

# 2023 Rule of Law Report - targeted stakeholder consultation

Fields marked with \* are mandatory.

## Introduction

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The annual Rule of Law Report lies at the centre of the European rule of law mechanism, which acts as a preventive tool, deepening multilateral dialogue and joint awareness of rule of law issues. So far, three editions of the Rule of Law Report have been published in 2020, 2021 and 2022.

In the preparation of the first three editions of the Rule of Law Report, the Commission has relied on a diversity of relevant sources, including from Member States, country visits, and stakeholders' contributions collected through the targeted stakeholder consultation [1]. The information provided has informed the Commission's country-specific assessments in preparing the Report. Building on the positive experience from the first three editions of the Rule of Law Report, the Commission is now inviting stakeholders to provide written contributions for the preparation of the 2023 Rule of Law Report through this targeted consultation.

The contribution to be provided should include (1) information on measures taken to implement the recommendations addressed to the Member State in the 2022 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter and (2) any other significant developments since January 2022 [2] falling under the 'type of information' outlined in the next section.

The input should be short and concise and summarise information related to one or more of the areas referred to in the template. You are invited to focus on the areas that relate to the scope of work and expertise of your organisation. Existing reports, statements, legislation or other documents may be referenced with a link (no need to provide the full text). Stakeholders are encouraged to make references to any contributions already provided in a different context or to Reports and documents already published. Contributions should focus on significant developments both as regards the legal framework and its implementation in practice.

**If you wish to submit information concerning several Member States, you will have to fill-in the questionnaire separately for each Member States (due to the size of the questionnaire). There is no limit to the number of contributions submitted by a single participant. In such cases, you are not required to repeat the information in the section "about you" that is non-mandatory nor the information on horizontal developments.**

Please provide your contribution by **20 January 2023**. Should you have any requests for clarifications or encounter difficulties in filling in the questionnaire, you can contact the Commission at the following email

address: rule-of-law-network@ec.europa.eu.

[1] For the consultation for the 2022 Report, see [https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation\\_en](https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en)

[2] Unless the information was already submitted in the consultation for the previous Rule of Law Reports.

## Type of information

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The topics are structured according to four pillars: I. Justice system; II. Anti-corruption framework; III. Media pluralism; and IV. Other institutional issues related to checks and balances. The replies could include aspects set out below under each pillar. This can include challenges, current work streams, positive developments and best practices:

### **Legislative developments**

- Newly adopted legislation
- Legislative drafts currently discussed in Parliament
- Legislative plans envisaged by the Government

### **Policy developments**

- Implementation of legislation
- Evaluations, impact assessment, surveys
- White papers/strategies/actions plans/consultation processes
- Follow-up to reports/recommendations of Council of Europe bodies or other international organisations
- Important administrative measures
- Generalised practices

### **Developments related to the judiciary / independent authorities**

- Important case law by national courts
- Important decision/opinions from independent bodies/authorities
- State of play on terms, nominations and expired mandates for high-level positions (e.g. Supreme Court, Constitutional Court, Council for the Judiciary, heads of independent authorities included in the scope of the questionnaire[1])

### **Any other relevant developments**

- Respondents are free to add any further information, which they deem relevant; however, this should be short and to the point.

If there are no changes, it is sufficient to indicate this and the information covered in the contributions for the previous Rule of Law Reports should not be repeated.

[1] Such as: media regulatory authorities and bodies, national human rights institutions, equality bodies, ombudsman institutions, supreme audit institutions and, where they exist, transparency authorities.

## About you

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\* I am giving my contribution as

- ☐ Academic/research institution
- ☐ Business association
- ☒ Civil society organisation/NGO
- ☐ International organisation
- ☐ Judicial association or network
- ☐ Media organisation or association
- ☐ Public authority or network of public authorities
- ☐ Other

\* Organisation name

*250 character(s) maximum*

Asociación Impulso Ciudadano

### Main Areas of Work

- ☒ Justice System
- ☐ Anti-corruption
- ☒ Media Pluralism
- ☒ Other

If "Other", please specify

Fundamental Rights, Democratic Principles

Please insert an URL towards your organisation's main online presence or describe your organisation briefly:

*500 character(s) maximum*

<https://impulsociudadano.org>

### Transparency register number

Check if your organisation is in the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making

