the producer and consumer, respectively.

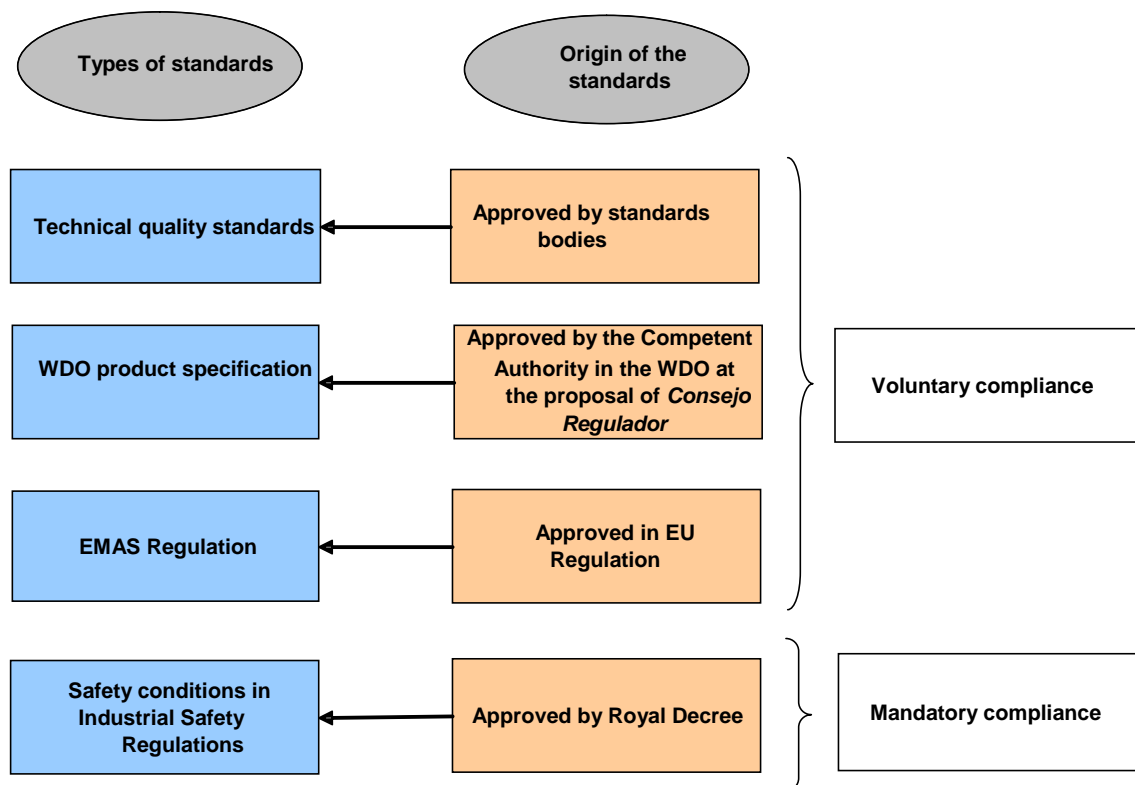
mitigate the problems of adverse selection. Standardisation also ensures interoperability and facilitates the dissemination of knowledge, thereby contributing to lowering production costs and to greater integration of markets, while also fostering enhancement of the quality and safety of the goods and services consumed.

41. The production of standards, however, can also have restrictive effects on competition, if the process by which they are defined does not comply with the necessary requirements for preventing competitor companies, some of which are often members of the bodies that draw up the standards, from using the standards to make collusive arrangements that limit price competition or curb output levels. Where the process of drawing up the standard is controlled to a greater or lesser degree by one or more operators in the sectors, the standards can also serve as tools for closing competitors out of the market. Furthermore, the existence of mandatory standards or the promotion of excessive standardisation by government bodies can lead to an unjustified increase in the administrative burdens borne by businesses and thereby hurt their competitiveness.
42. Standards that establish specific technical requirements for a product or service can also limit innovation, because by hindering product differentiation they also curb the emergence of new designs and the development of the diversity of the product base on which innovations depend. In certain circumstances, the process of drafting standards can give rise to delays or even block the adoption of more efficient technologies.
43. There are a large variety of types of standards that can be the object of certification. The main ones include the quality standards drawn up by standardisation bodies and the safety standards established by Industrial Safety Regulations. At the same time, certification can also be conducted in respect of standards produced by corporate groups or consortiums of businesses or standards promoted and approved by government bodies, such as the quality standards for a broad arrange of agrofood products. There is a very wide range of possibilities.
44. This Report concentrates on the certification of three types of technical standards: quality standards, the safety conditions laid down in Industrial Safety Regulations and the requirements of the Regulation governing the Community Eco-Management and Audit Scheme (EMAS). It also studies the certification of the product specifications for wine designations of origin (WDO).
45. There are several reasons for limiting the scope of this study in this way. First, the activity pursued by the entities that certify these standards is basically regulated by a common legal framework. Second, the economic

characteristics of the activity carried on are similar, even though the standards the compliance with which is being assessed have different legal statuses. In relation to the wine designations of origin (WDO), consideration has been given to their notable importance in the certification of the agrofood sector, as well as the specific competition problems raised in this area of certification; the legal framework also allows the certification entities regulated in Royal Decree 2200/1995 to operate in this field.

46. These certification activities span a large majority of the types of standards that are certified in Spain, so they can be considered as representative of the national certification market.
47. Diagram1 presents a schematic depiction of the types of standards referred to in this report, as well as their origin and whether they are voluntary or mandatory:

Diagram1. Types of standards and their origin



Source: Prepared in house.

A) Technical quality standards

48. The technical quality standards produced by standardisation bodies occupy a prominent place within the standards that are certified in the Spanish economy.³
49. The national legal framework defines standardisation bodies as “*private, not-for-profit entities whose purpose is to pursue at the national level activities relating to the preparation of standards to unify criteria for certain matters and make possible the use of a common language in concrete fields of activity*” (article 8 of Royal Decree 2200/1995). The standardisation activity they carry on is defined as the “*activity by which criteria are unified for certain matters and the use of a common language in a concrete field of activity is made possible*” (article 8.5 of the Industry Act).
50. AENOR is the only standardisation body that exists in Spain and it is responsible for preparing Spanish standards (identified as UNE, the acronym for “Una Norma Española” — *A Spanish Standard*), as recognised by the Additional Provision One of Royal Decree 2200/1995.
51. The standardisation edifice in Spain is completed with the Consejo de Coordinación de la Seguridad Industrial (Industrial Safety Coordination Council — CCSI), a collegial administrative body created by article 18 of the Industry Act and attached to the Ministry of Industry, Trade and Tourism.⁴
52. The need to harmonise the standardisation activity in different economies has given rise to standardisation processes and bodies at the international and European level.
53. Internationally, the main standardisation body is the International Organization for Standardization (ISO), which publishes the standards identified by that acronym and to which there belong 157 international standards organisations, including AENOR. There is a specific standards body for the electro-technical field: International Electrotechnical Commission (IEC). The adoption of standards issued by ISO and IEC is not mandatory.
54. In Europe, the European Committee for Standardisation (CEN) is composed of standardisation bodies from 30 European countries and is

³ The certification of this type of standards in the main Spanish certification body, Asociación Española de Normalización y Certificación (AENOR), accounted for 84.1% of its total revenues from the certification activity in 2009.

⁴ Its basic functions, according to Royal Decree 2200/1995, are to propose and coordinate the guidelines for Spanish standardisation, foster the production and use of Spanish standards and the transposition of European standards, assess the result of standardisation work done in Spain on matters of quality and industrial safety, and nominate the Administration's representatives on the governing bodies of standards bodies and accreditation entities.

responsible for developing European Standards (ENs). Spain is represented by AENOR. EN standards must be adopted or ratified⁵ as national standards in each of the CEN's 30 member countries. In addition to CEN, there are two other European standards organisations, each specialised in a concrete area: CENELEC, in the electro-technical sector, and ETSI in telecommunications.

B) Product specifications for the wine designations of origin (WDO)

55. The WDO product specifications are not technical quality standards in the strict sense, because they are not produced by standardisation bodies. Nevertheless, they can be considered quality standards that are similar to technical standards, in that compliance is voluntary and can be certified by certification entities.
56. WDO in Spain are primarily regulated by Act 24/2003 of 10 July 2003 Grapevines and Wine (Wine Act) and in Council Regulation (EC) 479/2008 of 29 April 2008 on the common organisation of the market in wine (COM Regulation of 2008).
57. According to the COM Regulation of 2008, a WDO refers to the name of a specific region or location that is used to designate a wine or similar or related product that comply with a series of requirements.⁶
58. WDO are protected in the European Union by means of including the specified name in the categories of designation of origin. To obtain this protection the applicant must submit a technical file containing, amongst other documents, the product specification that will allow the interested parties to verify the relevant conditions of production for the designation of origin in question.⁷
59. In relation to WDO, certification is focused on the product specifications, which refer both to the production of the wine and to the conditions existing

⁵ These concepts are introduced in detail in part III.

⁶ According to article 34 of the COM Regulation of 2008, those requirements are that: a) its quality and characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors; b) the grapes from which it is produced come exclusively from this geographical area; c) its production takes place in this geographical area; d) it is obtained from vine varieties belonging to *Vitis vinifera*.

⁷ According to article 35.2 of the COM Regulation of 2008, the product specification shall consist at least of: "a) the name to be protected; b) a description of the wine(s): i) for wines with a designation of origin, its principal analytical and organoleptic characteristics; ii) for wines with a geographical indication, its principal analytical characteristics as well as an evaluation or indication of its organoleptic characteristics; c) where applicable, the specific oenological practices used to make the wine(s) as well as the relevant restrictions on making the wine(s); d) the demarcation of the geographical area concerned; e) the maximum yields per hectare; f) an indication of the wine grape variety or varieties the wine(s) is obtained from; g) the details bearing out the link referred to in Article 34(1)(a)(i) or, as the case may be, in Article 34(1)(b)(i); h) applicable requirements laid down in Community or national provisions or, where foreseen by Member States, by an organisation which manages the protected designation of origin or geographical indication, having regard to the fact that such requirements shall be objective and non-discriminatory and compatible with Community law; i) the name and address of the authorities or bodies verifying compliance with the provisions of the product specification and their specific tasks."

when it is bottled and in subsequent stages. The product specifications are therefore a quality standard of a voluntary nature.

60. The application for protection of the designation of origin and, therefore, the product specifications are subject to a national and European approval process. The first step in the process is to file the application in the Member State in whose territory the designation of origin is located, thereby initiating a national procedure that includes submitting the protection application to a public consultation and input process. If the State believes the application complies with the provisions of Community law and hence does not reject it, it will publish the application and forward it to the European Commission, which will have the final say on whether or not to approve it. Spain has 111 protected wine designations of origin.⁸
61. According to the Wine Act, the management body of the WDO, called *Consejo Regulador* (Regulatory Board), is the entity that brings a proposal before the competent authority, for its approval, of the WDO Regulation (article 26.2.a and 31.2 of the Wine Act), which includes the relevant product specification.
62. Article 25.2 of the Wine Act allows broad discretion as to the choice of the legal personality of the *Consejo Regulador*. Their legal status varies depending on the WDO and the applicable regional laws and regulations. This article provides that: “*the management bodies will have their own legal personality, of a public or private nature, full capacity to contract and will function under public or private law. They may participate, establish or engage in relations with all types of associations, foundations and civil or commercial companies, and establish, if applicable, the relevant collaboration agreements amongst each other*”.
63. Vineyards and winemakers are represented on the *Consejos Reguladores* on record in the registers stipulated in the regulations governing the WDO, and their decision-making and governing bodies include producers and government representatives. As a general rule, in order for winemakers to be able to certify their wines to the WDO standard they must be registered in the relevant registers as members of the WDO.
64. The main sources of funding of a *Consejo Regulador* are the ordinary dues⁹ established for the operators, the government subsidies they may receive and the proceeds obtained from the provision of specific sectors,

⁸ Source: [http://ec.europa.eu/agriculture/markets/wine/e-bacchus/index.cfm?event=indicationsPerCntry&language=EN&zone=ECCGI&quality=1&title=European%20Community:%20Wine%20with%20a%20protected%20designation%20of%20origin%20\(PDO\)](http://ec.europa.eu/agriculture/markets/wine/e-bacchus/index.cfm?event=indicationsPerCntry&language=EN&zone=ECCGI&quality=1&title=European%20Community:%20Wine%20with%20a%20protected%20designation%20of%20origin%20(PDO)) (consultation of 18/05/2010).

⁹ The amount of these dues is established in the WDO regulation. These dues include the charges for registration in the register of vineyards and winemakers, and the fees for deliveries of the WDO label.

which may be created by the *Consejo* itself or done by specific mandate of the competent authority.

C) Safety conditions of Industrial Safety Regulations

65. The Industrial Safety Regulations lay down “*the safety technical conditions or requirements that must, according to their object, be met by industrial facilities, equipment, processes, products and their use, and the technical procedures for assessing their conformity with the said conditions or requirements*” (article 12.1.b of the Industry Act). Technical safety regulations are mandatory (article 8.4), unlike technical quality standards, for which compliance is voluntary. Normally, an industrial facility, process or product may be affected by more than one Regulation.
66. The National Industrial Safety Regulations at the State level are approved by the national government by Royal Decree (article 12.5 of the Industry Act), without prejudice to the Autonomous Communities being able to introduce additional requirements on the same matters in respect of facilities located in their territory.
67. Normally, a distinction is made between Regulations governing facilities and products. The Regulations of facilities have a markedly national character, whereas practically all product Regulations come from implementation of EU New Approach Directives.
68. The New Approach policy¹⁰ is based on the adoption of various Directives that affect a series of industrial products (normally of widespread use, such as household appliances, lamps, aerosols, etc.) in which the safety requirements applicable in each area are established. One of the basic characteristics of the New Approach policy is the CE marking, by means of which the manufacturer declares that the product it markets complies with the requirements included in the applicable Directives and has been submitted to conformity assessment procedures in relation to those requirements.
69. Unlike the technical quality standards, which are approved by the standardisation bodies, safety regulations are approved by the Administration. Nevertheless, the technical conditions included in the Regulations are normally standards drawn up by standardisation bodies

¹⁰ The new approach policy was established in the European Union at the same time as the internal market (Muñoz, Rodríguez and Martínez-Val, 1998). The name New Approach implies a difference with respect to the previous situation, termed the Old Approach, in which the harmonisation of technical safety regulations had not yet been developed. Prior to the harmonisation of technical legislation carried out in the European Union as a result of the new approach directives, each country had its own legislation on industrial safety. In the last two decades, the New Approach Directives have played an important role in the efforts to ensure free movement of goods and achievement of the Internal Market (European Commission, 2003).

which the Administration incorporates into the Regulations, either by reproducing them verbatim or by reference to the standard.

D) EMAS Regulation

70. Regulation (EC) 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) lays down a series of requirements to comply with those rules, which companies and organisations may adopt voluntarily, and which are aimed at recognising those organisations that go beyond strict compliance with the laws on environmental matters and seek to improve their environmental performance.
71. EMAS is a management tool for businesses and other organisations to evaluate, report and improve their environmental performance. This scheme has been in existence since 1995 and, although originally restricted to companies in industrial sectors, since 2001 it has been available for all types of enterprises and public sector and private organisations.¹¹
72. The requirements for conformity with the EMAS standard are: execution of an environmental review of all aspects of the organisation's activity, and of its goods and services; establishment of an environmental management system aimed at complying with the organisation's environmental policy; performance of an audit to assess the system and its conformity with the organisation's policy and with the applicable environmental regulations; preparation of an environmental performance report in relation to the proposed objectives, including the measures planned for continued improvement of that performance. The EMAS regulation has many similarities with the well-known ISO 14001 standard on environmental management systems.

