

# 2021 Rule of Law Report - targeted stakeholder consultation

Fields marked with \* are mandatory.

## Introduction

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The first annual Rule of Law Report was published on 30 September 2020. It is the core of the new European rule of law mechanism, which acts as a preventive tool, deepening multilateral dialogue and joint awareness of rule of law issues.

In the preparation of the first annual Rule of Law Report, the Commission relied on a diversity of relevant sources, including from Member States, country visits, and stakeholders' contributions collected through a targeted stakeholder consultation[1]. The information provided has informed the Member State-specific assessments of the Commission in preparing the Report. Building on the positive experience from the first Rule of Law Report, the Commission is inviting stakeholders to provide written contributions for the preparation of the 2021 Rule of Law Report through this targeted consultation.

The contributions should cover in particular (1) feedback and developments with regard to the points raised in the country chapters of the 2020 Rule of Law Report and (2) any other significant developments since January 2020[2] falling under the 'type of information' outlined in next section. This would also include significant rule of law developments in relation to the COVID-19 pandemic falling under the scope of the four pillars covered by the report.

The input should be short and concise, if possible in English, 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.

Please provide your contribution by 8 March. Should you have any requests for clarifications, you can contact the Commission at the following email address: [rule-of-law-network@ec.europa.eu](mailto:rule-of-law-network@ec.europa.eu).

[1] [https://ec.europa.eu/info/publications/2020-rule-law-report-targeted-stakeholder-consultation\\_en](https://ec.europa.eu/info/publications/2020-rule-law-report-targeted-stakeholder-consultation_en)

[2] Unless the information was already submitted in the consultation for the 2020 Rule of Law Report.

## 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 and nominations for high-level positions (e.g. Supreme Court, Constitutional Court, Council for the Judiciary, heads of independent authorities included in the scope of the request for input<sup>[1]</sup>)

### **Any other relevant developments**

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

Please include, where relevant, information related to measures taken in the context of the COVID-19 pandemic under the relevant topics.

If there are no changes, it is sufficient to indicate this and the information covered in the 2020 Rule of Law Report should not be repeated.

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

## About you

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\* I am giving my contribution as

Judicial association or network

\* Organisation name

*250 character(s) maximum*

[REDACTED]

\* 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*

[REDACTED]

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

[REDACTED]

\* Country of origin

Please add the country of origin of your organisation

Spain

\* First Name

[REDACTED]

\* Surname

[REDACTED]

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



### \* 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](#).

## 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

[overview topics for contribution.pdf](#)

Please provide any relevant information on horizontal developments here

*5000 character(s) maximum*

One of the factors that most influences public distrust in the functioning of the criminal justice system is its image of politicization, which is why any action in the common area aimed at strengthening the autonomy and independence of the Public Prosecutor's Office is a priority, but this requires that the Government does not appoint the Attorney General of the State, that the institution enjoys budgetary and management autonomy, as well as the attribution to the Public Prosecutor's Office of the investigation with parallel measures through appropriate procedural reforms that tend to streamline the administration of justice. At the European level, implementation of the European Public Prosecutor's Office, creation of a European judicial police, tendency to standardize procedural and substantive rules in the European area, reinforcement of the instruments of mutual recognition in all areas, the need for international legal cooperation to reside exclusively with judicial authorities, dispensing with the intervention of the executives of the different states in jurisdictional decision-making.

## Questions on developments in Member States

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The following four pillars are sub-divided into topics and sub-topics. You are invited to provide concrete information on significant developments, focusing primarily on developments since January 2020, for each of the sub-topics which are relevant for your work. Please feel free to provide a link to and reference relevant legislation/documents. Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices (as outlined under "type of information").

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.

Please note that, due to the size of the questionnaire, certain elements may be slow to load, especially if selecting many Member States at once. In such cases, it is recommended to wait a few minutes to let the page load correctly.

### Member States covered in contribution [several choices possible]

Please select all Member States for which you wish to contribute information. For each Member State, a separate template for providing information will open. This may take several minutes to fully load.