714406338494-96

\* Country of origin

Please add the country of origin of your organisation

- ☐ Afghanistan
- ☐ Albania

- ☐ Algeria
- ☐ Andorra
- ☐ Angola
- ☐ Antigua and Barbuda
- ☐ Argentina
- ☐ Armenia
- ☐ Australia
- ☐ Austria
- ☐ Azerbaijan
- ☐ Bahamas
- ☐ Bahrain
- ☐ Bangladesh
- ☐ Barbados
- ☐ Belarus
- ☐ Belgium
- ☐ Belize
- ☐ Benin
- ☐ Bhutan
- ☐ Bolivia
- ☐ Bosnia and Herzegovina
- ☐ Botswana
- ☐ Brazil
- ☐ Brunei Darussalam
- ☐ Bulgaria
- ☐ Burkina Faso
- ☐ Burundi
- ☐ Cabo Verde
- ☐ Cambodia
- ☐ Cameroon
- ☐ Canada
- ☐ Central African Republic
- ☐ Chad
- ☐ Chile
- ☐ China
- ☐ Colombia
- ☐ Comoros
- ☐ Congo
- ☐ Costa Rica
- ☐ Côte D'Ivoire
- ☐ Croatia
- ☐ Cuba
- ☐ Cyprus
- ☐ Czechia
- ☐ Democratic Republic of the Congo
- ☐ Denmark
- ☐ Djibouti
- ☐ Dominica

- ☐ Dominican Republic
- ☐ Ecuador
- ☐ Egypt
- ☐ El Salvador
- ☐ Equatorial Guinea
- ☐ Eritrea
- ☐ Estonia
- ☐ Eswatini
- ☐ Ethiopia
- ☐ Fiji
- ☐ Finland
- ☐ France
- ☐ Gabon
- ☐ Gambia
- ☐ Georgia
- ☐ Germany
- ☐ Ghana
- ☐ Greece
- ☐ Grenada
- ☐ Guatemala
- ☐ Guinea
- ☐ Guinea Bissau
- ☐ Guyana
- ☐ Haiti
- ☐ Honduras
- ☐ Hungary
- ☐ Iceland
- ☐ India
- ☐ Indonesia
- ☐ Iran
- ☐ Iraq
- ☐ Ireland
- ☐ Israel
- ☐ Italy
- ☐ Jamaica
- ☐ Japan
- ☐ Jordan
- ☐ Kazakhstan
- ☐ Kenya
- ☐ Kiribati
- ☐ Kuwait
- ☐ Kyrgyzstan
- ☐ Laos
- ☐ Latvia
- ☐ Lebanon
- ☐ Lesotho
- ☐ Liberia

- ☐ Libya
- ☐ Liechtenstein
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Madagascar
- ☐ Malawi
- ☐ Malaysia
- ☐ Maldives
- ☐ Mali
- ☐ Malta
- ☐ Marshall Islands
- ☐ Mauritania
- ☐ Mauritius
- ☐ Mexico
- ☐ Micronesia
- ☐ Monaco
- ☐ Mongolia
- ☐ Montenegro
- ☐ Morocco
- ☐ Mozambique
- ☐ Myanmar
- ☐ Namibia
- ☐ Nauru
- ☐ Nepal
- ☐ Netherlands
- ☐ New Zealand
- ☐ Nicaragua
- ☐ Niger
- ☐ Nigeria
- ☐ North Korea
- ☐ North Macedonia
- ☐ Norway
- ☐ Oman
- ☐ Pakistan
- ☐ Palau
- ☐ Panama
- ☐ Papua New Guinea
- ☐ Paraguay
- ☐ Peru
- ☐ Philippines
- ☐ Poland
- ☐ Portugal
- ☐ Qatar
- ☐ Republic of Moldova
- ☐ Romania
- ☐ Russian Federation
- ☐ Rwanda

