

2023 Rule of Law Report - targeted stakeholder consultation

Fields marked with * are mandatory.

Introduction

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

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

Type of information

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

* 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

Oficina Antifrau de Catalunya (Anti-Fraud Office of Catalonia)

Main Areas of Work

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

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

500 character(s) maximum

The Anti-Fraud Office of Catalonia is a public-law institution created by Law 14/2008, of November 5th that prevents and investigates corruption in the public sector of Catalonia (www.antifrau.cat). This Law sets up the institution entrusting it with the prevention and investigation of potential cases of fraudulent use or allocation of public funds or any unlawful appropriation arising from acts that involve conflicts of interest.

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

* 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

Miguel Ángel

Surname

Gimeno Jubero

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

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

As mentioned in previous contributions from our institution, one of the most positive horizontal developments has been the approval of the EU Directive 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union Law.

On the date of the submission of these contributions, the transposition of the Directive has not yet taken place in Spain even though currently a Draft Bill fostered by the Government is being processed at the Spanish Parliament.

According to the Draft Bill (Additional provision no 5) the Government, within the next 18 months since the entry into force of the Law, shall approve a strategy against corruption which shall include, at least, an evaluation of the objectives established in the Law as well as the measures which are deemed necessary to mitigate the deficiencies encountered in this period of time.

The mandatory transposition of this instrument into national law of Member States has led to the creation of the Network of European Integrity and Whistleblowing Authorities (NEIWA) which currently gathers national and regional authorities from EU MS. This Network has become a forum of exchange of good practices in the protection of whistleblowers and a platform to share the current state of EU MS transposition. It also issues recommendations (Declarations) addressed to relevant stakeholders.

Another relevant horizontal development undergoing in Spain is the Draft Bill fostered by the Spanish Government (Proyecto de Ley) on the civil service of the Spanish Administration which can be consulted in the following link:

<https://www.hacienda.gob.es/es-ES/Normativa%20y%20doctrina/NormasEnTramitacion/Paginas/AudienciaAbiertas.aspx>

It must be highlighted the short period of time that this Draft has been published for public consultation during the holiday period (3 January-13 January 2023) considering the importance of the reforms it aims to undertake (horizontal career, evaluations on the performance of functions which may lead to the removal of the civil servant, selection, transformation of the National Institute of Public Administration into an Agency, etc.). Some experts have criticised the poor/lack of development of the professionalisation of the managerial civil service.

Another Draft Bill is also undergoing regarding the modification of the Law 53/1984 of 26th of December on incompatibilities of the personnel at the service of the Public Administrations and conflicts of interests.

At the regional level (Catalonia) it can be highlighted the public consultation on a draft bill regarding the elaboration of regulations towards its simplification.

Also the current process of creation of internal reporting channels for those entities who are under this obligation according to the EU Directive 2019/1937, process in which our institution has provided advice and support regarding the configuration of these channels.

Questions for contribution

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[1]. 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

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

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

Some valuable remarks regarding this topic can be found in the Evaluation Round of GRECO regarding Spain.

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

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

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

It has been the opinion of our institution that the transposition of the EU Directive on protection of reporting persons (Whistleblower Directive) should entail the modification of legislation currently in place (procedural law, criminal law, labour law, legal aid). Some of these modifications seems to be reflected in the Draft Bill currently undergoing in the Spanish Parliament but they seem insufficient in the light of the EU Directive. For instance, legal aid is introduced by the Final Provision no 1 of the Draft Bill and the modification of other regulations but they do not seem to respond to the ambition projected by the European Directive and may lead to inconsistencies and the lack of harmonisation of domestic legislation.

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

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

- One of the recommendations issued in the 2022 EU Report was to continue efforts to table legislation on lobbying, including the implementation of a mandatory public register of lobbyists.

On the 8.11.2022 the Spanish Government approved the Law Project on Transparency and Integrity of Lobbies: <https://www.hacienda.gob.es/Documentacion/Publico/GabineteMinistro/Notas%20Prensa/2022/CONSEJO-DE-MINISTROS/08-11-22-NP-LEY-TRANSPARENCIA-SOBRE-ACTIVIDAD-DE-LOS-GRUPOS-DE-INTERES.pdf>

The law has not been passed up to the date of the submission of this contribution (applicable to the Spanish Administration even though some provisions could be applicable to the autonomous communities).