- ☐ 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

## Independence

### Appointment and selection of judges, prosecutors and court presidents

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

*3000 character(s) maximum*

Access to the judicial and prosecutorial career is based on the principles of merit and capacity. The selection process, carried out by a selection commission, guarantees, with objectivity and transparency, equal access to all citizens, by passing a public competitive examination (a multiple-choice exam and two oral exams) and a subsequent theoretical and practical selection course held at the Centre for Legal Studies (Prosecutors) or Judicial School (Judges). In the case of judges, it is also possible to become a Magistrate or Magistrate of the TS Jurists of recognized competence in the cases, form and proportion established by law. Training in the case of Prosecutors, both initial and continuous, does not take place in an institution dependent on the Public Prosecutor's Office, but rather on the Executive Branch. Once entry into the careers takes place, each of them follows separate paths. It would be advisable to promote joint initial training for both careers and facilitate transfer between them. The selection of the most relevant positions, both in the judicial and prosecutorial careers, is discretionary and does not always comply with the standards and is not always based on the principles of transparency, equality, merit and capacity. The regulation of the prosecutorial and judicial careers requires modifications that could be adapted in the event of a change in the procedural model and to rationalize the entry and movement in the careers, in accordance with the existing models in the closest legal environments. Political interference can be seen in the power attributed to the autonomous parliaments to appoint Magistrates of the High Courts of Justice; in the appointment of a certain number of members of the CGPJ; the proposal of the appointment of the State Attorney General by the Government without real control of the suitability of the candidate and without establishing broad causes of ineligibility such as the absence of the appearance of neutrality in the chosen candidate, the dedication of the candidate to the exercise of politics, etc

### Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

*3000 character(s) maximum*

Both prosecutors and judges, being part of the judicial and prosecutorial careers respectively, enjoy stability in their jobs and in their assignments, and may only be dismissed or suspended for committing criminal acts or disciplinary infractions; however, there is no possibility of transfer between the judicial career and the prosecutorial career

### Promotion of judges and prosecutors

*3000 character(s) maximum*

By seniority in the ranks through regulated competitions, although positions of responsibility are by appointment in the case of the Prosecutorial Career by the State Attorney General after hearing the opinion of the Prosecutorial Council. The opinion of the Prosecutorial Council is not binding on the State Prosecutor General. It would be advisable to establish, as a counterbalance to the power of the Attorney General, certain quotas or favourable votes of the members of the Fiscal Council for the candidate finally appointed. The Prosecutorial Council is a body of the prosecutorial career, made up of 12 members, 9 democratically elected by the career in open lists and 3 ex officio members, to advise the Attorney General on organizational matters and on the appointment of discretionary positions (prosecutors of the first or highest category; chief prosecutors of the different superior, provincial or area prosecutor's offices..) The Prosecutorial Council is chaired by the Attorney General and at present has little power to limit the internal power of the Attorney General.

#### Allocation of cases in courts

*3000 character(s) maximum*

By turn of distribution. Specialized courts and tribunals exist for certain matters

Independence (including composition and nomination 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*

To strengthen public confidence in the criminal justice system, the governing bodies of judges and the Public Prosecutor's Office must be independent. The current system of election of members of the CGPJ does not contribute to this, since it mimics the balance of parliamentary forces that permeate relevant decisions on judicial appointments. Thus, of the 20 members of the CGPJ 12 are judges and 8 are jurists, the latter elected by Congress and the Senate. However, the 12 judges are not elected directly by the judges themselves but are proposed by the professional associations and subsequently endorsed or vetoed by the political parties with the largest parliamentary representation. This system is denounced by judges and most judicial associations. On the other hand, citizen confidence in Justice is not reinforced by the traditional governmental linkage of the figure of the Attorney General of the State derived from its appointment system at the proposal of the Executive, the duration of its mandate coinciding with that of the government and its cessation when the government ceases and the absence of any real examination of the suitability of the candidate or prohibitions to prevent those who in the previous 10 years have exercised functions in the government or in the parliament from directing the Prosecutor's Office

Therefore, the depoliticization of Justice should be one of the main objectives that should focus the public agenda in the coming years