- ☐ Saint Kitts and Nevis
- ☐ Saint Lucia
- ☐ Saint Vincent and the Grenadines
- ☐ Samoa
- ☐ San Marino
- ☐ Sao Tome and Principe
- ☐ Saudi Arabia
- ☐ Senegal
- ☐ Serbia
- ☐ Seychelles
- ☐ Sierra Leone
- ☐ Singapore
- ☐ Slovakia
- ☐ Slovenia
- ☐ Solomon Islands
- ☐ Somalia
- ☐ South Africa
- ☐ South Korea
- ☐ South Sudan
- ☒ Spain
- ☐ Sri Lanka
- ☐ Sudan
- ☐ Suriname
- ☐ Sweden
- ☐ Switzerland
- ☐ Syrian Arab Republic
- ☐ Tajikistan
- ☐ Tanzania
- ☐ Thailand
- ☐ Timor-Leste
- ☐ Togo
- ☐ Tonga
- ☐ Trinidad and Tobago
- ☐ Tunisia
- ☐ Turkey
- ☐ Turkmenistan
- ☐ Tuvalu
- ☐ Uganda
- ☐ Ukraine
- ☐ United Arab Emirates
- ☐ United Kingdom
- ☐ United States of America
- ☐ Uruguay
- ☐ Uzbekistan
- ☐ Vanuatu
- ☐ Venezuela
- ☐ Viet Nam

- ☐ Yemen
- ☐ Zambia
- ☐ Zimbabwe

First name

Rafael

Surname

Arenas Garcia

Email Address of the organisation (this information will not be published)

[REDACTED]

#### \* Publication of your contribution and privacy settings

You can choose whether you wish for your contribution to be published and whether you wish your details to be made public or to remain anonymous.

- ☐ Anonymous - Only your type of respondent, country of origin and contribution will be published. Organisation name, URL, transparency register number, first name and surname given above will not be published. **To maintain anonymity, please refrain from mentioning the name of your organisation and any details from which your organisation can be identified in the rest of your contribution.**
- ☒ Public - Your personal details (name, organisation name, transparency register number, country of origin) will be published with your contribution).
- ☐ No publication - Your contribution will not be published. Elements of your contribution may be referred to anonymously in documents produced by the Commission based on this consultation.

☒ I agree with the personal data protection provisions.

[Specific privacy statement targeted stakeholder consultation 2023 rule of law report.pdf](#)

## Questions on horizontal developments

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In this section, you are invited to provide information on general horizontal developments or trends, both positive and negative, covering all or several Member States. In particular, you could mention issues that are common to several Member States, as well as best practices identified in one Member State that could be replicated. Moreover, you could refer to your activities in the area of the four pillars and sub-topics (an overview of all sub-topics can be found below), and, if you represent a Network of national organisations, to the support you might have provided to one of your national members.

Overview topics for contribution

[list of topics 2023 Report.pdf](#)

Please provide any relevant information on horizontal developments here

*5000 character(s) maximum*



## Questions for contribution

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The following four pillars (I.-IV.) are sub-divided into topics (A., B., etc.) and sub-topics (1., 2., 3., etc.). For each of the topics and sub-topics, you are invited to provide (1) information on measures taken to implement the recommendations addressed to the Member States in the 2022 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter of the 2022 Rule of Law Report and (2) any other significant developments since January 2022<sup>[1]</sup>. Please include a link to and reference relevant legislation/documents (in the national language and/or where available, in English) if relevant. Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices.

If there are developments you consider relevant under each of the four pillars that are not mentioned in the sub-topics, please add them under the section "other - please specify". Only significant developments should be covered.

Information provided in reply to the first question under each pillar, related to the follow-up to the recommendations, does not need to be repeated in subsequent parts of the questionnaire, but can be cross-referenced in the subsequent questions, where relevant. All other questions are not limited to the recommendations, but as in previous years, cover the entire scope of the Report.

[1] Unless already covered in the input for the previous Rule of Law Reports.

Member State covered in contribution [only one choice possible]

**If you wish to submit information concerning several Member States, please fill in the questionnaire separately for each Member State. There is no limit to the number of contributions submitted by a single participant.**

- ☐ Austria
- ☐ Belgium
- ☐ Bulgaria
- ☐ Croatia
- ☐ Cyprus
- ☐ Czechia
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☐ Germany
- ☐ Greece
- ☐ Hungary
- ☐ Ireland
- ☐ Italy
- ☐ Latvia
- ☐ Lithuania

- ☐ Luxembourg
- ☐ Malta
- ☐ Netherlands
- ☐ Poland
- ☐ Portugal
- ☐ Romania
- ☐ Slovak Republic
- ☐ Slovenia
- ☒ Spain
- ☐ Sweden

## I. Justice System

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Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the justice system (if applicable)

*3000 character(s) maximum*

Among the recommendations of the 2022 report was the recommendation to strengthen the status of the Attorney General by separating the term of office from that of the government. No action has been taken in this regard.

The report also recommended the renewal of the General Council of the Judiciary (CGPJ) to proceed with a reform of its members' system of appointment that would be in line with European standards. The CGPJ has not been renewed, nor has the system been reformed. Moreover, last year's events in relation to this issue have significantly weakened the perception of the Judiciary's independence, also affecting the appointment of Judges of the Constitutional Court. (We shall discuss this further in section 6.) Note now that the members of the CGPJ are appointed in their entirety by the two legislative chambers. Each of them elects 10 members by a three-fifths majority. The candidates are, in part, selected by the judges themselves through previous elections; however, the appointment of CGPJ members does not depend on who has obtained the most support among their colleagues. The composition of the CGPJ depends entirely on the arrangements made between the different political forces. [The system of appointment of the members of the CGPJ is found in arts. 566 to 578 of the Organic Law of the Judiciary.]

This system of appointment of the members of the CGPJ contravenes the recommendations of the Council of Europe and the European Union. In this regard, we should recall that the European institutions, including the Commission, have initiated proceedings in relation to Poland alleging, among other reasons, that the appointment of the members of the governing body of judges by a 3/5 majority of the Parliament did not guarantee the external independence of the Judiciary. We believe that the refusal of the Spanish government and legislature to modify the system of appointment of the CGPJ that has been in place for too long and does not correspond to European democratic standards requires a much more forceful action by the European Commission and the rest of the institutions than the one adopted so far.

Even though the Council of Europe and the European Union recommended that the designation of the CGPJ members should be in line with European standards, the Spanish government has not yet presented any legislative reform project to comply with this recommendation. Furthermore, it has refused to negotiate the proposal made in this regard by the main opposition party unless the latter previously agrees to the renewal of the CGPJ in accordance with the model currently in force. (As pointed out before, the current model does not comply with the requirements deriving from the Judiciary's external independence.) [<https://theobjective.com/espana/politica/2023-01-04/gobierno-pp-renovar-cgpj/>].

## A. Independence

### Appointment and selection of judges, prosecutors and court presidents (incl. judicial review)

*(The reference to 'judges' concerns judges at all level and types of courts as well as judges at constitutional courts)*

*3000 character(s) maximum*

Two issues are discussed in this section:

- 1- The way in which judicial appointments have been affected by depriving the CGPJ from its authority to make appointments once the term for their renewal has expired without the renewal having taken place.
- 2- The appointment of four new Judges of the Constitutional Court.

1- It is well known that the CGPJ should have been renewed years ago. However, the legal provision is that, if the renewal does not take place, the members of the CGPJ continue to retain their powers and can perform the functions attributed to them by the Constitution and the Spanish Organic Law of the Judiciary (LOPJ). This situation was modified by LO 4/2021 of March 29, which limited the powers of the CGPJ until it was renewed. This amendment has prevented the required appointments to take place for the proper functioning of the administration of justice. By mid-2022, more than 60 appointments were pending due to CGPJ's blockage of its function as an appointing body.

2- The CGPJ's blockage was, however, revised by the legislator so that it could resume the renovation of the members of the Constitutional Court due every nine years. Through LO 8/2022 of July 27, the power to appoint these magistrates was included among the exceptional powers that LO 4/2021 had maintained for the CGPJ when the latter has not been renewed in due time. The reason for this amendment is that the renewal of the Constitutional Court is carried out by third parties, with the judges appointed by the Government and the CGPJ corresponding in one of the appointment rounds. Two judges in each case. Given that the renewal must be of four magistrates, if the CGPJ did not appoint its magistrates, neither could the Government appoint his candidates, which led the governing party to present a proposal for an organic law that ended up extending the powers of the body.

Such modification of the LOPJ seeking to facilitate the appointment of government-appointed judges raises two objections. First, it is a clear sign that the functioning of the governing body of the judges is placed at the disposal of the interests of the executive branch, since the only intention of reversing the Council's blockage was to facilitate the interests of the government regarding the appointment of judges to the Constitutional Court. Second, both LO 4/2021 and LO 8/2022 did not result from government bills, but from bills submitted by the President of the government's political party, which speaks very poorly of this party's respect for the rule of law. We will return to this point in item 11 of the report.

It should also be noted that the recent judges appointed by the current Spanish Government to fill the empty seats in the Constitutional Court have ties with it. One of them, had been Minister of Justice in the current Government between 2020 and 2021. Another, was Director General in the Ministry of the Presidency between 2020 and 2022.