II.2 Certification bodies

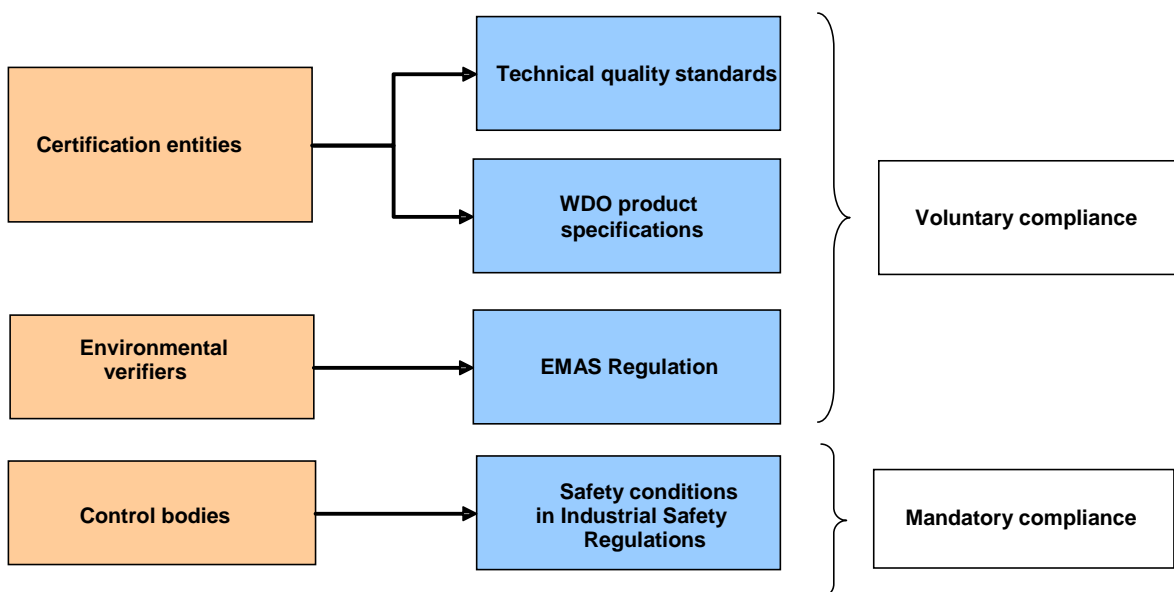
73. Certification *“allows a determination of the conformity of a given company, product, process or service with the requirements defined in technical specifications or standards”* (article 8 of the Industry Act).
74. The bodies qualified to certify are certification entities, which conduct their activity in relation to standards of voluntary compliance, and control bodies, which operate in the realm of the Industrial Safety Regulations. Environmental verifiers are not explicitly mentioned in the Royal Decree

¹¹ http://ec.europa.eu/environment/emas/index_en.htm (consultation of 21/06/2010).

2200/1995 as possible certification bodies, but they are recognised as such in the European Regulations that have traditionally regulated their activity. Environmental verifiers certify compliance with the four requirements mentioned above, that is, the environmental review, the environmental management system, the audit and the report established in the EMAS regulation.

75. The relation between the standards described in the preceding section and the certification bodies provided for in the Royal Decree 2200/1995 is summarised in Diagram 2:

Diagram 2. Types of standards and certification bodies



Source: Prepared in house.

76. Although in legal terms there are important differences between the different types of organisations that operate in the certification field, the companies or corporate groups operating in each field are often the same. For example, the main certification body in Spain, AENOR, acts as certification entity when it certifies technical quality standards, but also as a control body when it certifies safety conditions established in Industrial Safety Regulations, and as environmental verifier of EMAS regulations when it acts in the typical area of those operators.

77. The certification activity consists of three main types of assessment:

- **The certification of products, processes or services** to ensure that they comply with certain standards, for example, that a toy meets certain specific conditions or that wine from a certain WDO has been made

according to the relevant product specifications. The products certified may belong to the industrial or agrofood sector. Certification normally involves products. Certification of services is a minority segment within the certification activity.¹²

- **The certification of management systems** is intended to ensure that the organisation or company has developed an adequate system for managing certain aspects of its activity. The certification of management systems has five subsectors, in relation to quality, environmental, information security, food safety and R&D&i management.
- **The certification of persons** allows assurances to be given that the person certified satisfies the requirements of a given certification scheme.

78. The certification of technical quality standards can be applied to the three types of assessment described, that is, to products, to management systems and to persons, whereas certification of WDO and Industrial Safety Regulations only occurs in product assessments, and the certification of the EMAS Regulation is included in certification of management systems.

Accreditation

79. A key part of the certification activity is accreditation. In order for certification bodies to be able to issue conformity certificates in respect of specific standards that perform this function adequately, the activity of those bodies must be governed by the fulfilment of certain requirements of independence, impartiality and technical competence. Accreditation entities are the entities that check for fulfilment of those requirements.

80. Accreditation entities are private, not-for-profit organisations whose function is to formally recognise, at the State level and through a system in conformity with international standards, the technical competence of an entity for carrying on certification, inspection or quality audit activities. Testing or calibration laboratories may also be subject to accreditation. Accreditation takes in both voluntary and mandatory certification, as well as the environmental verification sphere (Royal Decree 2200/1995 article 14).

81. In Spain, the Administration has designated the Entidad Nacional de Acreditación (Spanish Accreditation Entity — ENAC) as sole entity

¹² An example of certification of services is the certification of tourist services.

accredited in Spain to carry on this task¹³ pursuant to Community standards.¹⁴

82. ENAC is managed by the Administration, which names its president. In order to safeguard its impartiality, its General Assembly includes representatives of all operators with interests in accreditation, including conformity assessment entities, government administrations and companies and business associations. According to its Bylaws, ENAC's fundamental sources of funding are the dues paid by its members, revenues obtained from the accreditation activity and the subsidies granted in the General State Budgets.
83. ENAC's actions are overseen by the Administration and it is also subject to the mutual supervision carried on indirectly by accreditation entities of other countries and the mutual recognition arrangements in place between them. Internationally, ENAC is member of the organisations European Accreditation (EA) and International Accreditation Forum (IAF), which have agreements for mutual recognition of accreditations issued by any of their members.
84. The procedure and the standards that govern accreditation vary according to the different certification bodies involved. The fundamental aspects of each of those procedures are mentioned together with the main characteristics of each type of certification body, as described in the sections that follow.

Principal characteristics of certification bodies

A) Certification entities

85. Certification entities are public or private entities with their own legal personality whose function is to determine, pursuant to a voluntary request, the conformity of a company, product, process, service or person with the requirements defined in standards or technical specifications (article 20, Royal Decree 2200/1995).
86. Within this voluntary nature, certification may be strictly voluntary, as is the case with technical quality standards, or regulated, when the certification involves standards of voluntary compliance established in legal texts and approved by the Administration, as is the case of WDO product specifications.

¹³ As provided in the Additional Provision Three of the Royal Decree 2200/1995.

¹⁴ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products stipulates in article 4 that "Each Member State shall appoint a single national accreditation body."

87. In the case of strictly voluntary certification, although there are no specific requirements for being able to operate, certification entities are usually accredited before a national accreditation entity to enhance their credibility. Nearly all certification carried out in Spain is accredited by ENAC or by a national accreditation entity from another country.
88. In the case of regulated voluntary certification, authorisation is required from the competent authority (normally regional), which will normally require, *inter alia*, ENAC accreditation as a condition for obtaining the authorisation.
89. The ENAC accreditation procedure depends on the subject matter of the certification. Entities accredited in ENAC to certify products, processes or services must comply with the UNE-EN 45011 standard on *“General requirements for bodies operating product certification systems”*.
90. Entities that are accredited to certify management systems, on the other hand, must satisfy the UNE-EN ISO/IEC 17021 standard on *“Requirements for bodies providing audit and certification of management systems”*. This is not a general accreditation, and specific accreditation is needed for certification of each of the five aforementioned certification subsectors in this field: quality, environment, information security, food safety and R&D&i.
91. Lastly, entities accredited to certify persons must comply with the UNE-EN ISO/IEC 17024 standard on *“Requirements for bodies operating certification of persons”*.
92. Basically, these accreditation standards seek to ensure compliance with article 22 of Royal Decree 2200/1995, which provides that *“certification entities must act impartially and perform their functions with technical competence”*. The technical competence requirements established are not very concrete, beside the obvious requisite of having a properly skilled team. As for impartiality, accreditation of management systems and persons requires that the entities have impartiality committees composed by a balanced representation of all parties affected.¹⁵ Conversely, in accreditation to certify products, impartiality committees are not required, although the requirement is maintained that certification entities must be impartial in order to be accredited.

¹⁵ For certification of management systems, the UNE-EN ISO/IEC 17021 standard mentions as stakeholder representatives: *“clients of the certification body, customers of organisations whose management systems are certified, representatives of industry trade associations, representatives of governmental regulatory bodies or other governmental services, or representatives of non-governmental organisations, including consumer organisations”*. For certification of persons, the UNE-EN ISO/IEC 17024 standard refers to a scheme that represents *“on an equitable basis and without favoritism the interests of all parties significantly involved in the certification scheme, with no one specific interest predominating”*.

B) Control bodies

93. The bodies that certify in relation to Industrial Safety Regulations, known as control bodies, are natural or legal persons whose function is to verify fulfilment of the safety conditions of industrial facilities and products that are established on a mandatory basis by the Industrial Safety Regulations. The verification includes certification, testing, inspection or audit tasks. Certification in the industrial safety field is only done in relation to industrial products; industrial facilities are subject to inspection.
94. Operating as a control body requires authorisation, which, in turn, requires being accredited by ENAC that ensures the impartiality, independence and integrity of the monitoring body (article 42 and 43 of Royal Decree 2200/1995).
95. The authorisation is granted by the competent body of the Autonomous Community (regional government) where the control bodies initiate their activity or where their facilities are located, except in certain cases¹⁶ where authorisation rests with the General State Administration. The authorisations are valid throughout the entire country in all cases, although before operating in a different region than the Autonomous Community that authorised it, the agency must give notice of such intent to the Ministry of Industry, Tourism and Trade, which will immediately forward it to the relevant regional governments. (Article 43.5 of Royal Decree 2200/1995).
96. Supervision of their activity rests with the government, which may impose penalties for any breaches committed by the agency in the pursuit of its activity, including temporary suspension or revocation of the authorisation (art. 48.1 of Royal Decree 2200/1995).
97. Control bodies include the notified bodies,¹⁷ which take the relevant actions regarding assessment of conformity with the New Approach Directives. The notified bodies can provide their services to operators established at any point of Community territory.¹⁸
98. The Directives lay down the obligation of Member States to notify the European Commission and the rest of the Member States the identity of the notified bodies that will intervene in the assessment of conformity with the different Directives, which also establish the requirements that those bodies must meet to act as such.

¹⁶ Those referring to “*certifications of vehicles, components, integral parts, spare parts and systems that affect traffic and circulation*” (article 13.4 of the Industry Act).

¹⁷ The notified bodies are control bodies. Nevertheless, the requirements they must meet to operate are subject to certain particularities that are discussed in the paragraphs that follow.

¹⁸ http://www.ffii.nova.es/puntoinformcyt/conceptos_nuevofoque.asp (consultation of 18/05/2010).

99. The Member States are the parties that apply these requirements when they make the decision to notify the body. An important criterion for determining whether the body fulfils the requirements laid down in the applicable Directive is the existence of accreditation according to the series EN 45000 standards.
100. Notification should not be interpreted as an authorisation in the strict sense, as some of the Directives conceive of it as a designation.¹⁹
101. In Spain, the notifying authority will vary according to the sector to which the Directive applies, which means the control body notification process is not the same for all Directives.
- For some of them, it is the Autonomous Communities that forward the control body notification request that has been authorised in their Autonomous Community to the General State Administration, normally to the Ministry of Industry, Tourism and Trade (MITYC), which then notifies the Community institutions and the rest of the Member States.
 - For other Directives, the notification process does not involve a preliminary step by a regional government, and it is the General State Administration instead that directly notifies the selected control body, which must then comply with certain requirements in order to be named as notified body. As mentioned above, the notifying authority usually considers that the existence of accreditation is a sufficient guarantee of fulfilment of those requirements. Nevertheless, accreditation is neither necessary nor sufficient, that is, an entity may be notified without being accredited and, in turn, the notifying authority is not obliged to notify all accredited entities.
 - In the case of radioelectric and telecommunication terminal equipment and mutual recognition of their conformity, the notified body is the State Secretariat for Telecommunications, according to article 46 of the Royal Decree which transposed Directive 1999/5/EC of the European Parliament and of the Council. This is the only case where the notified body is a ministerial department.

C) Environmental verifiers

102. Environmental verifiers are responsible for certifying that the environmental management systems radio electric companies and organisations comply with the EMAS regulation.²⁰

¹⁹According to the MITYC, the States “may choose the bodies they wish to notify from amongst the bodies under their jurisdiction that are in continuous compliance with the requirements of the Directives http://www.ffii.nova.es/puntoinformcyt/conceptos_nuevoenfoque.asp (consultation of 18/05/2010).

103. Traditionally, the EU Regulations on the activity of environmental verifiers have stipulated that their function is to certify.²¹
104. Environmental verifiers need to be accredited by ENAC in order to carry on their activity.²²
105. As indicated earlier, it is often the same the companies or groups of companies that operate in each area. Specifically, many of the leading environmental verifiers are also the main certification entities.

II.3 Characteristics of the market

106. Quantitative data on the certification sector are rather scarce. By way of approximate total revenues for the sector, according to the statistical report on the service sector (*Estadística de Productos en el Sector Servicios*) published by the Spanish Institute of Statistics (INE), the certification market was worth 181 million euros in 2007. Apart from this figure, there are no global, systematised and public data on the certification business. There are two main sources of information: ENAC, which provides data on the number of accredited entities, and Forum Calidad, which mainly publishes cumulative data on management system certifications.
107. The data used in this section of the Report are based on the revenues of the top nine certification entities by number of certificates issued for management systems, and have been obtained in via CNC consultations with those entities.
108. In 2008, the cumulative number of ISO 9001 and ISO 14001 certificates issued by the nine entities accounted for 92.4% of the total.²³ The certification of technical quality standards occupies a prominent spot, generating the lion's share of revenues for several of the main certification bodies like AENOR, Bureau Veritas and SGS ICS Ibérica.

²⁰ According to Royal Decree 2200/1995 “environmental verifiers are public or private entities or natural persons, independent of the enterprise subject to verification, that are established for the purpose of performing the functions stipulated for them in Chapter V of Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC” (article 49).

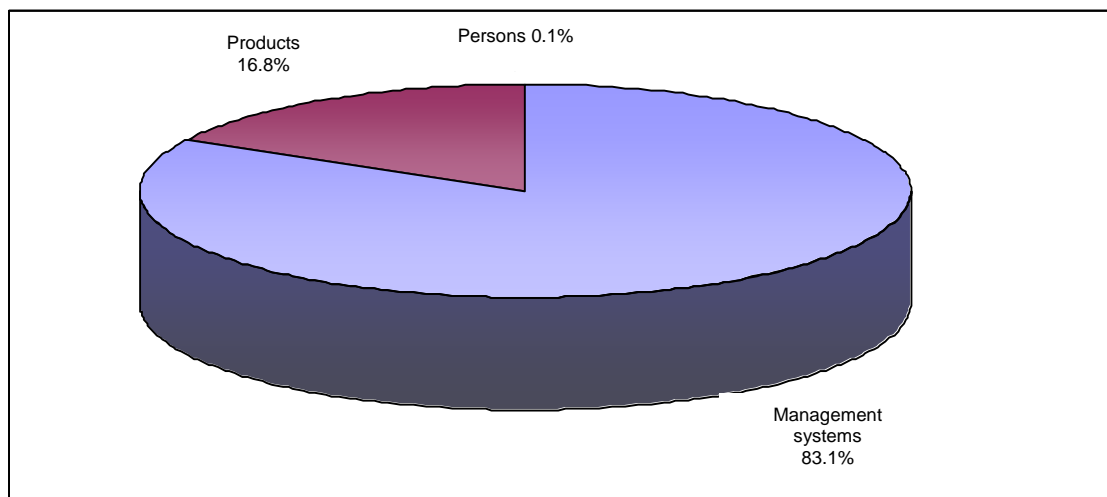
²¹ For example, Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing Voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), prior to and repealed by the current Regulation 1221/2009, provided that “the function of environmental verifiers is to check...” (Annex V).

²² The accreditation is done according to the requirements laid down in Regulation 1221/2009 (article 51.1 of Royal Decree 2200/1995).

²³ Prepared in house from data provided by Forum Calidad (2009).

109. It is therefore concluded that these data allow an approximate aggregate analysis of the sector's evolution, as well as the relative importance of each area of certification in the market as a whole. They also give us a preliminary glimpse of the quantitative analysis of the sector and contribute to increasing the available statistics.
110. It should be borne in mind, however, that the numbers fundamentally reflect revenue from management system certifications, given that they come from the main entities active in that field. Consequently, a more representative sampling would have slightly increased the weight of product certifications and certifications of mandatory-compliance standards. It also bears noting that a small number of entities have not been able to indicate which part of their product certification activities involves Industrial Safety Regulations.
111. According to these figures, the certification of management systems is the majority subsector in revenue terms, accounting for 83.1% of the total in 2009, followed by certification of products (16.8%) and certification of persons (0.1%), which is clearly residual.
112. As for the operators in the certification market, although the immense majority are also certification entities, there is a small number of control bodies and environmental verifiers that also conduct this activity, as will be described below.

Figure 1. Total revenues of certification bodies, broken down into % of certification of management systems, products and persons. 2009



Source: Prepared in house from data provided by the nine leading entities by number of cumulative management system certificates in 2008.