There is a perception in Spain of the interference of the political powers in justice and there is talk of the politicization of justice. The image of the CGPJ is marked by the appearance of political influence. Spanish judges demand greater participation in the election of the members of the CGPJ. The paradigm that is imposed in the States of our legal environments tends towards the functional independence of the Public Prosecutor's Office with respect to the Executive Power. This step has not been taken definitively in Spain. The appointment of the State Attorney General is made by the government and, in any case, his or her dismissal occurs automatically at the end of the term of office of the government that appointed him or her. The Law of the Organic Statute of the Public Prosecutor's Office does not adequately regulate communications with the government. However, European standards require that such communications be in writing. The Prosecutorial Council is a purely democratic body in which 9 of its 12 members are elected by direct universal suffrage, with open lists and a majority system, in a nominative manner by the prosecutors; however, its decisions are not usually binding on relevant issues (e.g., appointments to the State Attorney General). The Organic Statute of the Public Prosecutor's Office does not regulate its functioning in sufficient detail. Nor does it clearly detail the functions of the Attorney General and their delegation to other prosecutors, nor does it establi

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

*3000 character(s) maximum*

The disciplinary regime must be updated, as well as the incompatibilities and prohibitions. Prosecutors or Judges may return to the exercise of their functions, even if they have exercised political functions. A "freezing" period should be considered before reinstatement, distinguishing between political posts (Ministers, Deputies, Senators) and other technical or administrative posts. In any case, a modification of the regime of abstentions and recusals of prosecutors and judges after their time in politics is necessary. In 2020, the Code of Ethics for the Prosecutorial Career was approved.

Remuneration/bonuses for judges and prosecutors

*3000 character(s) maximum*



The salaries of prosecutors and judges are specifically regulated differently from those of civil servants, based on a salary and three years of service (seniority) and allowances based on assignment, category, and productivity. These allowances should be reviewed for updating; the productivity allowance is unsatisfactory as it is not a true reflection of the work activity for several reasons, among them the lack of study of the actual workload of the prosecutor, as well as the system of distribution of the amounts applied to this concept. To this must be added the payment of the on-call service that is performed, with different payments depending on the type of on-call, with a total of 13 different on-call groups depending on the number of Courts existing in the population, as well as the subject matter of the on-call. It so happens that in certain locations the hourly rate for on-call work by the prosecutor is only 57 cents per hour. In short, there is a significant variation in remuneration in the career from the beginning to the top of the career.

## Independence/autonomy of the prosecution service

*3000 character(s) maximum*

Since opinion 9 (2104) of the Advisory Committee of Public Prosecutors, the various documents of the Council of Europe have extended the need to ensure that prosecutors act independently of political powers. Therefore the following actions are required in our opinion: Appointment of the State Attorney General detached from the Government, there should not be appointments such as that of the current State Attorney General who assumes the position after assuming political functions of the highest level as Minister of Justice of the Government of Spain and Deputy for the party in Government (PSOE) for which she conducted a dedicated election campaign a few dates before her subsequent election to the current position, thereby compromising the appearance of impartiality of the Public Prosecutor's Office; the dismissal of the Attorney General should not take place with the dismissal of the government that appointed her, it being desirable that the term of office of the Attorney General be for a period of five years in order to eliminate the coincidence of terms of office; communications with the Government should be in writing; suppression of the possible intervention of the FGE in the Council of Ministers; reinforcement of the functional scope of the Fiscal Council as a body of democratic representation of the prosecutors in order to act as a counterweight to the power of the FGE; improvement of the guarantees of the prosecutors in the exercise of their profession, reform of the Statute of the Public Prosecutor's Office and of the mechanisms to guarantee the autonomy of each of the prosecutors against illegal or improper orders from their superiors; organizational flexibility of the institution; attribution of regulatory power to the Attorney General's Office; budgetary management capacity; development of its own Communications Office; budgetary autonomy; initial and continuous training with its own bodies by and for prosecutors without any dependence on Executive bodies. Today, more than ever, it is essential to provide the prosecutor with a new Statute that shields him/her from political interference or pressure, since the government has prepared a draft bill to assign the investigation of crimes to the prosecutor.

A new Statute of Judicial Police should be legislated with organic and functional dependence on the Prosecutor and not on the Ministry of the Interior. