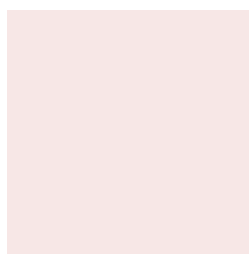
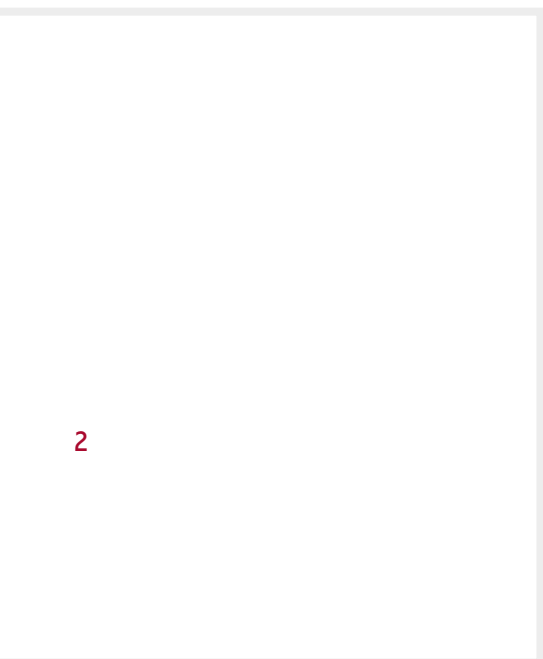
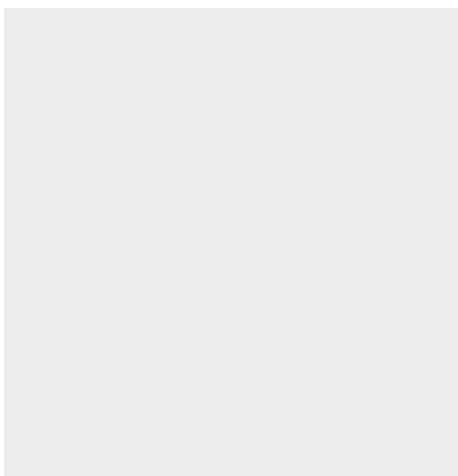


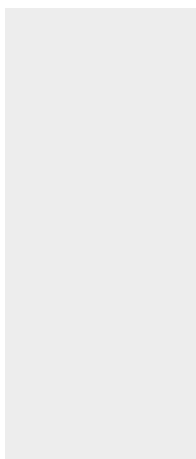
# Anti-fraud Plan

ICO Group



Instituto de Crédito Oficial





# 1. BACKGROUND

## 1.1 APPLICABLE LEGISLATION

Chapter 6 of the Treaty on the Functioning of the EU regulates the fight against fraud in the EU, stating that the EU *“and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union through measures taken in accordance with this Article, which shall act as a deterrent and be such as to afford effective protection in the Member States and in the institutions, bodies, offices and agencies of the Union.*

*2. Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests”.*

Articles 30 to 33 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union applicable to the general budget of the EU clarify the principle of sound financial management, which implies the respect of the principles of economy, efficiency, and effectiveness and the implementation of effective and efficient internal control.

In 2021, Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Resilience and Recovery Mechanism (RRM) was enacted. This Facility is the core of the Recovery Fund and was endowed with 672.5 billion euros, of which 360 billion euros were for loans and 312.5 billion euros as non-refundable transfers. The purpose of the RRM is to support investment and reforms in Member States to achieve a sustainable and resilient recovery, while promoting the EU's green and digital priorities.

The RRM has four main objectives: to promote the economic, social and territorial cohesion of the EU; to strengthen the resilience and adjustment capacity of Member States; to mitigate the social and economic impacts of the COVID-19 crisis; and to support the green and digital transitions. They are all aimed at restoring the growth potential of EU economies, fostering post-crisis job creation and promoting sustainable growth.

To achieve these objectives, each Member should design a National Recovery and Resilience Plan that includes the reforms and investment projects needed to achieve these objectives.

The Recovery, Transformation and Resilience Plan (PRTR) is the plan developed by the Spanish government for the management of Next Generation EU (NGEU) funds, promoted by the European Union to mitigate the impacts of the COVID-19 pandemic, is already under implementation.

In the second half of 2022, the Spanish government submitted to the European Commission an addendum to the Recovery Plan, in order to update it, incorporating three important new features:

- Allocate the additional transfers corresponding to Spain. This amounts to additional grants of 7.7 billion euros.
- Allocate Recovery and Resilience Facility loans. Spain will be able to request up to 84 billion euros from the European Commission.
- Allocate funds from the REPowerEU Plan, which aims to save energy, increase the production of clean energy and diversify Europe's energy sources. In the provisional distribution of the fund, Spain has been provisionally allocated an additional 2,586 million euros.

The addendum gives continuity to the reforms and investments of the Recovery Plan, in line with the strategic objectives of the Recovery Plan (ecological transition, digital transformation, social and territorial cohesion and gender equality) with a focus on strategic autonomy through strategic projects, known as PERTE.

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According to the European Union (EU) Recovery and Resilience Mechanism Regulation, in order for Spain to access the 7.7 billion euros in additional transfers and 84 billion euros in loans, a new document must be drawn up that includes the reforms and investments to which the new funds are to be allocated.

Royal Decree-Law 36/2020, of 30 December, approving urgent measures for the modernisation of the Public Administration and for the implementation of the Recovery, Transformation and Resilience Plan, establishes adaptations of the usual procedures with the aim of facilitating effective and efficient management in the implementation of the Plan, including the adaptation of budgetary management and those relating to auditing in the exercise of the control function.

To this end, and in accordance with Regulation (EU) 2021/241 of the European Parliament and of the Council, two Ministerial Orders, HFP/1030/2021 and HFP/1031/2021, were issued, specifying the rules that must govern the aid management procedure to ensure the identification of the final beneficiaries of aid, as well as contractors and subcontractors, in order to prevent fraud and corruption.