### Irremovability of judges, including transfers, (incl. as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (incl. judicial review)

*3000 character(s) maximum*

Promotion of judges and prosecutors (incl. judicial review)

*3000 character(s) maximum*

Allocation of cases in courts

*3000 character(s) maximum*

Independence (including composition and nomination and dismissal of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

*3000 character(s) maximum*

The failure to renew the CGPJ affects the functioning of the Judiciary, as well as the perception of the independence of the governing bodies of the Judiciary branch and even of some courts.

Negotiations over the renovation of the CGPJ between the two main Spanish political parties (PSOE and PP) have been interrupted and restarted on several occasions. Such behavior shows a deep institutional degradation that must be denounced.

In accordance with the provisions of the Rules of Procedure of the Congress and the Senate, this renovation involves a procedure in which the parliamentary groups of each House participate, led by the Bureau of the House. This procedure has never been implemented, but rather the so-called "negotiation" has been limited to conversations between representatives of the two main parties without the participation, at least directly, of other parties or parliamentary groups. This exclusion of individuals and groups who, according to legal requirements, should participate in the process, is a major institutional breakdown. The agreement between PP and PSOE may be sufficient to move forward with the appointments of the members of the CGPJ, but it is quite another matter to explicitly state that the legal procedure is only a pretense with no real effectiveness. Such assumption excludes any participation of other political groups, which is contrary to the letter and spirit of the law.

Moreover, this negotiation between PP and PSOE is an indication of some other relevant institutional flaws. In the first place, when the Constitutional Court ratified the constitutionality of the appointment of CGPJ members by the Chambers (and not by the judges themselves respect to 12 of the 20 members of the Council), it did so by indicating that this system of appointment could not imply the transformation of the CGPJ into an extension of the legislative chambers, thus reproducing their existing majorities. (STC 108 /1986, of July 29). The negotiation between PP and PSOE, based on what has been made public, is flawed, being largely limited to determining which members each party may recommend, excluding others unless they are "invited" by the two majority parties. Furthermore, this negotiation was tied to negotiations for appointments that have no relation with the Judiciary. Former Vice President of the government in the current legislature, Mr. Pablo Iglesias, admitted a few months ago that his party had received an offer to appoint a member of the CGPJ in exchange for their support in the appointment of the director of the Spanish public radio and television.

The arrangement between PSOE and PP included the appointments of the presidents of CGPJ and the Constitutional Court. The Constitution attributes to CGPJ's members the designation of its president and to the magistrates of the Constitutional Court the designation of the president of the Constitutional Court. It is not admissible the interference of political parties in such designations.

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (incl. judicial review)

*3000 character(s) maximum*

Remuneration/bonuses/rewards for judges and prosecutors, including observed changes (significant and targeted increase or decrease over the past year), transparency on the system and access to the information

*3000 character(s) maximum*

## Independence/autonomy of the prosecution service

3000 character(s) maximum

## Independence of the Bar (chamber/association of lawyers) and of lawyers

3000 character(s) maximum

## Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

3000 character(s) maximum

In previous contributions we had already reported both the overt disobedience to judicial decisions by the Catalan government and the statements by members of the Spanish government questioning judges' decisions; both actions are contrary to the 2010 Declaration of the Committee of Ministers of the Council of Europe on judicial independence [<https://rm.coe.int/cmrec-2010-12-on-independence-efficiency-responsibilities-of-judges/16809f007d>]. This time, the challenge to the Judiciary by the Executive power has been even greater: last December 2022, several members of the Spanish government, including its president, openly disqualified the Constitutional Court - an even more serious attack, if we consider the circumstances in which it occurred.

In December 2022, a Criminal Code reform was submitted before Congress (to which we will return in point 29). The parliamentary groups supporting the Government used this reform to introduce, via amendment, a reform of the Organic Law of the Judiciary and of the Organic Law of the Constitutional Court.

In 2011, the Constitutional Court established that amendments to legislative bills cannot be introduced if they are disconnected from their content. Taking advantage of the amendment process to modify texts different from the one being processed is a violation of the right to political participation of the deputies and, indirectly, of the citizens represented by these deputies. Given the submission of these amendments and based on the consolidated constitutional doctrine just described, several deputies from the opposition ranks filed an appeal for protection before the Constitutional Court. In the appeal, they requested that the processing of the amendments relative to the modification of the LOPJ and the Organic Law of the Constitutional Court be suspended as a precautionary measure. The Constitutional Court granted the requested precautionary measure and ordered the suspension of the procedure.

During the time period between the request for the suspension and the decision of the Constitutional Court, and after that decision, various members of the Government. They went so far as to say that "we are facing an attempt to undermine democracy, not only by the political right, but also by the right-wing judiciary, encouraged by the media", adding that "democracy will prevail in the face of the violation either by the conservative magistrates, the political right or the media that has attempted this unspeakable operation. Other members of the Spanish government and members of the parties supporting it insisted on disqualifying the judges' actions and comparing it to a coup.

As noted above, critical remarks by the Spanish government on the Judiciary are incompatible with due respect for judicial independence, as established by both the Council of Europe and the European Commission. Repeated condemnatory public statements by members of the government pose a systemic risk to democratic principles.

## B. Quality of justice

*(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section 2)*

Accessibility of courts (e.g. court/legal fees, legal aid, language)

*3000 character(s) maximum*

Resources of the judiciary (human/financial/material)

*(Material resources refer e.g. to court buildings and other facilities)*

*3000 character(s) maximum*

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

*3000 character(s) maximum*

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

*3000 character(s) maximum*

Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

*3000 character(s) maximum*

Geographical distribution and number of courts/jurisdictions ("judicial map") and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases

*3000 character(s) maximum*

## C. Efficiency of the justice system

*(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section 2)*

Length of proceedings

*3000 character(s) maximum*

Other - please specify

*3000 character(s) maximum*

## II. Anti-Corruption Framework

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Where previous specific reports, published in the framework of the review under the UN Convention against Corruption, of GRECO, and of the OECD address the issues below, please make a reference to the points you wish to bring to the Commission's attention in these documents, indicating any relevant updates, changes or measures introduced that have occurred since these documents were published.

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the anti-corruption framework (if applicable)

*3000 character(s) maximum*

### A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

List any changes as regards relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal, and technical resources as relevant), including the cooperation among domestic authorities. Indicate any relevant measure taken to effectively and timely cooperate with OLAF and EPPO (where applicable)

*3000 character(s) maximum*

Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption

*3000 character(s) maximum*

Information on the implementation of measures foreseen in the strategic anti-corruption framework (if applicable). If available, please provide relevant objectives and indicators

*3000 character(s) maximum*



## B. Prevention

Measures to enhance integrity in the public sector and their application (including as regards incompatibility rules, revolving doors, codes of conduct, ethics training). Please provide figures on their application

*3000 character(s) maximum*

General transparency of public decision-making, including rules on lobbying and their enforcement, asset disclosure rules and enforcement, gifts policy, transparency of political party financing

*3000 character(s) maximum*

Rules and measures to prevent conflict of interests in the public sector. Please specify the scope of their application (e.g. categories of officials concerned)

*3000 character(s) maximum*

Measures in place to ensure whistleblower protection and encourage reporting of corruption.

*3000 character(s) maximum*

List the sectors with high-risks of corruption in your Member State and list the relevant measures taken /envisaged for monitoring and preventing corruption and conflict of interest in these sectors (e.g. public procurement, healthcare, citizen investor schemes, risk or cases of corruption linked to the disbursement of EU funds, other), and, where applicable, list measures to prevent and address corruption committed by organised crime groups (e.g. to infiltrate the public sector)

*3000 character(s) maximum*

Any other relevant measures to prevent corruption in public and private sector

*3000 character(s) maximum*

## C. Repressive measures

Criminalisation, including the level of sanctions available by law, of corruption and related offences, including foreign bribery

*3000 character(s) maximum*

The most relevant aspect of this section is the reduction of time for sentences related to some types of embezzlement resulting from LO 14/2022 of December 22. In accordance with this reform of the Criminal Code, cases of illegal use of public money not involving personal gain are reduced from up to eight years imprisonment, and even in certain cases up to twelve years imprisonment, to a maximum prison sentence of four years (plus disqualification).

This reform resulted from an agreement between the government and the governing parties with those convicted for the events of 2017 in which public funds were allocated to the pursuit of Catalonia's secession. The agreement included revoking sedition (the crime for which the members of Catalan government participant in the attempt to repeal the Constitution in Catalonia were convicted), and significantly reducing sentences for embezzlement. Since the existing sentences had not effectively discouraged those convicted of sedition and embezzlement of public funds, the Spanish government sought to eliminate the first and significantly reduce the latter, thus facilitating that these crimes can be committed in the future with minimal consequences.