However, some autonomous communities such as Catalonia have already in place regulations on lobbying activity. The Law 19/2014 on transparency, access of public information and good governance provides a definition of interest groups, determining that some of its provisions are applicable to those groups. The transparency Portal of the Administration of the Catalan Government (Generalitat) must include this Register. There is also the obligation to actively publish information regarding the approval of regulations which must also include the participation of these groups, if applicable. Art. 47 of this Law establishes who must be included in this Register. The Law Decree 1/2017 of 14 of february is also in place which created and regulates the groups of interest register in Catalonia.

- Another recommendation of the 2022 EU Rule of Law Report on Spain was to pursue work to strengthen access to information, in particular via revision of the Law on Official Secrets. A public consultation regarding this modification was launched during August 2022 for a short period of time.

This Draft Bill has raised some concerns by significant sectors in Spain regarding some aspects included: the duration of deadlines, no deadlines for declassifying information, retrospective application, etc. Results of the parliamentary debate, and therefore the passed legislation, are yet to be seen. One key aspect of this Draft Bill will be the concept of classified information since the Draft Bill on protection of whistleblowers excludes of its application the informations affecting classified (or secret) information (art. 2.4 of the Draft). Finally, it must be highlighted that a modification of the Criminal Code regarding corruption related crimes have been passed during 2022 which will likely entail the revision of judicial decisions.

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

The existing anti-corruption institutions of control and prevention in corruption have established a stable network to share good practices and anti-corruption policies: <https://www.antifrau.cat/es/1274-las-agencias-anticorrupcion-existent-en-espana-crean-una-redestable-para-compartir-politicas-anticorrupcion.html>

The transposition of the EU Directive 2019/1937 on protection of reporting persons will entail the designation, as competent authorities, of several institutions in the different autonomous communities in Spain. This designation entails the assumption of new competencies regarding protection of whistleblowers by competent authorities that will necessarily need new resources to be allocated to them for developing those functions (sanctioning powers, creation of new units for protection of whistleblowers, adaptation of reporting channels, etc.). Also a coordination system will have to be put in place to gather data of these authorities to comply with the obligations set up by the EU Directive to provide reports and relevant to the EU Commission (art.27 EU Directive).

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

3000 character(s) maximum

One example at the regional level (Catalonia) regarding the safeguards for the functional independence of these authorities is the selection process of their Head/Director/President (appointment made by the Parliament among candidates with significant and relevant experience in the area in which the authority is competent) for a mandate that does not coincide with the length of a legislature or parliamentary term. Also the causes for his/her removal shall be reflected in the specific law as a *numerus clausus*. Sufficient resources must be allocated to the authority and the personnel must be provided with a status guaranteeing its autonomy (non removal). This is the case, for instance, of the Anti-Fraud Office of Catalonia (created by Law 14/2008, of November 5th and its Rules of Procedure).

In a set of 45 recommendations addressed by the Office to the Catalan Government it was highlighted the importance to strengthen the independence of constitutional or equivalent regional bodies.

Some academic sectors have raised concerns regarding the penetration of political parties in the appointment of the Heads of key public institutions, disregarding in occasions the expertise and the necessary professional profile these persons should have.

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

As reflected in past contributions to this survey, Spain does not currently count with an anti-corruption strategy even though, as mentioned in this contribution, a commitment has been made in the Draft Bill transposing the Directive. It is yet to be seen how ambitious this plan will be.

Some legislation is passed in this area, normally as a reaction to evaluations of international organisations (GRECO, United Nations, etc.).

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

As mentioned before the Spanish Government has fostered a Draft Bill aiming to regulate the incompatibilities of the personnel at the service of public administrations, which according to the assessment report for the review of the IV Open Government Plan has been partially executed (even though no record of recent developments are noted).

Currently, incompatibilities of public officials are foreseen in several regulations.

It can be highlighted that the operation of the current system of incompatibilities is based on the individual responsibility of public servants, who are obliged, for instance to apply for authorization to perform a compatible activity. Therefore, if they do not fulfil this obligation, the system remains entirely dependent on the efficiency of the control mechanisms.