Note: the % are calculated based on the total revenue of these entities as certification bodies, that is, from the total revenue obtained for certifying in the certification of management systems, products and persons areas, be it as certification entities, control bodies or as environmental verifiers.

II.3 a Certification entities

113. In the Spanish market, there are 51 accredited entities operating in the certification of products, processes or services.²⁴ The great majority are certification entities,²⁵ and their most common area of activity is the certification of agrofood products; only a minority certify industrial products.

114. Accredited certification **of management systems** is concentrated in two main areas of activity: management of quality, in which 25 entities operate, and environmental management, with 17 entities.²⁶

115. The **certification of persons** is clearly a minority segment in which even the main certification entities in other fields, such as AENOR, do not operate. Certification is primarily used for certain professions, such as welders, auditors of management systems or gas installers. At present there are seven entities accredited by ENAC to certify persons.

116. In the certification of products and in management systems, AENOR is the leading entity, with 43.7% of the revenues of the top nine certification

²⁴ Entities accredited by ENAC in 2009.

²⁵ Royal Decree 2200/1995 recognises AENOR's status as certification entity: the Second Transitional Provision provides that "The entity AENOR (...) may act as a certification entity of those provided for in section I of chapter III of the Regulation approved by this Royal Decree (...)".

²⁶ This figure refers to certification entities that certify the ISO 14001 standard on environmental management systems. Environmental verifiers, who certify compliance with the EMAS regulation, are discussed in section III.3.c.

entities (Table 1), followed by Bureau Veritas (20.8%), LRQA (8.9%), LGAI (7.7%) and SGS (6.4%).

Table 1. Total revenue of the top nine certification entities, as % of total revenues. 2009

Certification entities	% of total revenues
AENOR	43.7%
Bureau Veritas	20.8%
Lloyd's Register Quality Assurance	8.9%
LGAI Technological Center	7.7%
SGS ICS Ibérica	6.4%
TÜV	5.0%
Det Norske Veritas	4.2%
European Quality Assurance	2.2%
BM Trada	1.1%
TOTAL	100.0%

Source: Prepared in house from data provided by the nine leading entities by number of cumulative management system certificates in 2008.

Note: the data indicate the % of total revenues generated by each entity with respect to the aggregate revenue of all nine.

117. Table 2 shows the weight of certification of management systems, of products, processes and services, and of persons, in the total sector revenue base, as well as the degree of specialisations of the main entities in those three subsectors. Entities such as Bureau Veritas, Det Norske Veritas and Lloyd's Register are relatively more specialised in management systems, while LGAI and BM Trada are relatively more specialised in the certification of products. AENOR is one of the least specialised entities, with a strong presence in all activities of the sector.

Table 2. Revenues from certification of products, management systems and persons of the nine leading certification entities, as % of total revenue of each entity. 2009

	% of revenues in management systems	% of revenues in products	% of revenues in persons	Total
LGAI Technological Center	50.9%	49.1%	0.0%	100.0%
SGS ICS Ibérica	78.6%	21.4%	0.0%	100.0%
AENOR	84.7%	15.3%	0.0%	100.0%
Det Norske Veritas	96.8%	1.7%	1.5%	100.0%
Lloyd's Register Quality Assurance	94.8%	5.2%	0.0%	100.0%
BM Trada	64.5%	35.5%	0.0%	100.0%
Bureau Veritas	97.4%	2.6%	0.1%	100.0%
European Quality Assurance	90.8%	9.2%	0.0%	100.0%
TÜV	94.0%	6.0%	0.0%	100.0%
TOTAL	86.1%	13.8%	0.1%	100.0%

Source: Prepared in house from data provided by the nine leading entities by number of cumulative management system certificates in 2008.

Note: the data express the % which each subsector (products, management systems and persons) generates of the total revenue obtained by each entity in the certification field.

A) Certification of products, processes or services

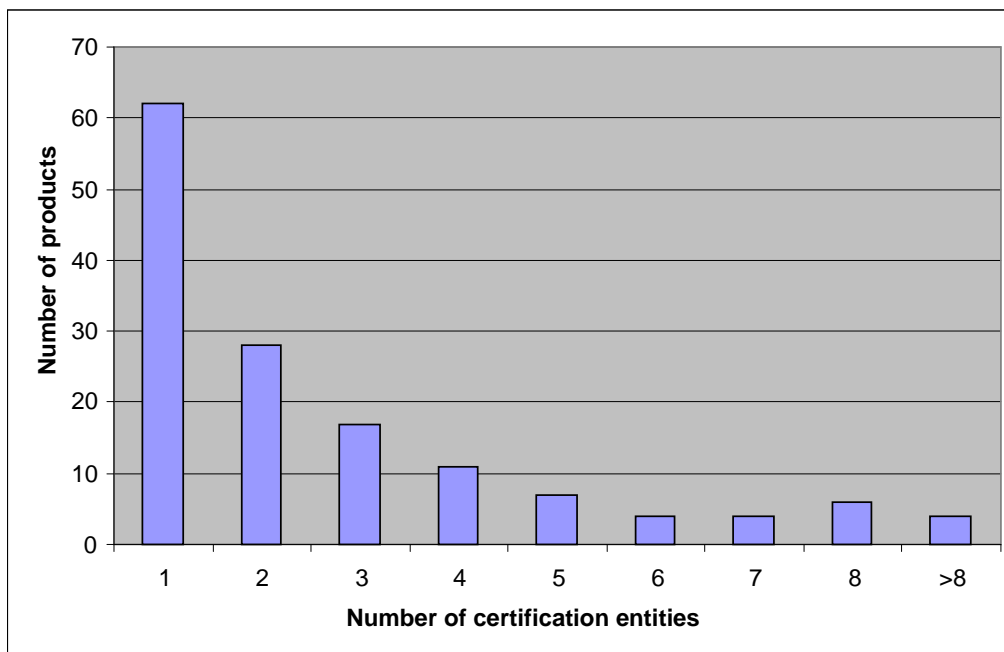
118. As has been emphasised above, within the certification of products, processes and services, the activity of certification entities focuses on the certification of products, with the certification of services playing a smaller role. The products certified may belong to the industrial or agrofood sector.
119. There are differences between the types of products certified, which depend mainly on the relation between the size of the market demanding certification services and the costs of offering those services, which, depending on the characteristics of the product, may include the costs of laboratory tests and payment for the highly qualified technical services provided by the auditors.
120. Costs that are relatively high in relation to the size of the market may explain why such a small number of competitors is seen in certain product types, some of which are only served by a single accredited entity. Thus, it can be seen that for very specific products in the R&D&i areas, such as numerical, molecular physics or cellular biology analysis, or in products which demand strong technical skills and costly laboratory tests, such as railroad infrastructure and windpower facilities, there is only one certification entity. Conversely, in other types of products, such as fresh produce or optional labelling of beef, there are a large number of entities that provide certifications services.
121. In other cases, such as the certification of WDO product specifications, which is studied in greater detail in a later section of this Report, the presence of legal barriers contributes to narrowing down competition greatly.

122. ENAC provides information on accredited certification for 142 types of products.²⁷ The distribution of products according to the number of accredited entities that certify in them is presented in Figure 2.

123. The available data only allow us to say that, of the 142 products, there is only one accredited certification entity in 62 of them, while 28 products have two certification entities (Figure 2). In the products with only one such entity, in 40 cases the lone certifier is either AENOR or AIDIT (Table 3). The 16 product types certified only by AIDIT are in the R&D&i field, whereas of the 24 certified solely by AENOR, 15 are in the manufactured products segment and the remaining 9 in R&D&i.

124. As previously noted, AENOR is the main entity, accounting for 48.4% of the revenues of the top nine certification entities (Table 4), followed by LGAI (27.4%), SGS ICS Ibérica (9.9%), Bureau Veritas (3.9%) and Lloyd's Register (3.3%).

Figure 2. Distribution of types of products, according to the number of accredited entities. 2009



Source: Prepared in house on the basis of data obtained from the ENAC website.

²⁷ Some examples of these products include: vegetable oils, animal feed, steel, insulation, household appliances, plastics and windows. Within services, a minority segment in this area of certification, one example would be tourist services.

Table 3. Product certification entities that operate in product types for which there is only one accredited entity. 2009

Company	Products for which only one entity is accredited
AENOR	24
AIDIT	16
ACIE S.L.	4
Cetren	4
Bureau Veritas Certification, S.A.	3
EQA	3
Fund. Esp. Protegidos Andalucía	2
LGAI Technological Center, S.A.	1
Calitax Certificación, S.L.	1
Cámara de Comercio Madrid	1
SGS ICS Ibérica, S.A.	1
ACCM, S.L.	1
ACSA	1
Total	62

Source: Prepared in house on the basis of data obtained from the ENAC website.

Table 4. Revenues from certification of products, processes and services of the top nine certification entities, as % of total revenues. 2009

Certification entities	% revenues products
AENOR	48.4%
LGAI Technological Center	27.4%
SGS ICS Ibérica	9.9%
Bureau Veritas	3.9%
Lloyd's Register Quality Assurance	3.3%
BM Trada	2.9%
TÜV	2.2%
European Quality Assurance	1.5%
Det Norske Veritas	0.5%
TOTAL	100.0%

Source: Prepared in house from data provided by the nine leading entities by number of cumulative management system certificates in 2008.

Note: the data express the % of total revenues obtained by each entity with respect to the total revenue for the nine entities in the segment covering certification of products, processes or services for voluntary-compliance standards.

125. The **certification of WDO product specifications** falls in the category of certification of products, processes or services. According to the COM Regulation of 2008, this activity may be carried on by the competent authority, or by one or more accredited certification entities to which the competent authority has delegated the tasks of monitoring compliance with the product specifications (that is, that they are authorised by said competent authority to do such monitoring). One requirement imposed on these entities is accreditation, according to article 48.3 of the Regulation.
126. For most WDO in Spain, the competent authority is the administration of the regional government. Nevertheless, according to article 28 of the Wine Act, where a WDO covers a geographic zone spanning more than one Autonomous Community, the competent authority is the Ministry of the Environment and Rural and Marine Affairs (MARM).
127. According to ENAC,²⁸ there is only one WDO with an accredited entity. In the rest of Spain's WDO, certification is not done by accredited certification entities, but, according to the available information,²⁹ by the competent authority, or the *Consejo Regulador* of the WDO without ENAC accreditation, or by a certification entity without ENAC accreditation. In practice, and with the exception of the Castilla-La Mancha WDO, there are no cases where certification of compliance with the product specifications of a specific WDO can be obtained by going to more than provider of such service, accredited or not.

B) Certification of management systems

128. The principal standards certified in this area are the ISO 9001 and ISO 14001 standards.³⁰ In recent years, the certificates of these standards issued in Spain have grown quickly (Table 5), with the number of ISO 14001 certificates practically doubling.

²⁸ www.enac.es (consultation dated 27/05/2010).

²⁹ The information on the systems in place in each WDO has been obtained by consulting the different competent authorities for WDO that exist in Spain.

³⁰ The certificates of management systems issued in Spain are primarily based on two international standards issued by the ISO. Namely: a) the UNE-EN-ISO 9001 standard, which specifies the requirements for a Quality Management System (QSM), concentrating on the effectiveness of quality management in satisfying customer requirements; and b) the UNE-EN-ISO 14001 standard for environmental matters, which specifies how to implement an environmental management system (EMS). EMS allow organisations to systematise the environmental impacts they generate in each of the activities they carry on, in addition to promoting environmental protection and preventing pollution.

Table 5. Number of ISO 9001 and ISO 14001 certificates issued in Spain. 2005-2008

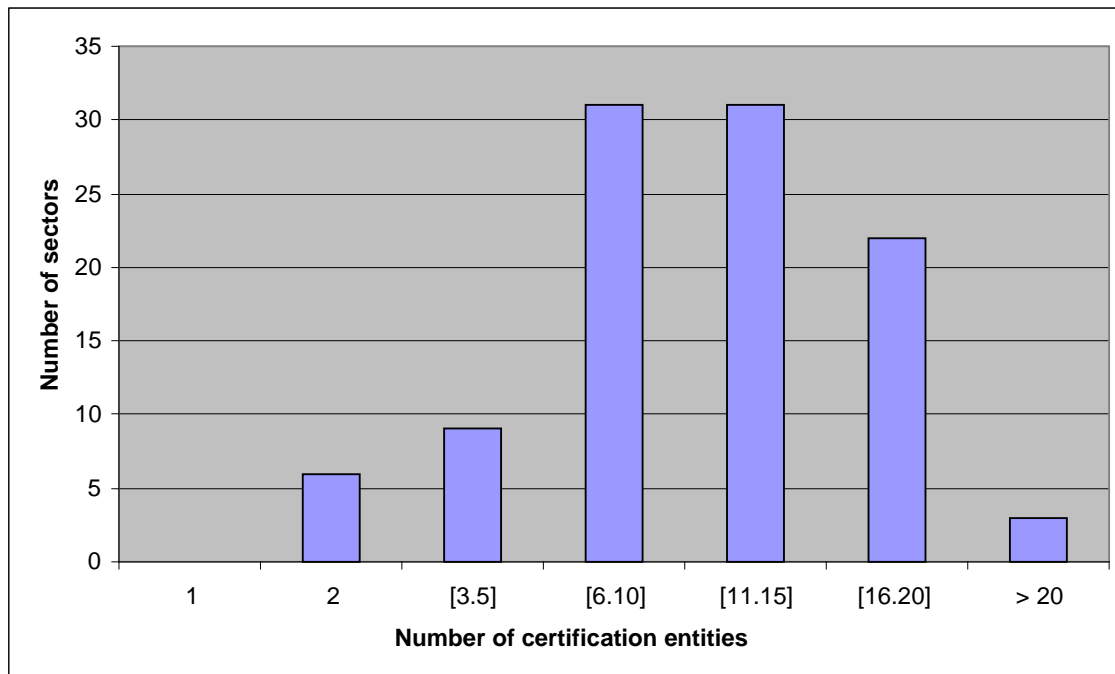
	2005	2006	2007	2008	Average annual growth (%)
ISO 9001	47,445	57,552	65,112	68,730	13.3%
ISO 14001	8,620	11,125	13,852	16,443	24.1%

Source: Prepared in house based on ISO data (2009).

129. Spain is near the top of the world ranking in number of certificates issued in these two areas.³¹ Specifically, in certification against the ISO 9001 standard, Spain is number three in the world, topped only by China and Italy; it is also ranked third in the ISO 14001 standard, where it is only surpassed by China and Japan.
130. Contrary to the situation in the certification of products, competition is more intense in certification of management systems, partly due to the lesser technical complexity needed to pursue this activity (for example, the standard is usually easier to understand and no laboratory tests are needed) and to the smaller variety of technical specificities between the systems certified, which makes it easier for the certification entities to adapt to their customers' needs.
131. ENAC distinguishes between 102 economic sectors in which this type of certification can be done. The number of parties offering services in each sector is fairly high (Figure 3). No cases are seen of only one supplier, and the existence of just two is not very common.

³¹ Source: ISO (2009).

Figure 3. Distribution of the sectors, according to the number of accredited entities. 2009



Source: Prepared in house on the basis of data obtained from the ENAC website.

132. In terms of revenues from certification of management systems, AENOR is the leading entity, with 43.0% of the market composed of the top nine certification entities, followed by Bureau Veritas (23.5%) and Lloyd's Register (9.7%).

133. Turning the analysis to ISO 9001 and ISO 14001 certification (Table 6), AENOR's share of the total revenues of seven³² of the top nine certification entities was 48.0%, followed by Bureau Veritas (24.6%), Lloyd's Register (11.8%), SGS ICS Ibérica (8.0%) and LGAI Technological Center (4.2%).

134. Nevertheless, by number of cumulative ISO 9001 and ISO 14001 certificates (see Table 7), Bureau Veritas is the leading certification entity, with 36.6% of the certificates issued, followed by AENOR (34.8%), Lloyd's Register, SGS ICS Ibérica and LGAI Technological Center, with percentages of less than 10%. In part, the differentials between the revenue figures and the data on number of certificates issued may be explained by the differences between the entities in terms of the demand segments they serve: some, like AENOR, have a greater role with major customers (large companies, etc.), whose certificates generate higher revenues than do those of other customers. This introduces variations in

³² In the consultations carried out, the CNC was only able to obtain disaggregated data on the ISO 9001 and ISO 14001 standards for seven of the nine certification entities.

the average contribution of each certificate to the entity's total revenue base.