Data on investigation and application of sanctions for corruption offences, including for legal persons and high level and complex corruption cases and their transparency, including as regards to the implementation of EU funds

*(Please include, if available the number of (data since 2019): indictments; first instance convictions; first instance acquittals; final convictions; final acquittals; other outcomes (final) (i.e. excluding convictions and acquittals); cases adjudicated (final); imprisonment / custodial sentences through final convictions; suspended custodial sentences through final convictions; pending cases at the end of the reference year)*

3000 character(s) maximum

Potential obstacles to investigation and prosecution as well as to the effectiveness of criminal sanctions of high-level and complex corruption cases (e.g. political immunity regulation, procedural rules, statute of limitations, cross-border cooperation, pardoning)

3000 character(s) maximum

Information on effectiveness of non-criminal measures and of sanctions (e.g. recovery measures and administrative sanctions) on both public and private offenders

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

### III. Media Freedom and Pluralism

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Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding media freedom and pluralism (if applicable)

*3000 character(s) maximum*

## A. Media authorities and bodies

*(Cf. Article 30 of Directive 2018/1808)*

Measures taken to ensure the independence, enforcement powers and adequacy of resources (financial, human and technical) of media regulatory authorities and bodies

*3000 character(s) maximum*

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies

*3000 character(s) maximum*

Existence and functions of media councils or other self-regulatory bodies

*3000 character(s) maximum*

## B. Safeguards against government or political interference and transparency and concentration of media ownership

Measures taken to ensure the fair and transparent allocation of state advertising (including any rules regulating the matter)

*3000 character(s) maximum*

Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)
- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions
- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

3000 character(s) maximum

Transparency of media ownership and public availability of media ownership information, including on direct, indirect and beneficial owners, as well as any rules regulating the matter

## C. Framework for journalists' protection, transparency and access to documents

Rules and practices guaranteeing journalist's independence and safety, including as regards protection of journalistic sources and communications

3000 character(s) maximum

Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists

3000 character(s) maximum

Access to information and public documents (incl. transparency authorities where they exist, procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities, possible obstacles related to the classification of information)

3000 character(s) maximum

Lawsuits (incl. SLAPPs - strategic lawsuits against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive lawsuits

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

## IV. Other institutional issues related to checks and balances

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Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the system of checks and balances (if applicable)

## A. The process for preparing and enacting laws

Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'[1] /public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process

[1] *This includes also the consultation of social partners*

3000 character(s) maximum

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

3000 character(s) maximum

During 2022 there continued to be an excessive use of the Decree-Laws, both by the central Government and by some autonomous governments. In the case of the Spanish Government, 20 decree-laws were enacted, compared to 39 laws and 15 organic laws. Thus, 27% of the legal regulations enacted adopted the exceptional form of Decree-Laws.

As previously noted, the parliamentary groups supporting the government have frequently resorted to the means of bills introduced by parliamentary groups as an alternative to bills introduced by the the government. (See section 2 above). Formally, there is no impediment using the first as an alternative to the latter; however, resorting to the means of bills introduced by parliamentary groups prevents the text from being submitted with the mandatory reports required in the case of bills introduced by the government, such as those issued by the State Council or, in this case, by the CGPJ itself.

There is no doubt that the inspiration for these reforms is to be found in the government itself, which controls the work of its own parliamentary group and even that of the governing bodies of the Chambers. In this way, the legislative procedure is being manipulated to enact laws by reducing prior consultations and reports. We believe that such abusive use of bills introduced by parliamentary groups should be denounced and corrected with a view to the future.