In the management of European funds, Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud affecting the financial interests of the Union by means of criminal law (PIF Directive), by means of measures directed against key targets, applies:

- Fraud
- Corruption
- Conflict of interest
- Double funding

In the aftermath of the COVID-19 pandemic crisis, the requirements to prevent fraud and corruption have intensified, given the cost they represent both in economic terms for citizens and in terms of reputation and credibility for institutions.

The ICO Group comprises the Instituto de Crédito Oficial, E.P.E., AXIS Participaciones Empresariales, S.G.E.I.C., S.A., S.M.E. and the Fundación ICO, F.S.P.

The ICO Group, as a participant in the Recovery, Transformation and Resilience Plan, has adopted this Anti-Fraud Action Plan in order to be able to declare that, within its scope of action, funds have been used in accordance with the applicable rules, in particular with regard to the prevention, detection and correction of fraud, corruption and conflicts of interest.

## 1.2 INTERNAL REGULATIONS

### 1.2.1 INSTITUTO DE CRÉDITO OFICIAL, E.P.E.

Instituto de Crédito Oficial (ICO) is a corporate state-owned entity (EPE) as provided for in Law 40/2015, on the Legal Regime of the Public Sector, attached to the Ministry of Economic Affairs and Digital Transformation, through the Secretary of State for Economy and Business Support. It has the legal status of a Credit Institution, and is considered a State Financial Agency, with its own legal personality, assets and treasury, as well as management autonomy for the fulfilment of its purposes. As a credit institution, ICO is subject to the supervision of the Bank of Spain and applies European and national financial regulations to its activity, including measures to prevent fraud and money laundering.

The ICO is also governed by the regulations contained in the Sixth Additional Provision of Royal Decree Law 12/1995, of 28 December, on urgent budgetary, tax and financial measures and subsequent amendments, by Royal Decree 706/1999, of 30 April, adapting the Official Credit Institute to Law 6/1997, of 14 April, on the organisation and functioning of the General State Administration and approving its Statutes.

The ICO is a public sector entity that has assumed the highest standards in terms of integrity in its management, in the supervision of its activity, and in the publicity of its activity. As part of its commitment to integrity in public management and transparency, the ICO has adopted internal regulations that develop the obligations it has assumed as a public sector entity. This regulation has a hierarchical structure, from the general lines established in its Policies, through procedures, processes and instructions, in which tasks and functions are specified by areas and units of the Institute. These regulations govern the conduct of its employees, as well as the approval and formalisation of transactions, relations with customers and suppliers, social responsibility and good corporate governance:

- Code of ethics and conduct
- Employee lending policies (housing, consumer, exceptional interest-free loan)
- Price control Policy for direct and mediated transactions
- Representation expenses and corporate credit card Policy
- Outsourcing Policy
- Direct Financing Policy
- Training policy
- Financial Markets policy
- Investee policy
- Budget policy
- Subsidies policy
- Travel policy
- Environmental policy
- Prevention of Money Laundering and Terrorist Financing Policy
- Data Protection Policy
- Corporate Gift Policy
- Internal Securities Market Regulations
- Corporate Social Responsibility (CSR) Policy
- Information Security Policy
- Sustainability Policy

With regard to its internal structure, ICO has a Compliance area, constituted as a technical prevention unit in accordance with the provisions of the regulations on the Prevention of Money Laundering and Terrorist Financing. This technical prevention unit reports on its activities to the Technical Regulatory Compliance Committee (of a technical nature), which is an internal control body under the aforementioned regulations. In the Audit and Compliance Committee, at management level, the Compliance area reports on its activities to the General Managements.

ICO also has an Internal Audit Department, which reports to the Directorate General of the Presidency and which, among other functions, is responsible for coordinating dialogue with supervisors.

ICO channels European funds, both directly, through financing to companies, and through its activity as the State's financial agency.

## 6

After the approval of the Anti-Fraud Plan, a first integrity risk self-assessment must be carried out, based on the questionnaires included in Order HFP/1030/2021, and annexed to this Anti-Fraud Plan, in order to determine which measures must be adopted in the implementation itself, for each operation concerned.

As a process of continuous improvement, periodic self-assessments will be carried out, at least once every six months,

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<sup>1</sup> The ICO's Internal Audit Department also performs its functions for Axis and the Foundation, so that references to this Department in this Plan will also apply to the operations of Axis and the Foundation.

to ensure that the level of control implemented is adequate throughout the development of the Plan, and to verify the adequacy of the measures to possible changes in the PRTR, as well as the need, if necessary, to extend the application of the Anti-Fraud Plan.

### 1.2.2 AXIS PARTICIPACIONES EMPRESARIALES, S.G.E.I.C., S.A., S.M.E.

Axis Participaciones Empresariales, S.G.E.I.C., S.A., S.M.E. ("AXIS") is a state trading company, as provided for in Article 111 of Law 40/2015, of 1 October, on the Legal Regime of the Public Sector, as it is wholly owned by the Instituto de Crédito Oficial, E.P.E. (Official Credit Institute). Its activity is focused on promoting the growth, development and internationalisation of Spanish companies by providing financing to entities in the form of equity and quasi-equity. Axis is a venture capital (also known as private equity) manager and is therefore registered with the CNMV (the Spanish National Securities Market Commission) as a closed-end investment management company under number 1 in the relevant register. Therefore, all its actions are subject to the supervision of the CNMV and it is subject to European and national financial regulations applicable to its activity, which include measures to prevent fraud and money laundering.

Axis is a public sector entity which, in the performance of its functions, without prejudice to the fact that the internal regulations of ICO are also applicable to it in the regulation of certain matters, has adopted its own internal regulations:

- Code of Conduct.
- Money Laundering and Terrorism Financing Manual.
- Internal Recruitment Instructions.
  - Action Plan for the implementation in Axis of the measures and procedures contained in Law 22/2014 that are applicable to it due to exceeding the thresholds established in Article 72 of said Law.
- Administrative Procedures Manual, which includes a section defining the roles and responsibilities that regulate the activity of the Oversight Committee.
- Criminal Risk Prevention Manual.
- Employee lending policies (housing, consumer, exceptional interest-free loan).
- Training policy.

In terms of its internal structure, Axis has:

- (i) Its own Internal Control Body in compliance with the applicable legislation on money laundering.
- (ii) A Legal and Regulatory Compliance Unit, which performs its functions in collaboration and coordination with the ICO's Legal Department.
- (iii) An Axis Audit and Control Committee, a specialised body set up within the Board of Directors, which ensures compliance with the provisions applicable to Axis, respect for internal rules and its code of conduct, as well as overseeing business ethics, investigating cases of irregular or fraudulent conduct and reported allegations or suspicions and conflicts of interest.
- (iv) The ICO's Internal Audit Department.
- (v) ICO's Regulatory Compliance Technical Committee, in which the inclusion of a representative of Axis will be considered when the issues addressed affect the operations and activity of Axis or the ICO Group as a whole in the execution of the content of this Plan.

As in the case of the ICO, following the approval of the Anti-Fraud Plan, a first integrity risk self-assessment will be carried out, based on the questionnaires established by the Order.

Likewise, periodic self-assessments will be carried out, at least once every six months, to ensure that the level of control implemented is adequate throughout the development of the Plan, and to verify the adequacy of the measures to possible changes in the PRTR, as well as the need, if necessary, to extend the application of the Anti-Fraud Plan.

### 1.2.3 ICO FOUNDATION, F.S.P.

ICO FOUNDATION, F.S.P. (a state public sector foundation), was created in 1993, within the institutional framework of the Instituto de Crédito Oficial. It was set up as a private foundation of national scope, with a permanent, non-profit character, endowed with an autonomous patrimony. In 2003, it adapted its statutes to bring them into line with Law 50/2002, of 26 December, on Foundations, becoming a state public sector foundation. On 23 October 2019, it adapted its Statutes to the provisions of Law 40/2015, on the Legal Regime of the Public Sector.

The Fundación ICO, F.S.P. also has a Code of Good Governance and Conduct specific to its scope of action that applies to the board of trustees, its chairman and employees, respectively.

## 2. OBJECTIVE OF THE ANTI-FRAUD PLAN OF ICO GROUP

The entities that make up the ICO Group: Instituto de Crédito Oficial, E.P.E., AXIS Participaciones Empresariales SGEIC, S.A. S.M.E., and Fundación ICO, F.S.P. have a zero-tolerance policy towards fraud and corruption, which is exercised through a robust control system, specially designed to prevent and detect, as far as possible, acts of fraud and to correct their impact, should they occur.

The purpose of the ICO Group's Anti-Fraud Plan is to prevent fraud and detect irregularities that could constitute a first indication of fraud or any other offence referred to in Order HFP/1030/2021.

The aim of this Plan is to systematise the internal regulations (policies, procedures, processes and instructions) applicable in the entities that make up the ICO Group, regulations that are geared towards transparency in operations, and which must serve as a guarantee of integrity and fraud prevention in its activity.

In particular, the aim is to respond to the requirements introduced in this area by Orders HFP/1030/2021 and HFP/1031/2021, which regulate the management system of the Recovery, Transformation and Resilience Plan (PRTP) promoted by the EU in the wake of the pandemic.

The control system put in place with Ministerial Orders HFP/1030/2021 and HFP/1031/2021 is based on two axes:

- An **internal control** of the entity participating in the execution of the PRTR, and
- Coordinated **external control** at the level of the General State Administration, based on the information provided by the PRTR managers and executors.

Proper compliance with anti-fraud schemes is essential to ensure that the PRTR is implemented with full guarantees for the financial interests of Spain and the European Union; thus the principles of integrity in public management that guide this Plan are applicable to all ICO Group activity.

The management and control system is aimed at preventing and combating four illegal activities: Fraud, double funding, corruption and conflict of interest.

The ICO Group's Anti-Fraud Plan includes effective and proportionate measures to prevent, detect and combat fraud and corruption. Its content is therefore based on a proactive and structured approach to managing the risk of fraud, and involves the heads and managers of operations, as well as all support units, to ensure that there is an adequate internal control system within their respective areas of responsibility and to guarantee, where appropriate, due diligence in the implementation of corrective measures, in compliance with the internal policies and procedures adopted.

In this way, the ICO Group implements anti-fraud measures based on the experience gained in previous periods and on the fraud risk assessment carried out for this purpose.



The ICO and Axis also have procedures for reporting any irregularities or suspicions of fraud that may be detected through internal channels, or directly through the European Anti-Fraud Office (OLAF) or the channel set up by the Spanish National Anti-Fraud Coordination Service (SNCA). All reports are treated in the strictest confidence and in accordance with the rules governing this matter.

In order to coordinate the ICO Group's actions in this area and to avoid duplication, any complaint received through Axis' complaint reception channels will be passed on to the Oversight Committee, as provided for in the Axis Code of Conduct and comprising representatives of Axis and ICO.

## 3. DEFINITIONS AND REGULATIONS

### 3.1 FRAUD

Fraud is defined in Directive (EU) 2017/1371 and consists, in general, of the submission of untruthful information or falsified documentation in order to obtain a benefit, aid, grant, loan, which would not have been obtained with the true information.

Article 3(1) of Directive (EU) 2017/1371 sets out the definition of expenditure fraud and, specifically, expenditure related to public procurement contracts

- a)** In the field of expenditure, fraud is defined as any intentional, relative act or omission:
  - i.** The use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds deriving from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities.
  - ii.** Failure to comply with an express obligation to communicate information having the same effect.
- b)** in respect of procurement-related expenditure, at least when committed with a view to unlawful advantage for the perpetrator or another person, causing loss to the Union's financial interests, any act or omission relating to:
  - i.** The use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets of, or on behalf of, the Union budget or budgets managed by the Union,
  - ii.** Failure to comply with an express obligation to communicate information having the same effect,
  - iii.** Misuse of such funds or assets for purposes other than those for which they were originally granted and which damages the financial interests of the Union.

### 3.2 DOUBLE FUNDING

Double funding is related to fraud insofar as it also harms the financial interests of the EU and consists of obtaining funding that is incompatible with European aid, for the same purposes, usually through the submission of false information or documentation.

The Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (Financial Regulation) expressly establishes in Article 188 the

prohibition of double funding as a general principle applicable to grants, stating in Article 191 that “In no case may the same expenditure be financed twice by the budget”.

Regarding funding from the Recovery and Resilience Mechanism, Regulation (EU) 2021/241 of the European Parliament and of the Council foresees that it is compatible with funding from other EU programmes and instruments, provided that the assistance does not cover the same cost.

The payment request must be accompanied by *“a management declaration stating that [...] the funds have been managed in accordance with all applicable rules, in particular the rules on the prevention of conflicts of interest, fraud, corruption, and double funding from the Facility and other Union programmes, in accordance with the principle of sound financial management” (Article 22).*

The Spanish Recovery, Transformation and Resilience Plan expressly includes the control of double funding in section 4.6, which specifies that double funding *“in the case of public subsidies, not only covers double Community funding, but also any excess funding that may occur regardless of its origin”.*

### 3.3 CORRUPTION

With regard to corruption, although the Directive refers to public officials in its definition, the term should be understood in a broad sense, as it applies to all public sector employees who are involved in the management of PRTR funds and who, through their intervention, make it possible to obtain aid in favour of specific beneficiaries.

### 3.4 CONFLICT OF INTEREST

Article 61.3 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July (EU Financial Regulation) states that *“a conflict of interest exists where the impartial and objective exercise of functions is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any direct or indirect personal interest”.*

For its part, Article 64 of Law 9/2017, of 8 November, on Public Sector Contracts, states that *“the concept of conflict of interest shall cover, at least, any situation in which the personnel in the service of the contracting body, who also participates in the development of the tender procedure or may influence the outcome thereof, directly or indirectly has a financial, economic or personal interest that could appear to compromise their impartiality and independence in the context of the tender procedure.”*

These are situations in which the law requires the person in question to abstain and inform their immediate superior, and which may lead to their disqualification if they have not refrained. The grounds on which a public employee in Spain must abstain are as follows (art. 23 of Law 40/2015, of 1 October, on the Legal Regime of the Public Sector):

- a) Have a personal interest in the case in question or in another case whose outcome may be influenced by the outcome of that case, be a director of the company or entity concerned or have a legal dispute pending with any interested party.
- b) Have **a marital relationship or similar de facto situation and a blood relationship** within the fourth degree or a relationship of affinity within the second degree with any of the interested parties, with the administrators of the entities or companies concerned and also with the advisors, legal representatives or agents involved in the procedure, as well as sharing a professional office or being associated with them for the purpose of advice, representation or mandate.
- c) **Having a close friendship or manifest enmity** with any of the persons mentioned in the previous paragraph.
- d) **Have been involved as an expert or witness** in the proceedings in question.
- e) Have **a relationship of service** with a natural or legal person directly concerned in the case, or have provided professional services of any kind and in any circumstances or place in the last two years.

The regulation establishes that the authorities and personnel in the service of the Administration who are affected by any of the aforementioned circumstances *“shall refrain from intervening in the procedure and shall inform their immediate superior, who shall decide what is appropriate”*.

In the case of persons who are considered high-ranking officials, the conflict of interest is more relevant because of the decision-making power or influence that can be attributed to them.

It applies specifically to public procurement processes, but must also be taken into account in the ICO Group’s financing operations and in operations with European funds.

## 4. MEASURES APPLICABLE IN COMPLIANCE WITH THE PLAN

### 4.1 INTRODUCTION

Broadly speaking, the prevention of **fraud and double financing** should focus on the ICO Group’s knowledge of the beneficiary of the aid and of the operations. In this case, prevention should consist of knowledge of the beneficiary, its activity, and its background with the entities of the Group, if any. This knowledge of the beneficiary should be complemented by information that can be obtained either directly, through questionnaires and responsible declarations, or through sources of proven use in the financial sector and the public sector.

With regard to **corruption and conflicts of interest**, the focus of prevention should be on the people within the ICO Group involved in the study, granting and formalisation of operations. Among other measures, it should focus on training and awareness-raising in this area; and the commitment of each actor should be documented through declarations of absence of conflict of interest, and a declaration of awareness of the fraud prevention regime applicable to public sector employees may also be sought.

Training should focus on the possibility of simplifying documentation tasks by integrating them into normal operations and, in particular, on getting to know customers and their sources of income, as well as their categorisation and the continuous monitoring of the business relationship.

It should also serve to make personnel involved in operations aware of the implications of their actions and omissions in this area and, in particular, liability for possible negligence.

Regarding the control of irregularities, Order HFP 1030/2021 sets out the steps to be taken if fraud, corruption, conflict of interest or double funding is revealed. At this point, the process should be stopped and the information available should be brought to the attention of the responsible entity. It should also be determined whether further action should be taken before administrative or judicial institutions, both national and European.

As set out in art. 6 of Order 1030/2021, the definitions of fraud, corruption and conflict of interest contained in **Directive (EU) 2017/1371** on the fight against fraud affecting the financial interests of the Union (PIF Directive) and in Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (EU Financial Regulation) apply.

The self-assessment indicated above shall correspond to the model questionnaire in **Annexe II.B.5** of the Order (minimum standard).

Once the products and operations which, due to receiving European funds, should be subject to this Plan have been identified, the ICO Group will carry out a periodic analysis of the different operations which, over time, may be related to the PRTR, in order to expand the questionnaire as necessary to fulfil its purposes and adapt it to each of them.

## Conflict of Interests

Conflicts of interest are regulated in the Code of Ethics and Conduct in force in the respective entities that make up the ICO Group, with Law 40/2015, of 1 October, on the Legal Regime of the Public Sector being applicable to ICO with regard to conflicts of interest.

In compliance with the provisions of Order HFP/1030/2021, a Declaration of Absence of Conflict of Interest (DACI) shall be obtained and signed by all ICO Group employees involved in proposing and deciding on operations or contracting files, in accordance with model 7.4.

Furthermore, the signature of forms 7.4.B (transfer and processing of data) and 7.4.C (declaration of commitment) must be obtained from the beneficiaries of the PRTR measures in which the entities integrated in the ICO Group intervene.

As soon as an employee perceives that they are in a situation of conflict of interest, they shall immediately inform their immediate superior.

In the ICO, when the employee considers that there is a conflict of interest, they must inform their immediate superior in writing, so that the latter may decide, also in writing, whether or not the employee should abstain. The response of their superior must be substantiated.

When another person perceives a potential conflict of interest, they may choose either to warn the employee, so that they abstain, or to inform the Institute's Ethics Committee, through the Ethics Channel that will be made available to all ICO Group entities, in the event that they do not have one of their own.

For these purposes, in the case of Axis, its Code of Conduct provides for the existence of its own Oversight Committee (composed of members of ICO and Axis), without prejudice to the competences specifically attributed to Axis' Audit and Control Committee in this matter.

This subject will be included in training and awareness-raising plans.

## 4.2 ANTI-FRAUD CYCLE

Order HFP/1030/2021 sets out the four typical phases in the anti-fraud cycle, following the outline of Directive (EU) 2017/1371 (PFI Directive):

1. Prevention,
2. Detection,
3. Correction and
4. Persecution

Measures for the prevention, detection and correction of fraud, corruption and conflict of interest are set out in Annexe III.C of the Order. In all operations related to the RRM, as a minimum, the following actions shall be carried out:

- Fraud risk assessment, to be carried out by each managing body of the corresponding ICO Group entity in coordination with Internal Audit.
- Completion of the Declaration of Absence of Conflict of Interest (DACI), in accordance with the model included in Annexe 7.4 of this Plan.

- Furthermore, the signature of forms 7.4.B (transfer and processing of data) and 7.4.C (declaration of commitment) must be obtained from the beneficiaries of the PRTR measures in which the entities integrated in the ICO Group intervene.

The ICO Group will establish an assessment of the risk, impact, and likelihood of fraud risk in the key processes of the implementation of the Recovery, Transformation and Resilience Plan, according to the following outline:

- Estimation of the probability and impact of fraud risk (gross risk), prior to the implementation of controls and measures and for a certain period of time.
- Assessment of existing controls to mitigate the gross risk
- Net risk assessment as a reduction in the probability and/or impact of the gross risk of fraud due to the application of mitigating measures
- Definition of additional specific mitigants that can be applied.
- Residual risk assessment after additional controls.

A reassessment of these risks will also be carried out when fraud has been detected or when there are significant changes in procedures or personnel.

#### 4.2.1 Prevention

The most effective management of the fight against fraud focuses on preventing fraud from taking place, because of the difficulty and cost of implementing all other measures once the fraud has been committed.

Preventive measures shall be based on the application of the ICO Group's internal control procedures and, in particular, those established for the prevention of money laundering and terrorist financing, with a risk-based approach, such measures being appropriate and proportionate, tailored to the specific situations, in order to reduce the residual risk of fraud to the lowest possible level.

To this end, the forms included as annexe 7.4 to this Plan shall be completed in accordance with the models in Order HFP 1030/2021, and a copy shall be kept in the file of each client/operation. They should be available to the institution's compliance function, as the technical prevention unit, and to the relevant internal control body, as required by the AML/CFT rules. The main preventive measures available to the ICO Group are as follows:

**A)** The Institutional Statement on the ICO Group's commitment in this area, which accompanies this Plan; as well as having a Code of Ethics and Conduct, which regulates the obligations of the Institute's employees, as public sector employees; and a Code of Conduct, which affects Axis employees, in their capacity as public sector employees. On the occasion of the publication of this Plan, it will be disseminated among the staff through its publication in Pórtico and the sending of an e-mail to all ICO Group employees, which will contain access to both the content of this Plan and that of the respective codes of conduct.

In addition, the information to ICO Group staff will include a reference to the Infofraude reporting channel, set up by the National Anti-Fraud Coordination Service, for the communication of information on fraud or irregularities affecting European funds and which includes a specific section on the Recovery and Resilience Mechanism.

**B)** Assessment of the need, where appropriate, to draw up a procedure to implement the provisions of the codes of conduct of each of the entities forming part of the ICO Group, in relation to the prevention, detection and management of possible conflicts of interest. This document will explain the modalities of conflict of interest, conflict of interest avoidance measures, regulatory requirements and the steps to be taken when a potential conflict of interest is identified.

**C)** Identification of the units/areas/bodies to which the functions of drafting, implementing and monitoring the Anti-Fraud Plan are assigned, and specifically:

**Fraud risk assessment (in the following order):**

1. *Whistleblower*
2. *Technical prevention unit (compliance function):*  
*ICO Compliance Area (also in the case of the Foundation)*  
*Legal Advisory and Compliance Unit/Audit and Control Committee at Axis.*
3. *Internal control body (Technical Commission for Regulatory Compliance at ICO and Internal Control Body at Axis).*
4. *General Council of ICO, Board of Directors of Axis, Board of Trustees of the Foundation.*

**Receipt and examination of complaints:**

*Code of Ethics Compliance Committee; complaints to: canal.etico@ico.es at the ICO/ Axis Code of Conduct Oversight Committee.*

**Assessment of situations that may constitute fraud or corruption**

*Technical prevention unit/ICO concerned.*

**Communication of cases to the appropriate internal units:**

*Legal Advisory Directorate in the case of ICO / Legal Advisory and Compliance Unit at Axis*

- *Internal Audit Department.*
- *Axis Audit and Control Committee, when the complaint concerns Axis.*

**Proposed corrective measures**

*ICO Operations Committee (hereinafter "COPER")*

*Axis Board of Directors*

*Board of Trustees of the ICO Foundation*

**4.2.2 Detection**

The applicable regulations on public procurement and on the prevention of money laundering and the financing of terrorism may be useful in detecting possible indications of fraud. In particular, the following factors shall be taken into account and shall be assessed together with other available information on the persons and operations allegedly affected:

- Lack of information, opacity, or excessive complexity regarding the company's shareholding structure.
- Unusual operations (compared to similar companies and transactions), unnecessary use of intermediaries, unexplained complexity of paperwork or financial procedures.
- Lack of consistency between the information provided and that obtained from official sources or from sources commonly used in the public sector or from credit institutions.
- Abnormally low tenders or number of tenderers.
- Receipt of bids for high amounts from all bidders, compared to similar tenders.
- Unusual price offers (all high prices, all low prices, excessive proximity).
- Matches or connections between different bidders (e.g. same address, telephone number, etc.).
- Family relationship between members of the contracting authority and a tenderer.
- Manifestly false or erroneous material or labour costs.

The documentation collected in compliance with the Anti-Fraud Plan will be reviewed by the employees involved in the transactions in order to detect possible indications of fraud and to react to prevent or reduce as far as possible the damage resulting from fraudulent activity. To this end, these indications must be communicated in accordance with the following in order for the appropriate measures to be taken by the units concerned and, where appropriate, reported to the competent authorities, depending on the irregularity in question.

The communication may be addressed to the Ethics Channel or the Oversight Committee . In turn, whoever receives the communication of the possible fraud or the well-founded suspicion thereof, must, in accordance with the provisions of Order HFP/1030/2021, request the immediate suspension of the procedure, informing of said suspension, respectively:

- In the case of the ICO, to its Management and to the Legal Advisory Directorate,
- In the case of Axis, to its General Manager and to the Axis Legal Advisory and Compliance Unit/Axis Audit and Control Committee.

An internal file will then be opened, which will include an analysis of the operation and of those involved in it, in order to clarify the extent of the irregularities. In the case of ICO, the opening and processing of the file shall be the responsibility of the Code of Ethics Compliance Committee and, in the case of Axis, of the Oversight Committee, without prejudice to the powers, if any, of the Audit and Control Committee of Axis.

Once the file has been processed, it shall be transferred to the technical prevention unit. To this end, additional documentation or information may be sought from other ICO Group units and external institutions. The report shall include details of the data collected, communications with other units, if any, conclusions on the facts and agreement to take mitigating measures and external communications or complaints, if any.

This report shall be submitted to COPER or to the Board of Directors of Axis, as appropriate, for its information and for approval of the measures, if any, deemed applicable.

### 4.2.3 Correction

Intentionality is an essential element of the definition of fraud in the PFI Directive. The ICO Group does not have the means to prove such intent, but may nevertheless, within the scope of its functions, carry out an assessment of the documentation at its disposal in order to report any indications of irregularities to the competent authorities.

On the basis of this assessment, the ICO Legal Department or the Axis Legal and Compliance Unit, as appropriate, will inform the National Anti-Fraud Coordination Service of the Ministry of Finance and Public Administration for the appropriate purposes.

It may also forward the information to the relevant courts or to the Public Prosecutor's Office if it considers that there are indications of a criminal offence.

Once an alert has been detected, the ICO Group unit that has detected the irregularities will coordinate with the ICO's Regulatory Compliance area or Axis' Legal and Compliance Unit in order to, as far as possible:

- Gather all available information that may help to prove that fraud has occurred, or to rule it out
- Suspend, where appropriate, the internal procedure for the approval or finalisation of the operation, or for the disbursement of funds
- Write a report describing the facts

<sup>2</sup> email: [comite.vigilancia@axispart.com](mailto:comite.vigilancia@axispart.com)

Postal mail addressed to: Attn. Secretary of the Oversight Committee

AXIS Participaciones Empresariales, S.G.E.I.C., S.A., S.M.E.

C/ Los Madrazo, 38 – 2nd floor

28014 Madrid

- Forward the documents and the report to the unit with management control functions
- Propose to COPER or the Axis Board of Directors, as appropriate, the adoption of other possible measures to prevent fraud or minimise its effects.

Among the latter measures, the technical prevention unit, without prejudice to the functions attributed to other units or bodies, shall review other files that may have been exposed to the same risk of fraud, in order to determine whether it is a one-off case or, on the contrary, has a greater impact. The relevant internal control body will be informed in order to assess the appropriateness of withdrawing the projects or the part of the projects affected by the fraud and financed or to be financed by the RRM (which must be approved by the COPER or by the Board of Directors of Axis, as appropriate, having previously informed the relevant bodies).

The report shall be passed on to the Organisation area (if applicable), to the Internal Audit department and, in the case of Axis, to the Audit and Control Committee, in order to review the processes, procedures, and controls related to actual or potential fraud. The changes resulting from the review will be incorporated into the regulation and will be reflected in the next risk assessment.

It will also be passed on to the Human Resources department, in order to initiate a confidential inquiry to determine responsibilities, or the opening of disciplinary proceedings, if deemed appropriate.

#### 4.2.4 Persecution

The internal control body shall coordinate the communication to the other administrative bodies concerned (in the PRTR, to the decision-making body, which in turn shall inform the Responsible Authority, and the latter, where appropriate, the Supervisory Authority).

To this end, the National Anti-Fraud Coordination Service shall be informed, as well as the decision-making body according to the procedure in question, in which the ICO Group is acting as executing or instrumental entity.

All citizens and public sector employees, in cases of fraud involving public funds, have the possibility of reporting the facts or indications to the SNCA through the Infofraud reporting channel, for assessment and possible communication to the European Anti-Fraud Office (OLAF).

The Legal Department, through the Compliance Department or the Legal and Compliance Department of Axis, shall take the following measures:

- a) Communicate the facts and the outcome of the investigation as soon as possible to the authorities concerned and to the bodies involved in the implementation of the actions and review all projects, sub-projects or lines of action that may have been exposed to it.
- (b) Report the facts and the measures taken to the directorate or unit that is in contact with the decision-maker, so that it can pass on the information. All cooperation required by the decision maker shall be provided in order to enable the decision maker to monitor and report to the Supervisory Authority.
- c) Evaluate the appropriateness of transferring the facts to the competent authorities, to the Spanish National Anti-Fraud Coordination Service -SNCA-, for their assessment and possible communication to the European Anti-Fraud Office; as well as to report them to the Public Prosecutor's Office, if appropriate.

Where appropriate, an assessment will be made of the appropriateness of opening an economic-financial infringement case (Law 19/2013 on transparency, access to public information and good governance) and, where appropriate, a disciplinary case.



The process should aim at recovering the amounts disbursed and misused. Cooperation should be prioritised, as well as confidentiality and preservation of documents.

Operations shall be duly monitored and reported to the CODIR and the General Council of the ICO and the Board of Directors of Axis, as appropriate.

Operations will be monitored in a coordinated manner by the General Directorate for Business, the General Directorate for Risk and Financial Control, the Compliance Area and the Internal Audit Department, assessing the opportunity to include a representative of AXIS and of the Foundation, where appropriate, in order to incorporate possible improvements in the processes that will prevent, as far as possible, new cases from occurring in the future. It should be integrated into the usual processes of the Risk Management Framework, with evaluation of the risk produced, scope, monitoring of measures applied and their effectiveness, proposal of changes and improvements to minimise the possibilities of recurrence and the damage derived, in the event of recurrence.

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## 5. PLAN UPDATES

Moreover, the self-assessment of the Plan should include the assignment of tasks in each process. As set out in Orders HFP/1030 and 1031, evaluations, analyses and ex-ante and ex-post controls should not unnecessarily increase the workload of the responsible units. The objective to be pursued is the timely input of information into the reporting tool established by the administration.

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## 6.ANNEXES – FORMS OF ORDER HFP 1030/2021

*Note: the nomenclature of the Order has been retained in order to avoid misunderstandings.*

### 6.1 ANNEXE II.B.55

*to be filled in by ICO Group employees*

#### Conflict of interest, fraud and corruption prevention test

Question	Degree of compliance			
	4	3	2	1
1. Is there an "Anti-Fraud Action Plan" in place which enables the implementing or decision-making entity to ensure and declare that, in its respective field of action, the funds concerned have been used in accordance with the applicable rules, in particular with regard to the prevention, detection and correction of fraud, corruption and conflicts of interest?				
2. Is the existence of a corresponding "Anti-Fraud Action Plan" established at all levels of implementation?				
<b>Prevention</b>				
3. Do you have a declaration, at the highest level, where you commit yourself to fight fraud?				
4. Is a self-assessment identifying specific risks, their impact and likelihood of occurrence carried out and regularly reviewed?				
5. Is a code of ethics disseminated and is there information on the policy on gifts?				
6. Is training provided that promotes public ethics and facilitates fraud detection?				
7. Has a procedure been developed to deal with conflicts of interest?				
8. Is a declaration of absence of conflict of interest completed by all participants?				

Question	Degree of compliance			
	4	3	2	1
<b>Detection</b>				
9. Have fraud indicators or red flags been defined and communicated to staff in a position to detect them?				
10. Are data mining or risk-scoring tools used?				
11. Is there a channel for any interested party to file a complaint?				
12. Is there a unit in charge of examining complaints and proposing measures?				
<b>Correction</b>				
13. Is the incidence of fraud assessed and classified as systemic or one-off?				
14. Are projects or parts of projects affected by fraud and financed or to be financed by the RRM withdrawn?				
<b>Persecution</b>				
15. Are the events that have occurred and the measures taken communicated to the implementing entity, the decision-making entity or the Responsible Authority, as appropriate?				
16. Are punishable acts reported, where appropriate, to national or EU public authorities or to the competent prosecutor's office and courts?				
Subtotal points.				
Total points.				
Maximum points.	64			
<b>Relative points (total points/maximum points).</b>				

*Note: 4 equals maximum compliance, 1 equals minimum compliance*

## 6.2 ANNEXE II.B.6

to be filled in by ICO Group employees

### COMPATIBILITY TEST STATE AID SCHEME AND AVOIDANCE OF DOUBLE FUNDING

State Aid Question	Degree of compliance			
	4	3	2	1
1. Are procedures in place to assess the need for prior reporting/notification of aid to be granted in your area and, where appropriate, to carry out prior notification/notification in a way that ensures compliance with Community State aid rules? (A sample check-list is provided for this purpose).				
2. Are specific human resources available to carry out this task?				
3. Is there a lack of risk history regarding compliance with State Aid rules?				
4. Has the analysis of compliance with State Aid rules been carried out at all levels of implementation?				
Subtotal points.				
Total points.				
Maximum points.	16			
<b>Relative points (total points/maximum points).</b>				

Note: 4 equals maximum compliance, 1 equals minimum compliance

Double funding Question	Degree of compliance			
	4	3	2	1
1. Are procedures in place to assess the possible existence, in your area of management, of double funding in the implementation of the PRTR? (A sample check-list is provided for this purpose).				
2. Are specific human resources available to carry out this task?				
3. Are there no previous incidences of double funding (under the RRM or any other European funds)?				
4. Has the analysis of the possible existence of double funding by all levels of implementation been carried out?				
Subtotal points.				
Total points.				
Maximum points.	16			
<b>Relative points (total points/maximum points).</b>				

Note: 4 equals maximum compliance, 1 equals minimum compliance

### 6.3 Risk estimation: Valuation table

to be filled in by ICO Group employees

Area	(a) Relative points	(b) Weighting Factor	(c) Assigned value
Management Control.		18%	
Milestones and Objectives.		34%	
Environmental Damages.		12%	
Conflict of Interest, Fraud, and Corruption Prevention.		12%	
Compatibility State Aid Scheme.		12%	
Avoid Double Funding.		12 %	
<b>Total</b>	<b>N/A</b>	<b>100 %</b>	

#### Reference values:

Low risk:	Total Assigned value $\geq 90$
Medium risk:	Total Assigned value $\geq 80$
High risk:	Total Assigned value $\geq 70$

The Total Assigned Value is calculated by adding the assigned value (c) of each area, which is obtained by multiplying the relative points (a), obtained in the corresponding test, by the weighting factor (b). The Total Assigned Value is calculated by adding the assigned value (c) of each area, which is obtained by multiplying the relative points (a), obtained in the corresponding test, by the weighting factor (b).

## 6.4 ANNEXE IV SPECIMEN DECLARATIONS

### A. Declaration of Absence of Conflict of Interest (DACI) form

*To be completed by the recipient of PRTR funds and employees of the ICO group.*

File: Contract/grant.