Table 6. Revenue from ISO 9001 and ISO 14001 certificates per certification entity, as % of total revenues obtained by seven of the top nine certification entities. 2008

	Revenues from ISO 9001 certificates	Revenues from ISO 14001 certificates	TOTAL
AENOR	47.7%	49.2%	48.0%
Bureau Veritas	26.4%	18.2%	24.6%
Lloyd's Register Quality Assurance	12.2%	10.5%	11.8%
SGS ICS Ibérica	7.1%	11.1%	8.0%
LGAI Technological Center	3.8%	5.5%	4.2%
European Quality Assurance	1.6%	3.8%	2.1%
BM Trada	1.2%	1.8%	1.3%
TOTAL 7 entities	100.0%	100.0%	100.0%

Source: Prepared in house using data provided by seven of the nine main entities on number of cumulative management system certificates in 2008.

Note: the data express the each entity's % of the total revenues of the seven entities for ISO 9001 and ISO 14001 certification.

Table 7. Cumulative ISO 9001 and ISO 14001 certificates by seven of the nine main certification entities, as % of total certificates accumulated. 2008

	ISO 9001 certificates accumulated (2008)	ISO 14001 certificates accumulated (2008)	TOTAL
AENOR	34.5%	35.8%	34.8%
Bureau Veritas	37.7%	32.0%	36.6%
Lloyd's Register Quality Assurance	7.9%	8.0%	7.9%
SGS ICS Ibérica	7.2%	8.8%	7.5%
LGAI Technological Center	7.1%	8.5%	7.3%
European Quality Assurance España	3.7%	4.8%	3.9%
BM Trada Certification	1.9%	2.1%	1.9%
TOTAL 7 entities	100.0%	100.0%	100.0%

Source: Prepared in house using data from Forum Calidad (2009).

135. In recent years, AENOR has lost ground within the group of the five main certification entities, both in terms of revenue and certificates issued (see

Table 8 and Table 9). From 2007 to 2009, AENOR's percentage of ISO 9001 and ISO 14001 certification revenue dropped 7.5 percentage points (p.p.), mainly to the benefit of Bureau Veritas and Lloyd's Register. Measured by its share of total certificates issued, AENOR's share shrunk 8.9 p.p. between 2006 and 2008.

Table 8. Revenue from ISO 9001 and ISO 14001 certificates per certification entity, as % of total revenue obtained by the five main certification entities. 2008

	% of ISO 9001 and ISO 14001 certificates issued (out of total of 5 certification entities)		
	2007	2008	2009
AENOR	56.9%	49.7%	49.4%
Bureau Veritas	19.2%	25.5%	24.7%
Lloyd's Register Quality Assurance	9.5%	12.2%	12.2%
SGS ICS Ibérica	8.7%	8.2%	7.8%
LGAI Technological Center	5.8%	4.3%	6.0%
TOTAL 5 entities	100.0%	100.0%	100.0%

Source: Prepared in house using data provided by the top five entities on number of certificates of management systems accumulated in 2008.

Note: the data express each entity's % of the total revenues of the five entities.

Table 9. ISO 9001 and ISO 14001 certificates issued per certification entity, as % of total certificates issued by the five main entities. 2004-2008

	% of ISO 9001 and ISO 14001 certificates issued (out of total of 5 certification entities)		
	2004	2006	2008
AENOR	45.5%	45.8%	36.9%
Bureau Veritas	27.9%	26.2%	38.9%
Lloyd's Register Quality Assurance	10.7%	9.4%	8.4%
SGS ICS Ibérica	9.9%	11.4%	8.0%
LGAI Technological Center	5.9%	7.2%	7.8%
TOTAL 5 entities	100.0%	100.0%	100.0%

Source: Prepared in house using data from Forum Calidad (2009).

II.3 b Control bodies

136. According to ENAC, there are 99 accredited control bodies, although for some of them accreditation only allows them to carry out certain parts of the certification process, such as laboratory testing, inspections or audits. Amongst accredited control bodies, 13 have accreditation to perform certification tasks.

137. The bodies notified by Spain for the various New Approach Directives are presented in Table 10. For Directives that specify the notification procedure consists in notifying control bodies previously authorised in an Autonomous Community, there are normally several notified bodies. Conversely, in the case of Directives where the notification process does not imply a preliminary step by an Autonomous Community, but it is instead the General State Administration that notifies the selected control body directly, there is normally only one notified body, generally a government entity. Specifically, as mentioned previously, for Directive 1999/5/EC the notified body is the State Secretariat for

Telecommunications, this being the only case in which the notified body is a ministerial department.

138. As already stated, a notified body may operate throughout the entire European Union. This means that when only one body is notified for certain Directives, it may compete in the Spanish market with those notified by other Member States and that are present in Spain.
139. In any event, competitive pressure would be heightened if notification was given to the European Commission of all bodies that so request and which have been accredited by ENAC to conduct conformity assessment according to the provisions of the Directive in question and/or which meet the requirements which according to the Directive must be fulfilled by the notified bodies.

Table 10. Spanish bodies notified for conformity assessment under the New Approach Directives. 2010

New Approach Directives		No. of Spanish bodies notified	Body notified
88/378/EE	Safety of toys	4	Sundry
89/106/EEC	Construction products	16 ^(a)	Sundry
89/686/EEC	Personal protective equipment	8	Sundry
90/385/EEC	Active implantable medical devices	1	Spanish Drug and Medical Devices Agency. Ministry of Health and Consumer Affairs.
92/42/EEC	Hot-water boilers fired with liquid or gaseous fuels	5	Sundry
93/15/EEC	Placing on the market and supervision of explosives for civil uses	1	Official Laboratory José de Madariaga
93/42/EEC	Medical devices	1	Spanish Drug and Medical Devices Agency. Ministry of Health and Consumer Affairs.
94/9/EC	Equipment and protective systems intended for use in potentially explosive atmospheres	1	Official Laboratory José de Madariaga
94/25/EC	Recreational craft	2	Sundry
95/16/EC	Lifts	16	Sundry
96/48/EC	Interoperability of the Trans-European high-speed rail system	1	Railroad Actions Association (AAF)
96/98/EC	Marine Equipment	1	AENOR
97/23/EC	Pressure equipment	18	Sundry
98/79/EC	In vitro diagnostic medical devices	1	Spanish Drug and Medical Devices Agency. Ministry of Health and Consumer Affairs.
99/5/EC	Radio and telecommunications terminal equipment	1	State Secretariat for Telecommunications and the Information Society
99/36/EC	Transportable pressure equipment	5	Sundry
2000/9/EC	Cableway installations designed to carry persons	1	AENOR
2000/14/EC	Noise emission in the environment by equipment for use outdoors	0	No bodies notified
2001/16/EC	Interoperability of the trans-European conventional rail system	1	Railroad Actions Association (AAF)
2004/22/EC	Measuring Instruments	7	Sundry
2004/108/EC	Electromagnetic compatibility	9	Sundry
2006/42/EC	Machinery	2	Sundry
2006/95/EC	Low voltage directive	7	Sundry
2007/23/EC	Pyrotechnic articles	1	Official Laboratory José de Madariaga
2008/57/EC	Interoperability of the rail system within the Community (Recast)	1	Railroad Actions Association (AAF)
2009/23/EC	Non-automatic weighing instruments	18	Sundry
2009/48/EC	Safety of toys	0	No bodies notified
2009/105/EC	Simple pressure vessels	8	Sundry
2009/142/EC	Appliances burning gaseous fuels	4	Sundry

Notes: a) testing laboratories have not been included.

Source: Prepared in house with information from the European Commission. The notified bodies included in this Table can perform other conformity assessment tasks apart from certification, such as inspection, auditing or testing.

II.3 c Environmental verifiers

140. In Spain there are 10 environmental verifiers accredited in ENAC to certify the EMAS. The total certificates issued by them in 2008 amounted to 1,204 (see Table 11), a much smaller number than for other similar certificates, such as ISO 14001.

141. AENOR is the leading environmental verifier (with 41.3% of the certificates issued in 2008), followed by LGAI (14.6%) and Bureau Veritas (12.4%). In recent years AENOR has lost ground in the total EMAS certificates issued (nearly 10 percentage points), while Bureau Veritas, SGS and LGAI have gained importance in this market.

Table 11. EMAS certificates issued, by level and as % of total. 2004-2008

	EMAS certificates issued (by level and as % of total)					
	2004	en %	2006	en %	2008	en %
AENOR	244	49.5%	370	46.5%	497	41.3%
LGAJ Technological Center	54	11.0%	98	12.3%	176	14.6%
Bureau Veritas	32	6.5%	36	4.5%	149	12.4%
TÜV	80	16.2%	97	12.2%	98	8.1%
European Quality Assurance	0	0.0%	45	5.7%	67	5.6%
SGS ICS Ibérica	14	2.8%	31	3.9%	64	5.3%
Lloyd's Register Quality Assurance	17	3.4%	49	6.2%	63	5.2%
Cámara de Comercio de Madrid	29	5.9%	55	6.9%	53	4.4%
Det Norske Veritas	23	4.7%	14	1.8%	37	3.1%
TOTAL*	493	100.0%	795	100.0%	1204	100.0%

Source: Prepared in house using data from Forum Calidad (2009)

* Only those environmental verifiers that issued at least one certificate in 2008 have been taken into account.

III. RESTRICTIONS OF COMPETITION

142. Consultations with players in the sector and several precedents examined by the former Competition Tribunal (TDC) and by the CNC itself in the certification sector strongly suggest a need to pay special attention to certain elements in the certification of quality and safety standards that may be restricting competition, not only in the certification markets themselves, but also in related markets such as those of goods and services for which operators need certificates, and in the testing laboratories market.

143. This part of the report analyses those restrictive elements, which are primarily: the dual function performed by AENOR as a standardization body and certifier, which places it in a unique position with respect to its competitors in the certification markets; the legal barriers to competition in the certification of WDO product specifications; the composition and functioning of the product certification technical committees, in particular, in AENOR; the role of government authorities as customers for certification services; and the absence of mutual recognition in the certification of products.

III.1 AENOR as standardisation body and certifier

AENOR: main features

144. AENOR is a private non-profit³³ association composed of different entities and natural and legal persons, public and private, *“that have a special interest in the carrying on of standardisation and certification activities”*³⁴. At present, approximately 1,000 members of the Spanish industrial community belong to AENOR.
145. According to article 17 of its bylaws, AENOR is governed by a General Assembly, the Executive Board, the Standing Committee and the President of AENOR. The General Assembly is the supreme body of AENOR, and is made up of all Association members. There are four types of members: corporate, affiliated, individual and honorary members.
146. The Executive Board is the governing body and its members are elected by the members of each sector of activity or by each group of members.³⁵ The AENOR General Assembly ratifies the members of the Executive Board.³⁶
147. According to article 23 of the Bylaws, the Executive Board names the President of AENOR, the Director General and the Standing Committee. The Committee supports the Executive Board and, amongst other functions, supervises and oversees the fulfilment by the directors of AENOR of all of the guidelines and objectives set by the Executive Board.
148. The governing bodies include the government representatives appointed by the Industrial Safety Coordination Council (*Consejo de Coordinación de la Seguridad Industrial*), which must consist of an equal number of representatives from the national government and from the regional administrations. The management rests with an Executive Board composed of a maximum of 70 members, ten of whom are government representatives.
149. The same management bodies are responsible for the standardisation and certification activities. In addition to these bodies, AENOR also pursues standardisation and certification activities through a single Directorate General to which there report the technical and administrative services needed for executing those tasks.

³³ Article 1 of the AENOR Bylaws.

³⁴ <http://www.aenor.es/desarrollo/aenor/miembros/queesmiembros.asp> (consultation dated 28/05/2010).

³⁵ Article 26 of the Internal Regulations of AENOR.

³⁶ Article 21.e of the AENOR Bylaws.

150. In 2008 AENOR recorded revenues of 67.8 million euros (Table 12). Nearly 75% of this income came from certification, with less than 15% generated by the standardisation activities.³⁷ According to AENOR, the standardisation activity is a loss maker: its deficit in 2007 was 2 million euros.³⁸

Table 12. Breakdown of AENOR revenue base, in millions of euros. 2008

Source	Revenues
Member dues	0.7
MITYC subsidy	1.8
Sale of standards and publications	4.8
Certification	52.7
Other subsidies	0.3
Other activities	5.9
Sundry	1.5
Total	67.8

Source: AENOR Annual Report 2008.

Procedure for producing standards

151. AENOR's standards making activity is carried on by the Standardisation Technical Committees³⁹ (STC). A STC may be created at the initiative of the AENOR Executive Board, by proposal of “a sufficient representation of the corporate members from the sector covered by the committee” or at the behest of the government representatives on the Executive Board.⁴⁰

152. The composition of the STC must ensure a balanced representation of the operators involved in the sector it covers,⁴¹ including customers and consumers, manufacturers and service firms, laboratories, research institutes, etc., and it is open to representatives of the government administrations. Operators who are not AENOR members may also join a STC if this is approved by a simple majority upon a prior documented request submitted by the interested party.

153. Participation in AENOR STCs is open to certification bodies, which in practice do sit on some of those Committees.

UNE Standards

³⁷ Standardisation revenues are mainly included in the categories *MITYC Subsidy* and *Sale of Standards and Publications*.

³⁸ Source: information provided by AENOR during the consultation process.

³⁹ According to the information on the AENOR website, there are approximately 200 STCs, organised by type of product/service (fines, mining and explosives, postal services ...).

⁴⁰ Article 38 of the Internal Regulations of AENOR.

⁴¹ Article 39 of the Internal Regulations of AENOR.

154. The most important standards drawn up by AENOR are the UNE standards, which may be purely national or stem from the transposition of European or international standards. The purely Spanish standards are normally prepared when the public sector has an interest in complementing certain areas not covered by European or international standards.
155. According to the AENOR Manual of Procedures (MP) a UNE standard is a *“technical specification of repetitive or continuous application the observance of which is not mandatory, which is established with the participation of all interested parties, approved by AENOR for its standards making activity”*. UNE standards include the category of Experimental UNE Standard, which is defined as the *“UNE standard established for interim application in technical fields that have a high degree of innovation or urgent need for guidance”*. One difference between a UNE standard and an Experimental UNE standard is that the latter has not been sufficiently tested in the industry or market and must therefore be reviewed to see if it is suitable before becoming established as a definitive standard. Most experimental standards end up becoming definitive standards, although some are repealed.
156. The process of preparing UNE standards is subject to AENOR's fulfilment of the following legal obligations regarding publicity of the standards and disclosure to Community institutions:
- First, it must submit to the competent body of the government administration that recognised it, that is, to the Ministry of Industry, Tourism and Trade (MITYC), the list of draft standards in the approval phase, so that they can be submitted to a public information and input procedure, as well as the list of standards approved and annulled, for publication in the Spanish Official State Gazette, the *BOE* (article 11 of Royal Decree 2200/1995).
 - Second, AENOR has to inform the European Commission, the European standardisation bodies (CEN, CENELEC and ETSI) and the national standards bodies of EU Member States of the new areas for which it has been decided to establish or amend a standard, unless it involves the identical or equivalent transposition of an international or European standard (article 3.1 of Royal Decree 1337/1999⁴²). AENOR is also

⁴² Royal Decree 1337/1999 of 31 July 2009 regulating the forwarding of information on matters of technical regulations and standards and regulations related to information society services. This decree transposes into Spanish law the content of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 and Directive 98/48/CE of the European Parliament and of the Council of 20 July 1998.

subject to other obligations on the publicity given to its standards in Europe.⁴³

157. Together with the rest of the legal formalities and procedures discussed, the process of drawing up standards consists of five phases.⁴⁴

- *The preliminary work*, which includes studying the need for standardisation of a given field, compiling the base information and documents, etc. This phase may be begun at the initiative of the relevant STC, of the Administration, of AENOR (for example, as a pursuant to its international commitments), of another STC or of any natural or legal person. In view of each initiative, the STC involved will decided whether or not the work should be undertaken.
- *The draft proposal* includes the activities carried on until the relevant STC approves the technical document as a proposed UNE standard for submission to the public information procedure.
- *The project phase* spans the period during which the proposed standard is subject to public disclosure and discussion. During this phase, individuals and entities may submit the observations they deem fit for analysis by the STC, which must also consider and study the observations that come from other standardisation bodies that are members of CEN, CENELEC or ETSI, and accept the participation in meetings of said natural or legal persons if they so request.
- *The proposal phase* includes all actions from the end of the public information period for the project to its final approval as a proposed standard by the STC and its subsequent approval by the AENOR governing bodies.
- *The editing phase* starts with the proposals approval by the governing bodies of AENOR and concludes with its publication by the publishing services of the association. Their publication in the *BOE* make the new standards Spanish standards, as provided in article 11.f of Royal Decree 2200/1995.

UNE standards of European and international origin

158. An important part of the UNE standards produced by AENOR are transpositions of European and international standards, which AENOR

⁴³ It must submit the drafts of standards it is preparing to the European Commission and to such other European bodies as may so request; publish the proposed standards to allow their public disclosure and input in the territory of the European Union; give national standards bodies in Europe the right to participate actively or passively in the work of AENOR; and allow a field of its standardisation work to be treated at the European level.

⁴⁴ Article 6.2 of the AENOR MP.

must adopt in fulfilment of its commitments as a CEN, CENELEC and ETSI member.

159. AENOR participates in the process of drawing up these standards through the function assigned to the STCs of proposing the representatives who will attend as members of the national delegation or as experts at the meetings and working groups of these bodies. The representatives must be members of the STC or, in any event, of one of its work groups.
160. According to the internal rules of the European standardisation bodies, the delegations sent by the national bodies must take into account the opinions expressed by all affected parties. In fact, the national positions vis-à-vis European and international standards are established in the STCs with the participation of all interested parties. The decisions are preferably adopted by consensus or by simple majority. The representative attending the meetings, who may or may not belong to the industry related to the STC in question, is chosen from amongst all of the interested parties, and commits himself to defending the position of the STC, not his individual position.
161. AENOR has two procedures for transposing European and international standards:
 - *Adoption*: In the case of a UNE standard, it is published with a text that translates the European standard into Spanish. Given the difficulties inherent to the translation process, the STCs are supported by technical experts in doing these translations. This is the general procedure and does not waive the obligation to go through the customary phases for preparing a UNE standard which are mentioned above, although some simplifications are allowed given the short time frames available.
 - *Ratification*: The European or international standard is transposed by means of a notice in the UNE journal published by AENOR. Ratification is an alternative that is used exceptionally, mainly for those cases where the allotted time does not allow the relevant versions of the European standards to be prepared or where the product or service covered by the standard is not marketed in Spain. According to information provided by AENOR, these standards are incorporated into its Catalogue with the EN code, that is, only available in English, although they are not formally considered a UNE standard. The great majority of these ratified standards are for the aerospace or telecommunication sectors.
162. The standards approved and ratified by AENOR are set out in its catalogue. Tables 13 to 15 summarise the evolution of this catalogue between 2004 and 2008, indicating the total number and relative weight of each type of standard in that total (Tables 13 and 14, respectively), and the

annual flow of standards published and their distribution by type (Tables 15 and 16).

163. The AENOR catalogue had some 28,030 standards in 2008 (Table 13), approximately 20% of which were purely Spanish UNE standards and the rest transpositions of European and international standards. The relative weight of standards published by AENOR as ratification or adoption of European or international standards increased in period examined (Table 15), going from 88.3% of the total in 2004 to 90.9% in 2008.
164. Only 1,746 UNE standards in force (some 7.5% of the total) are subject to certification, and 86.2% of these are European or international standards, that is, only 13.8% of the standards subject to certification are purely national ones.
165. Nor does certification by AENOR of these purely national UNE standards account for an important part of its revenues: in 2009 AENOR obtained 3.7 million euros in revenues from this category of standards, that is, 7.2% of its total revenues for certification of UNE standards (51.3 million euros) in that year.

Table 13. Number of standards in the AENOR catalogue. 2004-2008

	2004	2005	2006	2007	2008
	Num.	Num.	Num.	Num.	Num.
UNE: purely national	5,524	5,406	5,368	5,344	5,379
UNE: Adoption in Europe (AE)	12,710	13,637	14,372	15,239	15,852
UNE: International adoption	1,953	1,951	1,995	2,007	2,019
Total UNE	20,187	20,994	21,735	22,590	23,250
Ratified (R)	2,392	3,062	3,937	4,343	4,780
TOTAL (R+Total UNE)	22,579	24,056	25,672	26,933	28,030

Source: Prepared in house using data from AENOR.

166. Despite the large number of standards catalogued, the fact that their application is normally voluntary and that they originate in decisions taken by the affected operators themselves tends to reduce the risk of a possible negative impact on the competitiveness of Spanish businesses due to the administrative burdens involved in having compliance with the standard certified. It is interesting to also note in this regard that, as already commented, of the total catalogued standards, only 1,750 are subject to certification.
167. This negative impact can be more important in the case of standards which are of mandatory compliance because, for example, they are imposed by

the legal framework regulating a given sector or activity, or by administrative measures on the part of government.

Table 14. Distribution of the AENOR standards catalogue, as % of all standards in the catalogue. 2004-2008

	2004	2005	2006	2007	2008
	%	%	%	%	%
UNE: purely national	24.5%	22.5%	20.9%	19.8%	19.2%
UNE: Adoption in Europe (AE)	56.3%	56.7%	56.0%	56.6%	56.6%
UNE: International adoption	8.6%	8.1%	7.8%	7.5%	7.2%
Total UNE	89.4%	87.3%	84.7%	83.9%	82.9%
Ratified (R)	10.6%	12.7%	15.3%	16.1%	17.1%
TOTAL (R+Total UNE)	100.0%	100.0%	100.0%	100.0%	100.0%

Source: Prepared in house using data from AENOR.

Table 15. Number of standards published each year by AENOR. 2004-2008

	2004	2005	2006	2007	2008
	Num.	Num.	Num.	Num.	Num.
UNE: purely national	262	249	197	166	188
UNE: Adoption in Europe (AE)	1,426	1,408	1,455	1,504	1,289
UNE: International adoption	79	72	78	58	57
Total UNE	1,767	1,729	1,730	1,728	1,534
Ratified (R)	472	755	1,049	663	541
TOTAL (R+Total UNE)	2,239	2,484	2,779	2,391	2,075

Source: Prepared in house using data from AENOR.

Table 16. Distribution of standards published each year by AENOR, expressed as a % of total standards approved each year. 2004-2008

	2004	2005	2006	2007	2008
	Num.	Num.	Num.	Num.	Num.
UNE: purely national	11.7%	10.0%	7.1%	6.9%	9.1%
UNE: Adoption in Europe (AE)	63.7%	56.7%	52.4%	62.9%	62.1%
UNE: International adoption	3.5%	2.9%	2.8%	2.4%	2.7%
Total UNE	78.9%	69.6%	62.3%	72.3%	73.9%
Ratified (R)	21.1%	30.4%	37.7%	27.7%	26.1%
TOTAL (R+Total UNE)	100.0%	100.0%	100.0%	100.0%	100.0%

Source: Prepared in house using data from AENOR.

Distortions of competition in the certification markets arising from the combination of the standardisation and certification functions in AENOR

168. The fact that AENOR performs standardisation and certification functions gives it advantages over its competitors that distort competition in the certification markets. There are several reasons for this.
169. First, it allows AENOR technical staff to have privileged and immediate access to the standards that are approved. This participation in the adaptation of international standards or of purely national ones gives them a greater understanding of the standard and means AENOR specialists are better prepared to certify conformity before and in better conditions than their competitors. AENOR's position in this process distorts competition to the extent that it generates disadvantages for its rivals in the certification market, making it advisable to establish a framework of action for AENOR that ensures a more level competitive playing field.
170. The existence of experimental standards is another possible avenue for privileged access to a standard. In principle, those standards may be certified in their experimental phase by any certification entity. Nevertheless, some users have stressed that, in practice AENOR is the only entity that certifies. The operator with the easiest access to the experimental phase of a standard will obtain greater experience and hence an advantage when it comes time to certify compliance with the standard, in addition to the advantage of being the only entity capable of certifying it in the initial moments after the standard has become definitive. What is more, if the experimental standard does not change much during that period, the experimental certifications done will be valid.
171. Second, the presence of companies and business associations in the STCs, and in the experimental certification phase of experimental standards allows AENOR to establish ties with the customers who require certification, giving it a commercial advantage over other certification bodies. It might be thought that, the fact that AENOR's competitors in the certification markets can also attend STC meetings, reduces the importance of this advantage. But the competitors must bear the cost of the time and efforts dedicated to their participation in the STCs, unlike AENOR, which can pay those costs out of the subsidies it receives for its standardisation work.
172. Third, operating in the certification market with the name of the lone standards body that produces technical standards in Spain increases AENOR's prestige. Certification provides an indication that a company or product complies with a given standard. The fact that the entity that writes the quality standard is the same as the one that attests to conformity places its rivals in that market at a competitive disadvantage. AENOR's participation as Spanish representative in European and international standardisation forums, and in institutional acts organised by government

bodies, only serves to increase the entity's prestige and hence benefit its certification activity.

173. Fourth, the fact that AENOR writes the standards with which conformity is then certified and that the public sector has notable influence in AENOR's activity, be it by the subsidies granted or the presence of government representatives in its governing bodies, raises risks in terms of competition, given that a market operator is involved in regulating the market where it operates.
174. The dangers to competition entailed by this dual function have been pointed out by the CNC in some enforcement proceedings. In its Resolution R 718/07, Ports of Andalusia, the CNC Council held that: *"(...) this Council believes that, in general terms, the confluence in the same institution of regulatory functions with respect to entities which are its competitors in the market for recreational port services may generate severe distortions of competition in that market. And this is due to the structural problems of asymmetrical information that this produces, as well as to the possible distortion of incentives in the regulation and in its application that can be generated as a result of mixing such distinct functions as regulating a market and running a business"*. The same Resolution later goes on to add: *"the regulatory body (...) may, pursuant to its role as regulator, provoke greater costs for its competitors which the latter will have to pass on in their fees or bear out of their profits. This carries a potential risk of disruption of the conditions of competition which the competent authority, in this case, the Competition Authority of Andalusia, should examine and, if appropriate, design and propose the appropriate measures so that there is no room for these potential dysfunctions"*.
175. AENOR can choose the standards it will develop in house and/or adapt the standards production process so that it is most beneficial to it in the certification activity. This was precisely one of the points alleged in the complaint that gave rise to case 469/99 AENOR.⁴⁵ Nevertheless, the capacity to distort competition in this way is limited by the fact AENOR's autonomy in preparing standards is mainly concentrated in the purely national standards, which, in addition to being subject in all cases to a public disclosure and input procedure, represent only 13.5% of the total standards subject to certification in Spain.
176. Fifth and lastly, taking into account the commercial character of the certification activity, integrating standardisation and certification in a single

⁴⁵ That case underscored how AENOR had approved, as standards body, new versions of three UNE standards, according to which there were only two ways of obtaining certification of conformity with those standards. First, certification of products could only be done by AENOR and by no other equivalent certification entities. Second, the use of very costly tests made the system practically unfeasible.

entity can vitiate the standardisation process carried out by AENOR, due to the incentives to generate more standards than those which are strictly needed, or to increase their complexity aiming to benefit its certification activity.

177. For all of the reasons discussed in this section, a more pro-competitive situation for the certification market would be achieved if the standardisation functions were assigned to a different body than the one that conducts the certification. In fact, although countries like France and United Kingdom have a similar situation to Spain, there are others, such as Germany, Italy and Portugal, that have opted for different formulas that separate, more or less drastically, the standardisation and certification functions:

- In Germany the standards body, the *Deutsches Institut für Normung*, e.V. (DIN), performs certification tasks. Those tasks, however, are carried out indirectly, through its capacity to influence in the leading certification entity, DQS Holding, of which it is one of the founding shareholders and on whose Executive Board it sits.
- In Italy the standardisation body, UNI, is separate from the main certification entity, the CISQ Federation.
- Portugal has one standards body, the IPQ, and it does not engage in certification. IPQ was a founding member in 1996 of the principal certification entity in Portugal, APCER, but has no stake in the latter at present.

178. In the case of AENOR, one option would be a legal, functional and accounting separation of these activities, similar to the unbundling seen in certain regulated sectors, such as the power industry, where a distinction is made between regulated activities, mainly related to grid management (transmission and distribution), and activities subject to free competition (generation and sale). The current regulation of this sector recognises that difference and requires a functional and legal separation —albeit it without separation of brands— between transmission and distribution on the one hand and generation and sale on the other, to avoid vertically integrated companies using their position in the grid management business to obtain advantages in the other activities. Accounting separation is mandatory for all activities in order to avoid discriminatory treatment and cross subsidising.

179. The legal and functional separation means the legal personality, the organisation and decision-making in the unbundled activities must be done independently from the rest of the company's activities. In particular, the members of the organisational structures must be different, and the

companies and their employees cannot share commercially sensitive information with each other. This legal and functional separation does not carry an obligation to separate ownership, so the separated companies can continue to have the same owner. The accounting separation, in turn, implies the need to establish separate accounting systems that differentiate between the revenues and costs strictly attributable to each activity.

180. In addition to legal, functional and accounting separation of standardisation and certification activities, the AENOR name should be reserved solely for the national standards body, so that it cannot be used by any of the operators in the certification markets.
181. It also bears emphasis in this regard that the certification business in Spain has seen some efforts to establish a separation between the party that writes the standard and the one who certifies conformity, such as the case of certification of WDO product specifications described in detail in the following section. Although, as discussed in that section, that separation has not been carried out in certain cases, it is mentioned here because of its importance as an instance of recognition by the Spanish legal systems of the importance of separating standardisation and certification.

III.2 Legal restrictions in the certification of WDO product specifications

182. According to the current legal framework, the certification of WDO product specifications could be done on a competitive basis. Nevertheless, since this is not required by that legal framework, certain government administrations have denied the option to introduce competition in this area.

Legal framework

183. The legal framework regulating the certification of WDO product specifications (hereinafter, WDO certification) is primarily laid down in Act 24/2003 of 10 July 2003 on Grapevines and Wine (Wine Act) and in Council Regulation (EC) 479/2008 of 29 April 2008 on the common organisation of the market in wine (COM Regulation of 2008).
184. The COM Regulation of 2008 prevails over the Wine Act on any matters where the two texts establish conflicting provisions, something that happens with certain frequency given that the Wine Act implemented a previous Regulation, namely Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine.

185. According to the Wine Act, the entity that certifies conformity with the product specification must be separate from the *Consejo Regulador*, which, amongst other functions, plays a fundamental role in drawing up the product specification that must ultimately be approved by the competent national authority and Community institutions.
186. Article 27 of the Wine Act regulates the system for monitoring⁴⁶ the product specifications for "quality wine produced in a specified region" (referred to as quality wine psr), which include the WDO. According to part 1 of that article *"the regulation of each quality wine psr will establish its system of monitoring, which, in all events, will be separate from its management"*. To carry on this monitoring of WDO, the Wine Act envisages the following mutually exclusive options:
- A public body, *"that will act according to the principles of Royal Decree 50/1993 of 15 January 1993, which regulates the official monitoring of foodstuff, and of Royal Decree 1397/1995 of 4 August 1995, which approves additional measures for official monitoring of foodstuff"*.
 - An independent **control** body, *"accredited as complying with the standard on General requirements for bodies operating product certification systems (UNE-EN 45011 or such standard as may replace it) and authorised by the competent Administration"*. These bodies are certification entities.
 - An independent **inspection** body, *"accredited as complying with the standard on General criteria for the operation of various types of bodies performing inspection (UNE-EN 45004 or such standard as may replace it) and authorised by the competent Administration"*. These are inspection entities.
 - For wines with designation of origin, a **monitoring body that meets the following requirements**: a) *"that the management and monitoring bodies are appropriately separated and that the activity of the latter is conducted with hierarchical and administrative independence from the management bodies of the Consejo Regulador and under the supervision of the competent Administration"*; b) *"that assurances be given of the independence and long-term assignment of the controllers for a minimum period of six years and that the latter be authorised, from amongst independent experts, by the competent Administration, at the initiative of the Consejo Regulador"*; and c) *"that there be satisfied, according to their public or private nature, the principles and criteria indicated"* above for the other public or private options. The aim of the separation of functions required in a) is to ensure that the Consejo

⁴⁶ The term "monitoring" refers to the inspection or certification activity.

Regulador, as manager of the WDO, cannot introduce obstacles into the certification of the product specifications.

187. In the second and third case, that is, when the option is a monitoring system based on independent inspection or certification bodies, *“the choice of the independent inspection or monitoring body will in all cases rest with the operator who must submit to the monitoring”* (article 27.2 of the Wine Act). In other words, the winemakers themselves may choose the certification entity they deem fit. This option also entails an obligation for the independent inspection bodies, which shall *“send the results of their monitoring to the competent authority, in order for the latter to decide whether or not to grant the geographical name and on corrective measures, including, if applicable, the initiation of administrative enforcement proceedings ”* (article 27.3 of the Wine Act). Nevertheless, where the monitoring is done by entities accredited to certify products, their decision *“will be binding on the competent authority”* (article 27.4 of the Wine Act). These entities must comply with a long list of obligations.⁴⁷
188. The Wine Act does not give criteria for choosing between the four options mentioned earlier; nor does it introduce any type of principle on the requirements of the authorisation scheme that must be established by non-governmental bodies.
189. The monitoring system for each WDO is laid down in the regulation which the *Consejo Regulador* proposes to the competent authority, regardless of whether this authority is a regional government or the MARM.
190. Consequently, from the description of these characteristics it may be concluded that: the *Consejo Regulador* is the body that proposes the certification system to be adopted in each WDO; the Act does not exclude the possibility that the selected entity will be the *Consejo Regulador* itself or that the certification will be carried out by a government body; and the final decision on the system of certification for each WDO rests with the competent authority in that WDO.
191. Nevertheless, and even though the wording of the Act is somewhat confusing, it does not rule out the possibility of private certification entities operating on a competitive basis, given that its provisions say that

⁴⁷ According to article 27.4 of the Wine Act: “a. To have established a certification procedure for the quality wine psr as provided in its regulation, including the supervision of the production of the raw materials, preparation of the product and of the finished product; b. Have set the prices that apply to each of the products subject to monitoring and certification, in respect of the items determined by the competent Administration by regulation; c. To conserve for their possible consultation by the competent Administration, for six years, the files, documentation and data on the monitoring activities carried out and certificates issued; d. To hold or have applied for accreditation, according to the standard on General requirements for bodies operating product certification systems, with a scope that includes the quality wine psr subject to monitoring and certification; e. To inform the competent authorities and management bodies of the existence of irregularities detected in the exercise of their monitoring functions”.

winemakers may choose the control body⁴⁸ that will conduct the certification, and for a given regulation several private operators may be authorised to carry out the monitoring tasks.⁴⁹

192. For its part, the COM Regulation of 2008 allows the selection of one or more certification bodies, so it may be said that the regulations now existing in Spain do not place limits on the capacity to choose the degree of competition in the certification area. Choosing a single certification entity is just as compatible with this regulation as it is allowing several operators to work this market.
193. Despite this liberty, government administrations have generally opted to block competition in the certification of WDO product specifications.
194. The practice of allowing the *Consejo Regulador* to have a *de facto* say in determining the control system that will govern the WDO, by making it responsible for proposing the WDO regulation to the competent authority, is particularly negative for competition. It should not be forgotten that the four options provided by the Wine Act include one where the *Consejo Regulador* is designated as exclusive provider of the certification services, if the competent authority accepts this arrangement. Therefore, the *Consejo Regulador* is being allowed to intervene in the design of a regulation that will determine whether the WDO certification services will be provided competitively or be assigned in exclusivity to the *Consejo Regulador* itself.
195. The Wine Act, which implements Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine, has had a profound effect since its passage on the configuration of the certification activity for Spain's WDO. In particular, that law has determined the regulation at the regional level, which is broadly similar to the one described above, although on occasions some conflicts of interest or incompatibilities can be detected between the national and regional regulatory framework.
196. This situation, though compatible with some aspects of the framework laid down in the COM Regulation of 2008, clashes with major points of that Community norm, which has amended the previous Regulations on the market in wine and prevails over the provisions of the Wine Act in the event of conflicting provisions.

⁴⁸ Article 27.2 of the Wine Act: "When the Regulation of quality wine psr opts for one of the control systems regulated in paragraphs c or d of the above section, the choice of the independent inspection or monitoring body will in all cases rest with the operator who must submit to the monitoring."

⁴⁹ Article 27.2 of the Wine Act: "When the regulation of a quality wine psr opts for monitoring by authorised private entities that comply with the standard on General requirements for bodies operating product certification systems, the decision of the latter on the grant of the geographical name will be binding on the competent authority."

197. In particular, the Regulation no longer speaks of the quality wines produced in a specified region (psr), and establishes a WDO system of control that is different than the one derived from the Wine Act. In addition, the Regulation is clearer in allowing a choice between the existence of several control bodies for the WDO, and no longer contemplates the option of a single inspection body, in that it provides that the bodies to which this function is delegated must be certification bodies, which have to be accredited according to European standard EN 45011 or ISO/EC 65 Guide as from May 2010.
198. On the other hand, the Regulation does not invalidate important features of the Wine Act. In particular, it continues to allow the elimination of competition, by accepting the possibility of the competent authority deciding to grant the certification powers to itself in exclusivity, or to a single certification entity; it does not preclude the *Consejo Regulador* from being that sole body, and is not contrary to the requirement laid down in the Wine Act of separation of the management and certification functions of the *Consejo Regulador*.
199. Indeed, the COM Regulation of 2008 establishes several alternatives for certification of WDO, following a system that is also applicable to the Protected Geographical Indications (PGI). According to its article 48, “*annual verification of compliance with the product specification... shall be ensured*” by means of the following options:
- **By the competent authority or authorities designated by the Member State.** In other words, the competent authority in the WDO.
 - **By one or more control bodies** defined as an “independent third party”, that is, a body to which the competent authority has delegated certain control or monitoring tasks.⁵⁰ The delegation may only be done if the body complies with certain requirements.⁵¹ This delegation may be taken to be an authorisation, although the Regulation does not clearly say this.

⁵⁰ Article 48.1.b of the COM Regulation of 2008 indicates that those bodies are defined “within the meaning of point 5 of the second subparagraph of Article 2 of Regulation (EC) No 882/2004 operating as a product certification body in accordance with the criteria laid down in Article 5 of that Regulation”.

⁵¹ According to article 5.2 of Regulation 882/2004: “The competent authority may delegate specific tasks to a particular control body only if: a) there is an accurate description of the tasks that the control body may carry out and of the conditions under which it may carry them out; b) there is proof that the control body: i) has the expertise, equipment and infrastructure required to carry out the tasks delegated to it; ii) has a sufficient number of suitably qualified and experienced staff; and iii) is impartial and free from any conflict of interest as regards the exercise of the tasks delegated to it; c) the control body works and is accredited in accordance with European Standard EN 45004 ‘General criteria for the operation of various types of bodies performing inspection’ and/or another standard if more relevant to the delegated tasks in question; d) laboratories operate in accordance with the standards referred to in Article 12(2); e) the control body communicates the results of the controls carried out to the competent authority on a regular basis and whenever the competent authority so requests. If the results of the controls indicate non-compliance or point to the likelihood of non-compliance, the control body shall immediately inform the competent authority; f) there is efficient and effective coordination between the delegating competent authority and the control body.”

200. Certification bodies must also comply with standard EN 45011 and, as from 1 May 2010, be accredited according to European Standard EN 45011 or the ISO/IEC 65 Guide, on General criteria for product certification bodies.
201. The COM Regulation of 2008, like the Wine Act, establishes that the monitoring option that will ultimately govern the WDO be determined in the process of approving the WDO regulation. The product specification proposed by the applicant for protection of the WDO for approval by the competent authority and by Community institutions must include the name and address of the authorities or bodies verifying compliance with the provisions of the product specification and their specific tasks (article 35.2.i of the COM Regulation of 2008). The approved production specification, however, may later be subject to partial amendments, including an increase in the approved number of bodies charged with verifying compliance with the product specification.
202. As with the Wine Act, the 2008 Regulation does not provide criteria for deciding amongst the options, although it is clearer than the former in relation to the requirements for the competent authority to be able to delegate the control tasks, by reference to those laid down in Regulation 882/2004.
203. In summary, the Regulation establishes two certification options: it may be done by the competent authority for the WDO or by one or more product certification bodies to which the competent authority has delegated certain control tasks. Since the Regulation prevails over the Wine Act, the option contemplated in the Wine Act of assigning those tasks to inspection bodies is no longer valid, although the Regulation is compatible with the obligation to separate the management and control functions of the *Consejos Reguladores* as provided in the Wine Act.

Application of the legal framework: Organisation of the WDO certification systems in Spain

204. As previously mentioned, the final configuration of the certification system in force in a given WDO depends on the decision of the competent authority, which is the body that approves or rejects the certification system included in the regulation of the WDO.
205. The MARM, as the competent authority for WDO present in more than one Autonomous Community, has decided to take up the certification tasks directly, and it generally performs them using staff from the *Consejos Reguladores*.

206. The various regional governments, as the competent authority in their respective WDO, have established different operation models for their certification systems,⁵² which are similar in the restrictive effect they have on competition in this activity:

- In Andalusia,⁵³ the Region of Madrid, the Canary Islands⁵⁴ and Castilla y León, certification is done by the competent authority. In the cases of Andalusia and the Region of Madrid, the competent authority relies on staff from the *Consejos Reguladores*.
- In the Valencian Community and Catalonia, certification is carried out by the *Consejos Reguladores* themselves, and their legal status has been changed to qualify them as competent authority. It is important to note in this regard that the grant of such status is not the same as delegating the control functions, as envisaged in the COM Regulation of 2008, because, amongst other effects, when it becomes a competent authority the *Consejo Regulador* obtains powers to certify the WDO without having to comply with the obligation to separate its management and control functions or to be accredited.
- In Galicia, Murcia and the Balearic Isles, certification is done by the *Consejo Regulador* through its own body, which, according to what the competent authorities have said, acts separately from the management body. In the cases of Aragón and Extremadura, certification is also done by the *Consejo Regulador*. Nevertheless, even though the regulations in these regions require separation, there is no confirmation that this separation has been put into practice.
- In the Basque Country, certification is done by a product certification entity called *Fundación Kalitatea*. The system used to choose it is regulated in the Basque Country Wine Planning Law 5/2004 of 7 May 2004, the basic features of which are: a) the competent authority certifies the bodies that meet a series of requirements and b) the *Consejo Regulador* chooses from amongst them the entity it deems appropriate.

⁵² The information on the systems in place in each WDO has been obtained by consulting the different competent authorities for WDO that exist in Spain.

⁵³ At present, the regulations of all Andalusian wines with designation of origin stipulate that the monitoring will be done by the Consejo Regulador itself. Nevertheless, given that no control body of the Andalusian designations of origin has managed to obtain accreditation, the competent authority is performing the control function on an exceptional basis under article 33.1 of Act 10/2007 of 26 November 2007 on the Protection of Origin and Quality of Wines of Andalusia: "On an exceptional basis, when the control body, independent control body or authorised independent inspection body cannot perform those tasks, the regional government Department competent for agricultural matters may appoint, provisionally, another authorised body or, in default thereof, perform those tasks subsidiarily. In any event, the expenses inherent in the control process will be borne by the operators".

⁵⁴ Certification is done by the competent authority through the Instituto Canario de la Calidad Agroalimentaria (Canary Islands Institute for Agrofood Quality).

- In Navarre, WDO certification is done in exclusivity by the Navarre Institute of Agrofood Quality (*Instituto de Calidad Agroalimentaria de Navarra* — ICAN), a public sector entity attached to the Department of Rural Development and Environment, in compliance with the regional law that requires that control of wines with designation of origin be done by a single control body.⁵⁵
- In Castilla-La Mancha, certification is carried out by authorised product certification bodies. The systems is regulated in the Order of 19 January 2010, of the Department of Agriculture and Rural Development, which establishes the general system for controlling wines with a protected designation of origin and for certifying their designation of origin. The basic requirement of obtaining the authorisation⁵⁶ is to hold or have applied for an accreditation.

Between the approval date of the 19 January Order and the date it comes into force, any certification entity authorised to certify a geographical indication may also do WDO certifications. Within two months after the effective date of the Order, these bodies must file the relevant authorisation application for wines with designation of origin.

207. As regards the criteria followed by both the MARM and the regional governments to decide between the various options established in the COM Regulation of 2008, most competent authorities consulted by CNC do not indicate any specific principle. When they do mention something, it is normally to refer to subjective and discretionary reasons, such as how well the chosen system fits the regional government Department's organisation and functioning, or the desire to respond to the preferences of the operators in the WDO, or because the option seemed to be the most suitable one. In some cases where a body has been chosen other than the competent authority, responses have been obtained from those authorities indicating the existence of certain criteria that usually refer to compliance with the relevant accreditation regulation.

208. However, in most cases where the option of choice for certification was not the competent authority, the bodies that carry out certification do not hold accreditation, even though this is required by the Wine Act and the COM Regulation of 2008 provides that they must be accredited as from May 2010, although in a good number of cases these bodies are in the process of being accredited by ENAC. The only place where certification is being done by an accredited entity is for the Basque Country WDO.

⁵⁵ Local Historic Charter Law 16/2005 of 5 December 2005 on planning of the wine sector, provides in article 22 that control of wines with designation of origin is to be performed by one and only one entity. Article 31 of Navarre Decree 56/2006 of 16 August 2006, which implements Law 16/2005, assigns the function of controlling wines with designation of origin to the ICAN.

⁵⁶ As provided in article 4 of Decree 9/2007, on authorisation of agrofood product control entities in the region of Castilla-La Mancha and creation of a Register for those products.

209. In summary, this analysis shows that the actions of the Ministry of the Environment and Rural and Marine Affairs (MARM) and of nearly all Autonomous Communities have prevented the certification of WDO product specifications from being carried out on a competitive basis. At the present time, the product specification for each and every WDO can only be certified by one agent only, be it the competent authority, a *Consejo Regulador* converted into a competent authority, an autonomous body of the *Consejo Regulador* that does not perform management functions or a certification entity. The lone exception is Castilla-La Mancha, where, in principle, several certification entities could operate for the same WDO. In all other instances, the competent authorities have approved regulations in their current legal framework that do not contemplate the possibility of several entities offering WDO certification services, thereby depriving users of these services from the price and quality advantages that would be available from the existence of a competitive market for certification in this field.

210. Also, the constraint of competition has been particularly pernicious in those cases where it has been decided to convert *Consejos Reguladores* into competent authorities, because this decision also has important negative repercussions in various areas. In particular, by becoming a competent authority, the *Consejo Regulador* is no longer obliged to separate its management and control functions or to be accredited, and the risk arises of a *de facto* elimination of the supervision that could be conducted by the competent authority over the *Consejo Regulador*, both in the control area and in other management-related ones.

Conditions for a certification system open to competition

211. The concept of efficient regulation that favours the market's functioning requires that any constraints on competition that may be established have to comply with the principles of necessity and proportionality. If the WDO product specifications are considered to be a special standard requiring a certification system not based on market mechanisms, unlike what happens with the certification of other quality standards, which are certified on a competitive basis, then the reasons for that consideration should be spelled out. The identification of the differentiating factor that would justify establishing different certification systems is not clear, all the more so when for designations very similar to the WDO, such as Wine Geographical Indications (WGI⁵⁷), there are cases where a more open system has been established than the one governing any of the WDO.

⁵⁷ WGIs are similar to but not the same as the WDO. According to the Wine Act, wine geographical indications are not included in the quality wines psr, which do include the WDO. Nevertheless, according to COM Regulation of 2008, the similarity is greater, and protection can be requested for a geographical indication to convert it into a Protected Geographical Indication (PGI). In fact, article 48 of the Regulation, which regulates the control system for WDO also

212. In fact, for the WGI “*Viñedos de España*”, the MARM has established a system based on accreditation by ENAC and prior authorisation by the Ministry, thereby promoting competition between different certification entities. At present, there are five entities accredited in ENAC to certify this geographical indication. Other examples are the geographical indication “*Vinos de la Tierra de Castilla*”, for which ENAC has accredited three entities, and the two accredited for the indication “*Vinos de la Tierra de Castilla y León*”. Therefore, the CNC believes that it is not necessary to restrict competition in the provision of certification services for WDO product specifications, and, therefore, even though this is an option within the currently prevailing regulatory framework, there appears to be no justification for eliminating competition in this field and depriving winemakers who seek to achieve greater cost efficiencies of the possibility of going to the certification market.
213. A more pro-competitive arrangement would be one based on establishing a system that allows all accredited entities to enter these markets, upon prior authorisation, similar to what is seen in certain WGIs. The authorisation scheme must be subject to the principles of necessity, proportionality, justification and non-discrimination.
214. Developing competition would also require preventing the *Consejos Reguladores* from being able to perform certification functions, whether directly or indirectly. Indeed, a *Consejo Regulador* that as management body participates in drawing up WDO product specifications and which, moreover, provides certification services in respect of those specifications, poses the same anti-competitive problems as analysed in relation to AENOR. This similarity with the situation of AENOR is greater if we take into account that the Administration is normally present inside the *Consejos Reguladores* and that part of their funding comes from the government.
215. Nevertheless, unlike AENOR, in this case a simple legal, functional and accounting separation would not be adequate, because the *Consejos Reguladores* do not operate in a framework that ensures participation by the affected parties as is the case for AENOR. Defending competition in this case requires a total separation, including separate ownership of the bodies that perform each of those functions.

regulates the system for WGIs that have obtained protection. In the Regulation (see article 34), the main differences would be that in the case of WGIs: a) the grapes need not all come from the geographical zone, but a minimum of 85% and b) that the grapes do not have to be obtained just from *Vitis vinifera* species, but can also come from a cross between that species and other species of the genus *Vitis*.