At the regional level, some recommendations have been issued in this regard by the Anti-Fraud Office of Catalonia in his report on managing conflicts of interests in the public sector of Catalonia published in 2016 (such as proactive role of immediate superiors of identifying and managing conflicts of interests, access to tax information, request of accreditation of the compatibility by the second employer, etc.). The report can be consulted in the following link: <https://www.parlament.cat/document/cataleg/236205.pdf>

In 2016, the Anti-Fraud Office issued a guidance on how to elaborate an ethics code in a public institution.

https://www.antifrau.cat/sites/default/files/noticies/cnv1_2015.pdf

In 2019 an agreement was signed by the Anti-Fraud Office of Catalonia with the Catalan Association of Municipalities to foster an ethics culture between catalan local administrations through the elaboration of autoevaluation guides and integrity plans in the framework of the Next Generation EU Funds. A Plan for Anti-Fraud measures for the management of EU Next Generation Funds (Guide for its elaboration and tools) was also issued by the Anti-Fraud Office of Catalonia in this context:<https://www.antifrau.cat/es/guia-elaborar-plan-medidas-antifraude>

On the 15.01.2020 the Catalan Government approved the strategy for fighting corruption and strengthening public integrity which translated into 25 actions to be implemented for a period of 2 years. For now, no continuity of this initiative is foreseen and this interruption causes the impossibility to assess the impact of these actions.

Finally, in the field of ethics, the Anti-Fraud Office of Catalonia has launched in October 2022 a service (Dialectic) oriented to civil servants which offers self-training and examples of ethical dilemmas and a service to accompany the civil servant in the doubts, worries or problems of ethical nature which may arise during its daily activity. More information can be found in the following link: <https://www.antifrau.cat/es/dialectic>

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

Regarding transparency, since the approval of the Spanish law on transparency in 2013 (Spanish Law) and the Catalan Law 19/2014, of December 29th and the approval of the Decree 8/2021, of February 9th, some remarks can be noted:

- Some of the independent supervisory authorities have not been renovated regarding its members and are lacking resources, receiving complaints involving entities obliged to disclose information by the Law.
- Some issues having been noted by the supervisory authorities regarding the difficulties on the execution of the decisions issued regarding complaints on access to public information by these authorities.

Regarding asset disclosures, this requirement is foreseen in several regulations. The obligation to declare interests mainly affects elected representatives and political appointees and excludes the vast majority of public employees. Currently public employees have no obligation to submit declarations of interests. In the above mentioned study carried out by the Anti-Fraud Office of Catalonia, it was found that only those in political appointments are obliged to declare interests, whereas other public servants are not. The time of submission

is inconsistent across the groups and certain interests do not have to be declared. Regarding lobbying, the risk of undue influence in public policy (capture) is not foreign to any country. Catalonia has been pioneer within Spain to approach a regulation on lobbying initially through the above mentioned Law on transparency, access to public information and good governance. Recommendations have been issued regarding this regulation in the sense that a real publicity of public agendas and the activity of lobby must be ensured. Also the agenda must include any contact (meetings, phone calls, etc.), as well as provide publicity on the public funds received by lobbies as well as disclose the personnel at their service (if former civil servants are currently working for them). Public decision tracing should also be necessary, including contacts with lobbies. The Catalan Law on transparency foresees also obligations on active publicity regarding the participation of interest groups in the elaboration of regulations.

Finally, the recently approved Decree on transparency approved in Catalonia established that agenda's of high-ranking officials shall be published regarding the contacts and the meetings maintained with lobbies; this information must contain the date of the meeting, the name of the lobby, the persons who acts on its behalf and the object of the meeting in a precise manner so that it allows for the knowledge of its main content.

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

In this point, it must be highlighted that the measures and rules to prevent conflicts of interests in the public sector that have been passed recently are designed, exclusively, towards the execution of EU Next Generation Funds (for instance the creation of a mechanism to follow-up in a systematic and automated manner the risk of execution of these funds). These mechanisms (and others) should be made extensible to other public funds/expenditures and situations beyond these funds.

As mentioned before, in this regard, the Anti-Fraud Office of Catalonia published a report in 2016, unique within its category in Spain, on the management of conflicts of interest in the public sector of Catalonia. In this report, several detection and management tools were presented through a Toolkit and some recommendations were addressed to the relevant authorities, regardless of their regulatory or executive nature, in order to carry out a comprehensive review of the system for managing conflicts of interest, taking as a starting point a risk analysis for each group of public servants in the bodies and organisations which make up the Catalan public

sector. Since its publication, in the past years, there has been no improvement or implementation of the recommendations issued in that 2016 report.

The publication of this report (in English) can be consulted in the following link: <https://www.parlament.cat/document/cataleg/236205.pdf>

Members of the Training Unit of the Anti-Fraud Office of Catalonia conducted a training on this topic at the National Institute of Public Administration (INAP).

The Anti-Fraud Office of Catalonia plans to update some recommendations and carry out some follow-up regarding the recommendations issued in the 2016 report.

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

3000 character(s) maximum

As mentioned in previous contributions, before the entry into force of the EU Directive 2019/1937 on the protection of persons who report breaches of Union Law, Spain had scarce sectorial regulation on protection of whistleblowers.

Some regional authorities entrusted with the prevention and control of corruption, such as the Anti-Fraud Office of Catalonia, foresee in their regulations specific provisions on the protection of whistleblowers (providing of assistance and advise to persons who complain or report in good faith). The Office has also set up an anonymous exchange system with the reporting person to guarantee its anonymity when reporting to the Office.

As mentioned before, the Anti-Fraud Office is called to be likely designated as a competent authority according to the text of the Draft Bill.

The entry into force of the transposition Law will entail a review of internal procedures and systems into place in the Office (and likely other competent authorities in Spain) in order to align with the obligations and duties foreseen in the legislation. Also specific training will have to be provided to the personnel in charge of managing reporting channels (for instance, on data protection regulations).

A set of new functions (impartial and free advise, accompaniment of the reporting persons, follow-up to the report and active measures of protection) will have to be put into place. General training to civil servants and citizens will also have to be provided on the conditions to be considered a reporting person according to the legislation and on the measures that can be requested for protection in front of reprisals.

It is yet to be seen how the transposition will be made and the interpretation that will be given by Courts in application of the transposed legislation.

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

During the experience gathered by the Anti-Fraud Office of Catalonia during its more than ten years of existence, the institution has been able to identify risk areas most exposed to corruption, fraud and to other irregularities (some of which are reflected in the Annual Report that the institution submits to the Parliament of Catalonia). In this sense, the areas that have been more recurrent and identified by the Investigations Department of the Office are:

- Public Procurement, conflicts of interest and incompatibilities, urban planning, subsidies and others.

Adopting a methodology based on risk analysis and key factors can help to better understand what are the dynamics of each group risk and to adopt, upon evaluation, those preventive measures tending to avoid risk from happening as well as making a planification of those contingent actions for when the damage cannot be voided and revert it, or at least mitigate its consequences.

It can also be highlighted the project that the Anti-Fraud Office of Catalonia undertook on risks for integrity in public procurement which counted with two phases (first phase: detection and analysis resulting in the diagnosis of the main risks in public procurement; second phase: issue of an interactive guide to manage integrity risks in public procurement). A comprehensive list of more than 80 factors creating, enhancing or perpetuating those risks (organisational factors, human factors, procedural factors, leadership and cultural factors) have also been issued in the framework of this project.

This project and its outputs can be consulted in the following link: <https://www.antifrau.cat/es/prevencion/areas-estudio/contratacion-publica>

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

3000 character(s) maximum

In other contributions, the Anti-Fraud Office of Catalonia highlighted the need of issuing public policies contemplating a comprehensive strategy to fight and prevent corruption.

In this sense, the institution issued a set of 45 recommendations to the Catalan Government on 15 different areas (transparency, access to public information, institutional integrity, control bodies, conflicts of interests, civil service, public procurement, subsidies, town planning, political parties, judiciary, media, lobbying, whistleblower protection, education and implication of civil society).

<https://www.antifrau.cat/ca/antifrau-ha-elaborat-document-recomanacions-formi-part-estrategia-lluïta-contracorrupcio-catalunya.html>

The table with the specific 45 measures can be found here: <https://www.antifrau.cat/sites/default/files/Documents/Quefem/45-recomanacions-oficina-antifrau-politica-integritat-catalunya.pdf>

Finally, a reference must be made to a pioneer measure in Spain with the implementation of a perception Barometer, which aims to capture the perception of corruption; with the obtained data, it is possible to finetune on the adoption of preventive policies.

The recently issued perception Barometer 2022 can be consulted in the following link: <https://www.antifrau.cat/es/aumenta-percepcion-corrupcion-ciudadania-cataluna-situa-en-80-%25-personas-encuestadas-creen-que-hay-mucha-bastante-corrupcion>

This 2022 findings are a raise in the perception of corruption by citizens in Catalonia (80,2 % in 2022 vs. 67% in 2020). A raise in the tolerance of citizens towards corruption was also detected (for instance, 21,9% does not perceive corruption in the fact that a company pays in order to obtain a public contract or 22% does not care if a person takes advantage of his/her public office for personal benefit).

C. Repressive measures

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

3000 character(s) maximum

As mentioned before, on 23.12.2022 a reform of the Spanish Criminal Code has been recently conducted which is reflected in the Spanish Official Gazette: <https://www.boe.es/boe/dias/2022/12/23/pdfs/BOE-A-2022-21800.pdf>

This reform affects corruption related offences, namely it has criminalised for the first time illicit enrichment (which was already recommended by the UNCAC) in its article 438 bis.

The article is applicable to "the authority" leaving outside its application civil servants and criminalises the fact that during the performance of its functions or within the next 5 years, the authority obtains an increase of their wealth or a cancellation of debts and obligations for a value higher than 250.000 euros than their accredited income and denies openly to comply with the requirements of competent authorities aiming to verify their justification. The legislator sanctions this conduct with deprivation of liberty from 6 months until 3 years, penalty up to three times the benefit obtained and a prohibition for public employment and prohibition of the right to stand as an elected candidate from 2 to 7 years.

On the other hand, a modification was also introduced regarding embezzlement or misappropriation introducing three levels of misappropriation:

- the appropriation of funds by the perpetrator or his/her consent by third persons (art. 432);
- The temporary use of public goods without the will of appropriation (*animus rem sibi habendi*) and its subsequent reintegration (art.432 bis) up to a deprivation of liberty from 6 months to three years;
- Budgetary deviation or of difficult justification (art. 433).

This last modification of this criminal offences has raised some concerns regarding, in one hand, the lack of political reflection in this key area of criminal policy, and on the other one , the possibility that this will be linked to the possibility of reducing current penalties according to the principle of application of the most favourable sanction for condemned persons.

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

Some relevant statistics can be found in the National Statistics Institute (INE) regarding convictions by the type of crime; however data in investigation and sanctions for corruption offences is not gathered centrally or regionally and the consultation must be made directly to external control bodies (via website or annual report) to obtain some data on the number of reports, sanctions, etc.

The National Service of Anti-Fraud Coordination also counts with their own data base with relevant legislation and reports.

This service can receive reports in the misuse of EU funds regarding projects and operations financed by the European Union.

Finally, some relevant data on this issue can also be find in the reports issued by the Supervisory reports of the Independent Office for the Regulation and Supervision of public contracts (OIRESCON).

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

A modification regarding the Spanish Criminal Procedural Code is undergoing but its entry into force is not foreseeable in the short term.

III. Media Freedom and Pluralism

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

In this regards, some proposals of political parties in Catalonia have been in the line of the creation of a Parliamentary Commission that will validate, prior to its allocation, grants and subsidies destined to the media.

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

The role of journalist will be key in the transposition of the EU Directive 2019/1937 regarding the protection of their sources, meaning that they will represent another layer of protection for whistleblowers, when they will be in need to make a public disclosure to the press.

In this regard, during the parliamentary processing of the Draft Bill on protection of whistleblowers in Spain a new Draft Bill is undergoing regarding the protection of the professional secret of journalists which seems to aim to cover this aspect. The Draft Bill counts currently with 7 articles establishing that no journalist shall be pursued for protecting the identity of their sources and extends this protection to the director of the media.

The identity shall be only revealed to a criminal court, upon request, if necessary.

It is yet to be seen how the transposed law will cover the protection (so far, the current draft bill does not

seem to deploy any protection measure for journalists against reprisals and only seems to cover the revelation to the journalist of "true information" which seems to leave outside information with the reasonable belief of its truth which is actually covered by the EU Directive).

Finally, one of the proposed modifications submitted to political groups in the Spanish Congress by the Office was to sanction "abusive procedures" launched against whistleblowers (which could be extendable to journalists), in line also with the published minutes of the group of experts on the EU Directive.

In the current developments of the Draft Bill this proposal seems not be included, despite its importance.

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

One of the main concerns raised by journalists in the field of access to public information and public documents is the lenght in obtaining the information (in general terms, according to the applicable legislation, provides for one month to issue a decision by the Public authority in posession of the information which can be extended if the request for public information is complex and an additional 30 days period to provide the information. Even though journalist must count with what has been called " a reinforced right to access of public information" this sometimes does not materialise in the obtention of information.

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

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)

3000 character(s) maximum

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

As mentioned in previous contributions, new provisions were approved at the regional level in Catalonia via the Decree 8/2021, of February 9th regarding the regulation procedures in process of elaboration; as an example, we describe some of the new provisions in this regard:

- During all the regulatory procedure the current status of the regulation must be stated.
- In case of a previous public consultation, the previous assessment, the contributions received and the assessment document of this contribution must be published.
- The initial text of the regulation, the reports and the preliminary legal report.
- If reports are requested they must be published together with the text proposal object of the report, the issued reports and the assessment document.
- It must be specially published the information regarding the participation in the regulatory elaboration procedure of the persons who have the condition of group of interests or lobbies, if appropriate, in order to know the identity of the interest group, the date of their participation, the contact or influence and the description of their contributions to the text of the legislation and its assessment.

Also, a Draft Bill is currently undergoing also at the regional level (Catalonia) on the simplification of elaboration of regulations.

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

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

As mentioned in previous contributions, the Anti-Fraud Office of Catalonia issued in April 2020 a set of reminders, recommendations and resources to promote integrity under the title “Risks prevention in the exercise of public authority during COVID-19 crisis”. The recommendations aimed to increase this trust reinforcing the ethical commitment, transparency, control and at a later stage, the assessment and accountability of public entities during this crisis. The recommendations were addressed (and still are) to public authorities to explain already in real time what do they do, for what reasons and how do they do it. They aim to support internal and external control bodies so that they can carry out their roles in better conditions and in a more coordinated manner. And eventually, when the emergency sees its end, they encourage the public sector to commit carrying out an independent assessment on how the COVID-19 crisis has been managed.

The document can be access in the following link: <https://www.antifrau.cat/sites/default/files/Documents/Quefem/Recommendations-risks-prevention-exercise-public-authority-during-COVID-19-crisis.pdf>

The document was presented in several international forums, such as in the OLAF workshop in 2020 EURegioWeek.

Some rulings have been passed regarding the constitutionality of some of the measures adopted in the framework of the declaration by the Spanish Government of the emergency state during the COVID-19 crisis.

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

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

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

As mentioned in previous contributions, regarding the implication of civil society in the fight against corruption, a strategy to fight against corruption must involve civil society as a whole, according the mandate of the United Nations Convention against Corruption. Civil society has a key role as an added mechanism to institutionalised controls and its participation in the definition and execution of public policies related to the fight against corruption must be guaranteed. The Anti-Fraud Office of Catalonia has recommended an agreement derived from an open, critic and participative process based in the cooperation of several elements of society, judicial and control institutions, political parties, economic and social operators, media and civil society. This process should end with the configuration of a contract of all society in the fostering of ethical conduct, transparency and the defense of the general interest. In this line, the document of the Social Agreement or Pact against corruption formalised in the Parliament of Catalonia on the 9.12.2015 already stated this idea.

This recommendation is included in the recommendations issued by the Anti-Fraud Office of Catalonia towards an integrity policy in Catalonia: <https://www.antifrau.cat/sites/default/files/Documents/Quefem/Propostes-oficina-antifrau-politica-integritat-catalunya.pdf>

Furthermore, the Parliament of Catalonia hosted the 1rst. Summit against Corruption which concluded with a working plan to implement measures to fight structural causes. This Summit was fostered by civil society with the support of the Anti-Fraud Office of Catalonia.

A second summit was organised in the Catalan Parliament in July 2022 by citizen entities, political parties, and control authorities with the aim of:

- Making an assessment of the agreements adopted in the first Summit and deciding which of those agreements must remain into force;
- Prioritise new agreements allowing to advance towards the fight against the structural causes of corruption;
- Updating the structure of the Commission which must follow-up the working plan approved in the framework of the Summit.

Among the decisions undertaken, it can be highlighted the need to reform the laws on transparency and access to public information for a more simple and impartial sanctionning procedure, regulate the need for all public institutions to count with integrity plans with the assessment of the Anti-Fraud Office of Catalonia.

More information regarding the summit can be found at the following link:

<https://contralacorrupcio.cat/ii-cimera-aprova-noves-mesures-contra-corrupcio/>

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

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