In order to guarantee impartiality in the above-mentioned procurement/grant procedure, the undersigned, as participant(s) in the process of preparing and processing the dossier, declare(s):

First. To be informed of the following:

1. Article 61.3 “Conflict of interest” of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July (EU Financial Regulation) states that “a conflict of interest exists where the impartial and objective exercise of functions is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any direct or indirect personal interest”.
2. That Article 64 “Fight against corruption and prevention of conflicts of interest” of Law 9/2017, of 8 November, on Public Sector Contracts, aims to avoid any distortion of competition and to guarantee transparency in the procedure and ensure equal treatment for all candidates and bidders.
3. That Article 23 “Abstention” of Law 40/2015, of 1 October, on the Legal Regime of the Public Sector, establishes that “the authorities and personnel in the service of the Administrations in whom any of the circumstances indicated in the following section apply” must abstain from intervening in the procedure, these being:
  - (a) Have a personal interest in the case in question or in another case whose outcome may be influenced by the outcome of that case; be a director of the company or entity concerned, or have a legal dispute pending with any interested party.
  - b) Have a marital relationship or similar de facto situation and a blood relationship within the fourth degree or a relationship of affinity within the second degree with any of the interested parties, with the administrators of the entities or companies concerned and also with the advisors, legal representatives or agents involved in the procedure, as well as sharing a professional office or being associated with them for the purpose of advice, representation or mandate.
  - c) Having a close friendship or manifest enmity with any of the persons mentioned in the previous paragraph.
  - d) Have been involved as an expert or witness in the proceedings in question.
  - e) Have a relationship of service with a natural or legal person directly concerned in the case, or have provided professional services of any kind and in any circumstances or place in the last two years.

Second. That they are not in any situation that could be classified as a conflict of interest as indicated in Article 61.3 of the EU Financial Regulation and that they do not have any cause for abstention as indicated in Article 23.2 of Law 40/2015, of 1 October, on the Legal Regime of the Public Sector that could affect the tender/concession procedure.

Third. That they undertake to inform the contracting authority/evaluation committee without delay of any situation of conflict of interest or cause for abstention that gives or could give rise to such a scenario.

Fourth. I am aware that a declaration of absence of conflict of interest that is proven to be false will lead to disciplinary/administrative/judicial consequences in accordance with the applicable rules.

(Date and signature, full name and ID card number)

<sup>3</sup> For the purposes of the ICO Group's Anti-Fraud Plan, the content of Article 23 of Law 40/2015 shall apply to all employees of the ICO Group and to the other parties involved in the management of the funds of the RRM.

## **B. Model declaration form for the transfer and processing of data in relation to the implementation of actions under the Recovery, Transformation and Resilience Plan (PRTR)**

*To be completed by the PRTR funding recipient*

Mr/Ms ....., ID ....., as Managing Director/Manager/ of the entity .....  
 ....., with Tax ID ....., and tax domicile at ..... beneficiary  
 of aid financed with resources from the PRTR/ which participates as contractor/subcontractor in the development of  
 actions necessary for the achievement of the objectives defined in Component XX “.....”, declares to be  
 aware of the applicable regulations, in particular the following paragraphs of Article 22 of Regulation (EU) 2021/241  
 of the European Parliament and of the Council of 12 February 2021 establishing the Resilience and Recovery  
 Mechanism:

1. Paragraph 2(d): “to collect, for the purpose of auditing and monitoring the use of funds in relation to measures  
 for the implementation of reforms and investment projects under the recovery and resilience plan, in a searchable  
 electronic format and in a single database, the following harmonised categories of data:

- i. The name of the final recipient of the funds;
- ii. the name of the contractor and of the subcontractor, where the final recipient of the funds is a contracting authority  
 in accordance with Union or national public procurement law;
- iii. the names and dates of birth of the beneficial owners of the recipient of the funds or of the contractor, as defined in  
 Article 3(6) of Directive (EU) 2015/849 of the European Parliament and of the Council (26);
- iv. a list of measures for the implementation of reforms and investment projects under the Recovery and Resilience  
 Plan, together with the total amount of public funding for these measures and indicating the amount of funds disbursed  
 under the Facility and other Union funds”.

2. Paragraph 3: “The personal data referred to in paragraph 2(d) of this Article shall be processed by the Member States  
 and by the Commission only for the purposes and for the duration of the relevant discharge audit and control procedures  
 relating to the use of funds in connection with the implementation of the agreements referred to in Articles 15(2) and  
 23(1). As part of the Commission’s discharge procedure under Article 319 TFEU, the Facility shall be subject to reporting  
 in the framework of the integrated financial and accountability reporting referred to in Article 247 of the Financial  
 Regulation and, in particular, separately in the annual management and performance report”.

In accordance with the aforementioned legal framework, you agree to the transfer and processing of the data for the  
 purposes expressly stated in the aforementioned articles.

....., XX of ..... of 202X

Signed ..... Position: .....



### **C. Model declaration of commitment in relation to the implementation of actions of the Recovery, Transformation and Resilience Plan (PRTR)**

*To be completed by the PRTR funding recipient*

Mr/Ms ....., with ID ....., as head of the body/managing director/manager/ of the entity ....., with Tax ID ....., and tax domicile at ..... as the responsible body/managing body/beneficiary of aid financed with resources from the PRTR/ participating as contractor/subcontractor, in the development of actions necessary to achieve the objectives defined in Component XX “.....” “The person/entity he/she represents declares the commitment of the person/entity to the highest standards in relation to compliance with legal, ethical and moral rules, adopting the necessary measures to prevent and detect fraud, corruption and conflicts of interest, reporting any non-compliance observed to the appropriate authorities. In addition, in accordance with the content of the PRTR, it undertakes to respect the principles of circular economy and to avoid significant negative impacts on the environment (DNSH or do no significant harm) in the execution of the actions carried out within the framework of the Plan, and states that it does not incur in double financing and that, where applicable, it is not aware of any risk of incompatibility with the State aid scheme.

....., XX of ..... of 202X

Signed .....

Position: .....



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