III.3 Composition and functioning of the product Certification Technical Committees

216. European and international standards on the certification activity envisage the existence of technical committees inside the certification entities, with a composition that guarantees an equilibrium of interests and impartial functioning.
217. The regulations do not specify which should be the most appropriate organisation for making the technical decisions on each certification file. In fact, the procedure differs according to whether it is management systems or products that are to be certified. For the former, the entities must decide based on the experts of the committee itself. In product certification, conversely, some entities have opted for committees with capacity to decide certification cases that include not just experts, but also representatives from companies in the relevant sector, consumers and government.
218. The great market power wielded by AENOR in the certification of certain products lends special significance to the way in which that association organises the relevant technical committees, in terms of the conditions of competition created in the sectors that demand certificates for those products, as well as in the sector of the testing laboratories used in the certification process. The possible distortions of competition in those two areas are evaluated in the next section.

Organisation of the certification of products in AENOR

219. According to UNE-EN 45011 standard on “General requirements for bodies operating product certification systems”, those entities must identify the management team (committee, group or persons) that will be wholly responsible for decisions on certification matters (article 4.2.c). The committees must be free of all commercial, financial or other type of pressure that might influence their decisions. This requirement is deemed fulfilled if the committee members are elected in such way that the different interests are well balanced and no particular interest predominates” (article 4.2.n).
220. AENOR's activities in the field of certifying goods and services can be carried on by the Certification Technical Committees (CTCs) or, pursuant to a resolution of the Executive Board, by the technical services of AENOR. The functioning of the CTCs is mainly regulated by the Regulation on Certification Technical Committees (RCTC), the latest version of which was approved by AENOR in 2010.⁵⁸

⁵⁸ RCTC of March 2010.

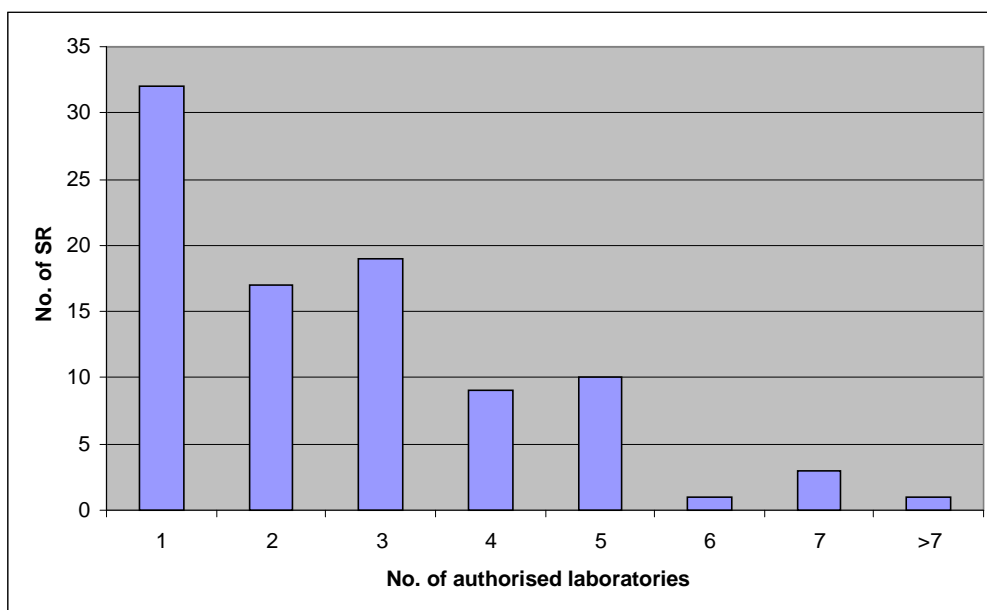
221. The composition of the CTCs must ensure a balanced representation of stakeholders, including representatives of the government, users, consumers, businesses and, if applicable, testing laboratories and entities. In those cases where the participation of other agents is needed, they should be taken into account.
222. The initial composition of the CTC is the one specified by the Executive Board when it sets up the committee. Once the CTC has been formed, any proposal to modify its composition will require a simple majority of its members and ratification of the proposal by the Executive Board (3.1.2 of the RCTC). Committee members who represent companies are preferably appointed from companies that have certified or are in the process of certifying their products through the individual certification systems developed by the CTC (3.1.3 of the RCTC).
223. The President and Vice President of the CTC are elected from amongst the committee members, by simple majority or majority of votes. The functions of President are to call and chair the CTC meetings, directing the deliberations and overseeing the execution of the decisions approved there.
224. The CTC has a Secretariat, basically responsible for administrative tasks that are performed by the technical services of AENOR. The Secretary, in the exercise of his functions, must always maintain strict neutrality. Until the recent amendment of the RCTC in 2010, AENOR's Bylaws allowed the tasks of the Secretariat to also be done by the corporate members who requested them by means of entering into a collaboration agreement for that purpose.⁵⁹ Those associate members could be business associations from the sector of the company that wanted a certificate subject to the decision of the CTC.
225. AENOR CTC's have decision making capacity when it comes to certifying. Their functions include, *inter alia*, analysing the inspection and monitoring reports and the results of any testing conducted, and issuing an opinion on the viability of the requested certification. CTC resolutions are preferably adopted by consensus, although where necessary a resolution is adopted by simple majority (article 4.6.3 of the RCTC).
226. Each of the AENOR CTCs has its own Specific Regulation (SR). That Regulation determines, amongst other matters, the authorised testing laboratories that the CTCs may choose from to perform the testing needed to award the certificate. Of the 91 AENOR CTCs in which there are authorised laboratories, 32 have only one laboratory authorised, 17 have

⁵⁹ Article 3.3.1 of the RCTC of November 2004.

two and 19 have three (see Figure 4). The rest of the CTCs have more than three authorised laboratories.

227. According to AENOR, the basic criterion for choosing the laboratories to be authorised is that they operate nationally and are accredited by ENAC. Where this is not possible, in some cases foreign laboratories are used that have been accredited by a national accreditation entity.

Figure 4. Distribution of the number of CTCs according to number of authorised laboratories. 2009



Source: Prepared in house using data from AENOR.

Analysis of the distortions of competition in the markets that demand certificates and in the testing laboratories market

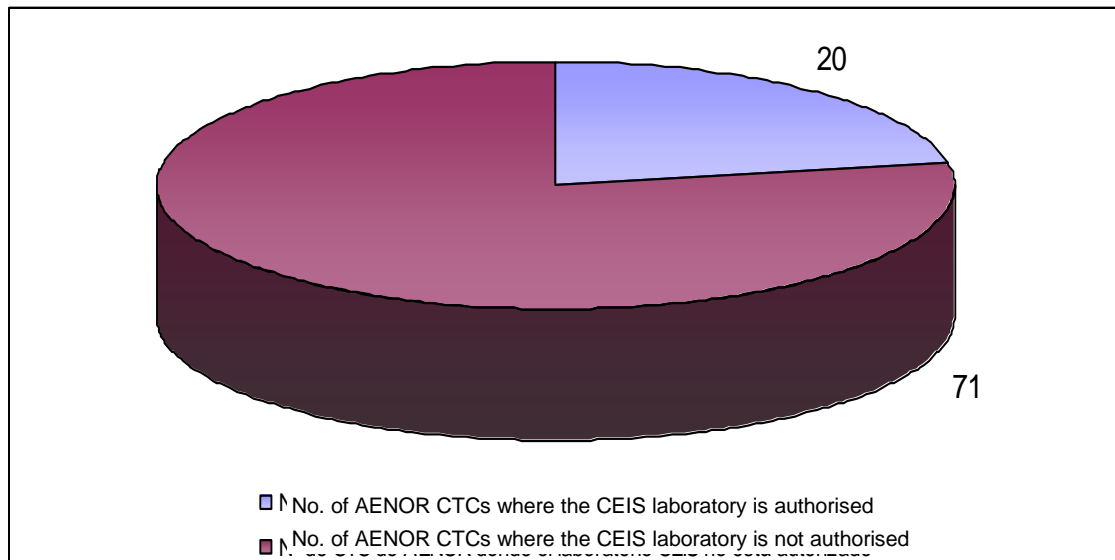
228. The presence of companies from the sector in the CTCs, something which holds not just for AENOR but for all other certification entities as well, can introduce distortions in the markets for the products or services where the users demanding the certificates operate. To be specific, the presence in the CTCs of companies or industry associations could place companies that are not represented on the committee at a disadvantage, given the influence that their competitors with seat and vote on the committee can wield in the final decision on whether or not to award a certificate. In this regard, it is interesting to recall the Resolution of 28 July 2009 on case S/0143/09 AENOR, which examined a possible restriction of competition from foreign products in the Spanish market arising from a decision adopted by an AENOR CTC.

229. In that case, the Portuguese firm DUOFIL filed a complaint against AENOR for having suspended its certificate with the aim of protecting companies belonging to the Spanish association of plastic piping and accessories manufacturers, the Asociación Española de Fabricantes de Tubos y Accesorios Plásticos (ASETUB). The plastics CTC in question was composed, *inter alia*, of a member of ASETUB and another one from the plastics industry association, the Asociación Española de Industriales de Plásticos (ANAIP), which, in turn, was headed by an ASETUB member. The CNC held that AENOR had not engaged in abuse of dominant position, amongst other reasons because the CTC's decision to withhold the AENOR mark from DUOFIL was adopted by consensus of the members at the meetings, without the need for a formal vote. The CNC, however, did draw their attention to the possible harm that could result from the composition of the CTCs.
230. In addition, insofar as these committees may handle sensitive information of all types when making their decisions, there is a risk that they provide a forum for exchanging sensitive information in violation of the Competition Act.
231. Certainly, regarding competition, it would be desirable that the CTCs of the certification entities did not include competitors of the companies requesting certification, given the risk that the former may introduce competitive disadvantages to the detriment of the latter in terms of the type of information needed to award the certification, as well as the fact that competitors' participation in those committees facilitates the establishment of horizontal agreements between sector companies. Moreover, taking into account that this way of organising certification procedures only applies to CTCs for products, because certification of management systems is normally assigned solely to specialised staff of the certification entity, this arrangement could be considered as setting up an unnecessary constraint on competition and that an acceptable level of certification could be assured without procedures that are potentially less anti-competitive.
232. Nevertheless, several certifiers have indicated to the CNC that the way product CTCs are organised in AENOR stems from the particular certification requirements in this field, and generates informational advantages when it comes time to making a technical decision on the certification of goods. In addition, some certifiers have a similar organisation for their product CTCs as the one used by AENOR.
233. Furthermore, it must be borne in mind that the changes recently made to the AENOR CTC Regulation reduce the potential negative impact on competition of the organization of its CTCs. One of the factors that could generate the greatest distortions is the presence of business associations in the committee Secretariat, given that the latter knows the cases and can

influence their processing, with the consequent potential to distort competition in the sector to which the companies requesting certification belong. This risk, however, has been eliminated by the recent prohibition on appointing such associations to take charge of the CTC Secretariats. As a result, the committees can be expected to function more impartially and will a smaller change that their decisions will distort competition.

234. In any event, AENOR, like the other certification entities, does not have specific protocols on the treatment of commercially sensitive information inside the CTCs, even though there are provisions regarding the confidentiality of the information they handle. Therefore, the rules on the relations between companies in the CTCs is not adequate for minimising the existence of exchanges of sensitive information that can give rise to conducts that run afoul of the Competition Act.
235. As for distortions of the laboratories market, if the only entity that certifies for a given product is also the owner of a network of laboratories, there is the risk that it will favour its own network to the detriment of competitor laboratories and thereby generate distortions of competition in this market.
236. As mentioned further above, each AENOR CTC determines the testing laboratories that are authorised to perform the tests required in each case.
237. AENOR owns 85% of the share capital of the laboratories company Centro de Estudios, Investigación y Ensayo (hereinafter, CEIS laboratory). Analysing the presence of this laboratory amongst those authorised in each AENOR CTC, we find that the CEIS laboratory is only authorised in 20 CTCs out of the total of 91 (see Figure 5). Only in two of those CTCs is CEIS the sole authorised laboratory. In the other 18 cases, CEIS always operates with other authorised laboratories.

Figure 5. Presence of the CEIS laboratory in AENOR CTCs. 2009



Source: Prepared in house using data from AENOR.

238. In order to determine if there is prima facie evidence of AENOR favouring the CEIS laboratory in the CTCs where it is authorised, we have used the data reflected in Table 17, which only refer to the 20 CTCs where that laboratory is authorised. The purpose is to show which laboratories were used in those CTCs from 2007 to 2009 and thus determine if there has been a systematic preference for the CEIS laboratory over the others. The first column gives the number of laboratories authorised in each CTC in 2009. The second contains the number of laboratories used in each CTC in the period 2007-2009. The third indicates whether the laboratories actually used include CEIS or not.

239. The data shown that in those CTCs where the CEIS laboratory can act, there are usually other authorised laboratories as well, that is, normally there is a choice between various labs, except in two cases. In addition, the information in the table shows that in the AENOR CTCs where the CEIS laboratory is authorised, it is not used systematically, that is, the CTC does not always rely on CEIS. For example, in the CTC for polyurethane panels, five laboratories were used between 2007 and 2009, four of which where not CEIS.

240. It bears emphasis, nonetheless, that even though there does not appear to be evidence that AENOR is systematically favouring the CEIS laboratory, this does not mean that the AENOR is not using the CTC to carry on conducts of some other kind that introduce restrictions on competition in the laboratories market.

Table 17. Use of the CEIS laboratory in AENOR CTCs. 2007-2009

Certification Technical Committees in which the CEIS laboratory is authorised.	No. of labs authorised in the Certification Technical Committee	No. of labs actually used	Have they used the CEIS laboratory?
– Polyurethane panels	5	5	Yes
– Transformers for energy transmission and distribution	4	4	Yes
– Switchgear for energy transmission and distribution	5	3	Yes
– Electrical and electro-medical equipment and accessories	4	1	Yes
– Electrical material subject to technical specifications applicable to transmission and distribution of electricity	3	-	
– Thermal insulation products	5	-	
– Lighting columns	5	2	No
– Road signage equipment	2	-	
– Plastics	5	5	Yes
– Household appliances	3	2	No
– Copper piping and accessories and other components for their installation	2	1	Yes
– Luminaires	3	3	Yes
– Lighting poles and supports	5	4	Yes
– Thermal insulation material	5	-	
– Electronics and telecommunications components and equipment	3	3	Yes
– Switchgear and minor electrical material for low-voltage installations	7	6	Yes
– Electrical cables	1	1	Yes
– Environmental	3	2	Yes
– Structural elements for transmission and distribution of electricity	4	4	Yes
– Bare conductors and electrical cables for transmission and distribution of electricity and their components	1	1	Yes

Source: Prepared in house using data from AENOR.

III.4 Government administrations as customers of certification services

241. The current legal framework fosters the acquisition of standardised products by government departments. Certificates of quality are customarily taken into account in a large number of government tendering procedures. The Industry Act itself provides, in article 20, that the national Administration, in collaboration with the regional governments and pursuant to the guidance provided by the Commission for Industrial Competitiveness, shall promote the acquisition of standardised products by government.

242. In relation to the policy of promoting certification, it should be recalled, as mentioned above, that the inclusion in the government tender specifications of requirements on standards may give rise to an excessive increase in the administrative burden borne by businesses and to unjustified restrictions on competition in the economy. Sound policymaking requires that government promotion of standardisation always pass the test of necessity and proportionality, in all cases assessing whether that

promotion is justified. In addition, government actions in this area must not provoke unjustified distortions of competition in the certification markets or in the related markets. In this sense, the favourable treatment of a given certifier by a government body could strengthen that operator's position in certification markets and thus give rise to a constraint on competition.

243. During recent years there have been cases in which the administration favours a specific certifier in government procurement procedures. Thus, in the Resolution of 4 September 2000 in the case 469/99 AENOR, it was found that: *"...public works account for some 64% of the construction sector's revenues, and the Administration often demands certification by AENOR"*.
244. Furthermore, the CNC has also detected certain cases, some fairly recent, in which different administrations have required that the certification of products to be used has to be done by AENOR or, at least, have mentioned AENOR or another certification entity as example of entities by whom certification would be considered valid. Chart 1 of Annex 1 contains some examples of this kind, generally more frequent in certain specific sectors such as roads and construction.
245. Nevertheless, despite this evidence, these are probably isolated cases, mostly attributable to a lack of understanding of the certification market by the Administration and increasingly a thing of the past. This, at least, is what has been generally said by the certification entities consulted, who do not detect problems in this area. In the consultation conducted by the CNC with the central national government and regional governments, the administrations stated that they do not demand that the certificate come from any specific certifier. Although some tender procedures include conditions regarding certificates of quality, be it as a requirement for participation or as criteria to be assessed, the public tender does not require that the certificate be issued by a given certifier, confining itself at times to requiring that the certification entity be accredited by ENAC or by a similar accreditation entity.
246. In any event, article 101.8 of the Public Sector Procurement Act 30/2007 of 30 October 2007 introduces an obligation for government to narrow the possibilities of there arising conducts such as those detected in the past, by providing that: *"unless justified by the subject matter of the contract, the technical specifications cannot mention a given fabrication or provenance or a specific procedure, nor refer to a given brand, patent or type, origin or production with the aim of favouring or discarding certain companies or products..."*.
247. The results of the investigation therefore show that in the procurement procedures of the public sector there is no general requirement for

certification by a specific certifier, which would seem to rule out that this type of behaviour may be restricting competition in certification markets significantly.