In the case of the Autonomous Community of Catalonia, there has also been a frequent use of the Decree-Law, even exceeding that of the central government (17 decree-laws against 12 laws in the year 2022; that is, 58.7% of the norms of legal status have been decree-laws, thus turning exceptional regulation into the usual one). In Catalonia, the Decree Law has also been used as a means of subterfuge to avoid the enforcement of sentences that were not to the regional government's liking. This has been the case with Decree Law 6/2022 of May 30 that was passed with the deliberate purpose of preventing the enforcement of a sentence issued by the Superior Court of Justice of Catalonia. The purpose was made clear at the press conference where the Royal Decree was announced (<https://www.elimparcial.es/noticia/239421/nacional/el-gobierno-catalan-desobedece-al-tsjc-y-emite-un-decreto-para-incumplir-el-25-por-ciento-en-castellano.html>) and in statements made by various members of Parliament during the process of validation of the Decree Law in Parliament. The will to draft a law to prevent the execution of the sentence is explicit and clear, with total disregard for the requirement of execution of sentences which, as a sign of effective judicial protection,

is included both in the Spanish Constitution and in art. 6 of the European Convention on Human Rights and art. 47 of the Charter of Fundamental Rights of the European Union. We will return to this in point 53.

#### Regime for constitutional review of laws

3000 character(s) maximum

COVID-19: provide update on significant developments with regard to emergency regimes/measures in the context of the COVID-19 pandemic

- judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic
- oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic
- processes related to lessons learned/crisis preparedness in terms of the functioning of checks and balances

3000 character(s) maximum

## B. Independent authorities

Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

(Cf. the website of the European Court of Auditors: <https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>)

3000 character(s) maximum

Statistics/reports concerning the follow-up of recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years

3000 character(s) maximum

## C. Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)

3000 character(s) maximum

## Judicial review of administrative decisions:

- short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review)

3000 character(s) maximum

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## Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non-implementation

3000 character(s) maximum

As has already been reported in previous contributions to this Report, the Catalan regional administration maintains an attitude of constant defiance of court decisions. Without consequences for such behavior, this attitude has increased in 2022.

Faced with a final and fully binding ruling, as of January 2022, according to which the Catalan administration should include at least 25% of classes taught in Spanish in all Catalan public schools' curricula, the Catalan government still refused to comply. Furthermore, instructions were issued to schools asking them to disregard the court ruling and the inquiries of families requesting its execution. (The Court ruling dated back to December 16, 2020).

As the court orders could result in personal responsibilities for the political leaders, they resorted to extraordinary legislation (Decree Law) to prevent the regular judicial system from acting, thus forcing the latter to bring the case to the Constitutional Court, as indicated in section 46. In September 2022, the Catalan administration ordered that no school should teach classes in Spanish, thus disobeying previous court decisions concerning individual families.

Conflicts among the executive, legislative and judicial powers in the Autonomous Community are disturbing. The controversial ruling affects all students attending school in Catalonia (more than one million)

More than 1,600 families had requested the execution of the sentence requiring a minimum presence of Spanish in the education system. The Catalan government put all the mechanisms at its disposal, including the capacity to exceptionally issue legal provisions to stop the judicial resolution. The decision of the High Court of Justice of Catalonia remitting the case to the Constitutional Court shows the helplessness of the courts when faced with the active opposition to their work by the executive and legislative powers:

The will of the Government and Parliament of Catalonia is unequivocal that the purpose of both provisions [Law 8/2022 and Decree-Law 6/2022] is to block the application of the sentence handed down in these proceedings and, with it, the guarantee of the educational use of Castilian in constitutionally acceptable terms. In this context, an interpretation that would disregard such a self-evident fact would betray not only the genuine meaning of their provisions but also their purpose and, ultimately, the will of Parliament.

Respect for the rule of law means that court decisions must be obeyed and complied with in good faith and precludes the use of legislative power from being used to deprive citizens of the rights granted in a court sentence.

It must be emphasized that the rejection to comply with the Court's order was followed by a discrediting campaign against of the Courts by the political leaders of the Catalan government. The Catalan minister of

education described the court judgement forcing implementation of December, 2020, ruling as an "aberration".

## D. The enabling framework for civil society

Measures regarding the framework for civil society organisations and human rights defenders (e.g. legal framework and its application in practice incl. registration and dissolution rules)

*3000 character(s) maximum*

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or on-line –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.

*3000 character(s) maximum*

Organisation of financial support for civil society organisations and human rights defenders (e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding)

*3000 character(s) maximum*

Rules and practices on the participation of civil society organisations and human rights defenders to the decision-making process (e.g. measures related to dialogue between authorities and civil society, participation of civil society in policy development and decision-making, consultation, dialogues, etc.)

*3000 character(s) maximum*

## E. Initiatives to foster a rule of law culture

Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, contributions from civil society etc.)

*3000 character(s) maximum*

Other - please specify

*3000 character(s) maximum*



## **Contact**

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