248. Nevertheless, it is useful to repeat that when government tender specifications require the certification of products, they should stand ready to accept certification by any ENAC-accredited entity or by any of the accreditation bodies with which ENAC has entered into mutual recognition accords. Also, the procurement conditions should not mention any specific certification entity, as required by the Public Sector Procurement Act.

III.5 Absence of mutual recognition in the certification of products

249. Accreditation bodies from different countries or certain certification entities from different countries may reach agreements for mutual recognition. The arrangements made in those agreements can have an impact on the degree of competition in certification markets and in the markets for the goods and services in which the parties seeking certification operate.

250. Mutual recognition by accreditation bodies from different countries makes it easier for certification entities that have been accredited in one country to have their accreditation recognised in others.

251. ENAC is party to various mutual recognition agreements as member of the International Accreditation Forum (IAF). At the Community level, such recognition is regulated in Regulation 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products. Article 11.2 of that Regulation establishes a system of recognition between Community accreditation entities that have successfully passed an evaluation process that is defined in the Regulation itself: *“National authorities shall recognise the equivalence of the services delivered by those accreditation bodies which have successfully undergone peer evaluation under Article 10, and thereby accept... the accreditation certificates of those bodies and the attestations issued by the conformity assessment bodies accredited by them.”*

And recognition between certification entities, for its part, consists in the acceptance in the marking of conformity affixed by another certification entity. On occasion, recognition of certifications between certification entities is done through multilateral agreements, such as the international accord between entities that belong to IQNet.⁶⁰ Nevertheless, there may

⁶⁰ The International Certification Network (IQNet) is the main global network of certification entities. IQNet's goals include recognition and promotion of the certificates issued by its members. AENOR and APCER are the only national

be instances where a certification entity does not accept the validity of certificates issued by other entities.

252. A specific case of this failure of mutual recognition is that of “cascading certification”, which occurs when the lack of such recognitions means that the certifier of an end product must have also certified the raw material that compose it.⁶¹

253. In the consultations conducted by the CNC with different certifiers, there was no evidence of the existence of mutual recognition agreements between national certification entities.

254. The absence of mutual recognition between product certification entities can close a market off to entities that certify raw materials if their mark of conformity is not later accepted in the certification of products made with those materials. The effects of this situation can likewise distort competition in the product and raw material markets by hindering the marketing of raw materials that do not have the right certification and of those products that cannot be certified for this reason.

255. Refusal by a certification entity to recognise attestations by other entities has been analysed both by the CNC and by the European Commission. There follows a summary of some decisions in this regard:

- Resolution of 4 September 2000 in case 469/99 AENOR. In this case, three companies from the mesh sector accused AENOR of modifying the Specific Regulation for CTC-017 so that certification of this product would require certification by AENOR of the wire rod that goes into making it. Given the sizeable market power wielded by AENOR in the wire mesh market, the change required operators to buy wire rod certified by AENOR (which only certified in Spain), and thus introduced distortions in the certification markets, in the mesh manufacturing markets and in the wire rod markets.

The Competition Tribunal held that AENOR had violated article 6 of the Competition Act by implementing a cascading certification system for the mesh, and admonished it to refrain from that conduct, without levying any fine.

- Resolution of 5 May 2009 in case S/0087/08 AENOR. In this proceeding, AENOR was the object of a complaint in connection with a cascading certification system for passive reinforcement steel for

certification entities of those that operate in the Spanish market that belong to IQNet, so, in theory, this would be the only case of mutual recognition between two certification entities at the national level.

⁶¹ It is important to make clear that this only refers to product attestations, and not to certifications of management systems or persons.

structural concrete (reinforcements) that required that the raw material used also have the AENOR mark for steel products.

The CNC found there was no evidence that AENOR had abused its dominant position. One of the main reasons was that AENOR had defined its own procedure for accepting certificates issued by other entities, similar, in its opinion, to that of other countries, and the fact that this system had not yet been used did not prove this was due to a conduct attributable to AENOR. Also, the CNC Investigations Division underscored in the case that AENOR had bilateral and multilateral mutual recognition agreements with entities in different countries, in particular, with members of IQNet.

- Commission Decision 95/551/CE of 29 November 1995.⁶² The case originated with the complaint lodged by various mobile crane hire companies from the Netherlands and Belgium against the FNK association of mobile crane hire companies and the certification entity SCK, both from the Netherlands, for, amongst other conducts, having closed off the mobile crane hire market to companies not authorised by SCK. Specifically, until 1993 the SCK regulations prohibited companies that it certified from hiring supplementary cranes to companies not also certified by it. This sublease of cranes is a customary practice in the sector.

The Commission ruled that the prohibition on subcontracting activities to companies that did not hold a SCK certification restricted the freedom of action of the certified companies and, above all, prevented third parties from entering the Netherlands market and, in particular, entry by companies from other Member States. The Commission made it clear that if the prohibition was linked to a certification system that was completely open, independent and transparent, that accepted equivalent guarantees from other systems, then it could be argued that its has no restrictive effects on competition, but simply seeks to guarantee the quality of the certified goods or services. Given that this was not the case, the Commission, placing special emphasis on the non-open character and lack of acceptance of equivalent guarantees, did not consider it possible to extend an exemption under article 85.3 of the EU Treaty and fined SCK for violation of article 85.1 of that Treaty for the time period prior to 1993 during which that ban had been in force.

256. The absence of mutual recognition between certification entities can also distort competition in the markets in which the operators who seek certification operate. For example, in the case of the reinforcements

⁶² Relating to a proceeding on enforcement of article 85 of the EC Treaty (IV/34,179.34.202.216-SCK and FNK).

certification dealt with in the aforementioned Resolution on case S/0087/08 AENOR, it was found that AENOR certified 90% of such reinforcements that were certified in Spain, with the remaining 10% being done by AIDICO. Given the position held by AENOR in this certification market, it was obvious that by severely restricting the conditions for recognising the raw materials certified by other certification entities, it was constraining competition in the certification of those materials.

257. Despite the evidence that lack of mutual recognition has given rise to competition problems, the consultations carried out with several certification entities support the conclusion that the absence of mutual recognition does not represent a major problem in practice. In one case it was explicitly stated that the problems of mutual recognition have nearly disappeared since the Resolution handed down by the CNC on this question.
258. There are several reasons why, even though there have only been a relatively small number of explicit mutual recognition agreements in the past, the issue of cascading certification poses fewer problems now. Amongst those reasons we should not rule out that increased competition in the certification market has reduced the possibilities of such practices being profitable. One important reason is that the market operators are performing this mutual recognition function indirectly through the agreements reached between national accreditation entities for that same purpose.

IV. CONCLUSIONS

- One.** Within the certification activity focused on by this Report, mainly consisting of the certification of quality and safety standards for goods and services, and of quality and environmental management systems, there are major differences regarding the conditions of competition existing in the different subsectors analysed.
- Two.** Competition is relatively stronger in management systems certification, which in recent years has seen a significant increase in the number of competitors that operate in this segment and a considerable reduction in the market share of the Spanish Standardisation and Certification Association (AENOR).
- Three.** In the case of product certification, competition is less intense, and there are likewise very pronounced differences between the conditions of competition in the certification of industrial products and services, on the one hand, and those in the certification of product specifications for Wine Designations of Origin.
- Four.** As for certification of non-agrofood products, the market is characterised by the existence of a notable group of products in which there are few operators. For those products, the certification activity is normally minor, mainly because certification carries relatively high costs in relation to the size of the market that demands these services, with the consequent disincentive for entry by other operators.
- Five.** In the certification of products, one of the main obstacles to the development of effective competition is the combination in AENOR of both standardisation and certification functions, because of the advantages this gives to AENOR over its competitors in certification markets.

The dual function allows AENOR a privileged access to the standards to be certified, and facilitates the establishment of special ties with certain groups of users that participate in its Standardisation Technical Committees (STCs), which are responsible for preparing and approving the standards. Also, given that the public sector involved in the areas of industrial quality and safety has notable influence in its activity as a standardisation body, there is the risk of certain conducts in the production of standards, or in the design of regulations, that would unduly benefit

AENOR in its certification activity.

AENOR also provides certification services using the name of the only standardisation body that exists in Spain, giving it a prestige which can prove decisive in the decision of customers to buy its certification services.

Six

The certification of non-agrofood products is affected by other potentially anti-competitive risk factors, some of which have been examined by the CNC as possibly underlying conducts that violate the Competition Act. Those factors relate to the composition and functioning of the product Certification Technical Committees (CTCs) of AENOR, to the role of government as a customer for those certification services, and to mutual recognition agreements in the certification of products.

Nevertheless, the importance of all of these risks has diminished in recent years, due to the adoption of measures more consistent with the reasoning set out in the Resolutions handed down by the competition authority.

As regards the functioning of the AENOR CTCs, for example, recent amendments of their regulations prohibit the CTC Secretariat work from being done by business associations. This should contribute to increasing the impartiality of how those bodies work and to reducing the possibility of anti-competitive decisions.

Attention should nonetheless be called to the absence of specific protocols regarding exchanges of commercially sensitive information inside the CTCs of certain certification bodies, given the risk this entails of failing to avert exchanges of information that may run contrary to the Competition Act.

Regarding government demand for certification, although some cases are still found where an administration requires certificates from AENOR or some other specific certifier, especially in public sector infrastructure contracts, such instances seem to be more attributable to insufficient knowledge by the tendering authority than to a widespread practice. In fact the general practice is not to require any specific certifier, in compliance with the General Government Procurement Act, although on some occasions the requirement is merely that the certifier be accredited.

Lastly, with respect to the antitrust issues associated with lack of mutual recognition between certification entities, which have in the past attracted several Resolutions by the CNC on “cascading

certification”, the problems are seen to be increasingly isolated and to have little impact on the current conditions of competition in this subsector of the certification activity.

Seven

In the certification of WDO product specifications, competition is much narrower than in the certification of industrial products. At present, except for the region of Castilla-La Mancha, the competent authorities for WDO of Spain have approved regulations that do not allow various certification entities to compete against each other to offer WDO certification. Consequently, with that lone exception, this type of certification is done in monopoly conditions in Spain, which prevents winemakers who seek to achieve greater cost efficiencies from benefiting from the better prices and quality they could obtain if there were a real certification market in this field.

Furthermore, and contrary to what is seen in the certification of industrial products, this situation has not improved in recent years, even though the entry into force of the COM Wine Regulation of 2008 means the current regulatory framework permits WDO certification to be done on a competitive basis by various certification entities.

The competent authorities for the WDO of some regions have made use of the possibility envisaged in the current legal framework to allow the governing board, the *Consejo Regulador*, of the WDO, which takes part in drawing up the product specifications, to also carry out the certification tasks. In some of these cases, the certification tasks performed by the *Consejo Regulador* are separated from its management work, as stipulated by the current law, but not always. There are situations where restriction of competition has been particularly pernicious, such as in the Valencia and Catalonia regions, where the competent authorities for the WDO have opted to convert certain *Consejos Reguladores* into competent authority, a decision with severe negative repercussions in several areas. In particular, on becoming a competent authority, the *Consejo Regulador* is no longer obliged to separate its management and control functions or to be accredited, and the risk arises of de facto elimination of the supervision that could be conducted by the competent authority over the *Consejo Regulador*, both in the control area and in other management-related ones.

Lastly, taking into account that certification of the product specification is a fundamental requirement for being able to make and market the wine, the frequent allocation of this function to the

Consejo Regulador in exclusivity opens the door to it being able to use certification as a tool for distorting competition in the wine production market and intervening in the commercial strategies of the operators that work the WDO.

V. RECOMMENDATIONS

To ensure an environment that allows for greater competitive pressure in the provision of certification services, the CNC recommends the various government administrations involved to introduce the necessary policy, regulatory and legal amendments to achieve the following objectives:

- One. Establish a legal, functional and accounting separation of the standardisation and certification services of the Asociación Española de Normalización y Certificación (Spanish Standardisation and Certification Association — AENOR).**

The name AENOR should be reserved exclusively for the national standardisation body.

It must be guaranteed that the actions of the standardisation body comply with the principle of non-discrimination, assuring equal treatment and avoiding discriminatory practices between the different certification bodies.

- Two. Allow competition between certification entities in the certification of the product specifications for the Wine Designations of Origin.**

Given that the existing legal framework already allows the option of competition in the delivery of these certification services, the government administrations involved are requested to opt for a system organised according to market criteria.

This system could consist in establishing an authorisation scheme for the exercise of that activity with the lone requirement that the operators hold accreditation from an national accreditation entity for certifying the designation of origin in question.

Furthermore, the separation required in the Wine Act between the management and monitoring bodies of the *Consejos Reguladores* should be strengthened. Given that those bodies do not act in a framework that allows participation by the parties affected by their decisions, contrary to the one that exists in the case of AENOR, it is considered necessary that a complete separation be established for these functions of the *Consejos Reguladores*, not just a legal, functioning and accounting separation.

In addition, there should be a prohibition on the practices by which the competent authorities for the WDO convert certain *Consejos Reguladores* into *de facto* competent authority for the WDO, given the particularly harmful repercussions for competition and the risks of inefficiency in the management of the WDO that those practices entail.

With the aim of preventing the possible competition problems that could arise from the functioning and composition of the product Certification Technical Committees, and from the mention of certain certification bodies in government tender documents, it is recommended that:

Three. Both AENOR and any other certification body that wields large market power in the certification of products must ensure that the composition and functioning of the Certification Technical Committees are in keeping with the principles of impartiality and independence.

Certification bodies must ensure that the documents regulating the composition and functioning of the Certification Technical Committees include specific obligations to guarantee that the exchange of commercially sensitive information does not give rise to conducts contrary to the Competition Act.

Four The public administrations that require certificates of quality in the specifications for government procurement procedures must accept the certification issued by any certification entity that has been authorised by the Spanish Accreditation Entity (Entidad Nacional de Acreditación), or by any of the accreditation bodies with which the latter has mutual recognition agreements. In addition, those specifications should not mention any specific certification entity, as stipulated by article 101.8 of the Public Sector Procurement Act.

Five. Refusal to recognise certificates of other accredited certification agencies must be properly justified in order to prevent such refusal from constituting a violation of the Competition Act.

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Annex 1.

Chart 1. Examples of government tender specifications in which a specific certification entity receives privileged treatment

Tender	Sector/Date	Verbatim text
Official Technical Specifications (PPT) for the works to replace safety barriers and install screens for motorcyclists on the A-8 expressway (Key:PPT Bidegi/015-4)	Roads	<i>"The component elements of the safety barriers should preferably possess the relevant accreditation or certification ("N" mark from AENOR)" [...]. "For safety barrier component elements that do not possess the relevant accreditation or certification ("N" mark from AENOR), their technical characteristics will be as specified in the UNE standards 135 111, UNE 135 112, UNE 135 121, UNE 122".</i>
Specifications for the supply of lighting equipment for renovation of public installations in the municipality of Alcobendas	Public lighting (05/2006)	<i>"The size of the towers shall comply with what is provided in UNE standards EN 40-3-3-1:2001 and UNE EN 40-3-3:2003. They shall possess the N mark from Aenor"</i>
Specification of technical conditions that shall govern the composition of items for public lighting in the north sidewalk of the Bajondillo maritime walkway (municipal government of Torremolinos)	Public lighting (02/04/2009)	<i>"With electrical equipment certified by Aenor, VDE, BS, etc."</i>
Specification of technical conditions of works executed with ClimaBlock blocks.	Construction	<i>The ClimaBlock® blocks [...] must possess the N mark from AENOR, or any other equivalent certification of quality"</i>
PPT Specifications for the Basic Project Plan and Execution of Assembly Hall-Auditorium in the town of Hornachos (Badajoz).	Construction (02/2009)	<i>"All piping and accessories used shall possess the N mark from AENOR"</i>
PPT Specifications (KEY 2-MA-1559-RF, Government of Andalusia)	Roads (05/2006)	<i>"The elements for placement and anchoring of retro-reflecting traffic signs and vertical panels shall have the relevant document attesting certification" ("N" mark from AENOR).</i>
Specification of technical conditions for works executed with thermo-clay blocks (Thermo-Clay Consortium).	Ceramics	<i>"The THERMO-CLAY blocks shall comply with UNE standard 136,010 "Ceramic blocks of light clay. Designation and specifications", both in relation to the basic piece and to the complementary parts. They must possess the N mark from AENOR, or any other equivalent certification of quality".</i>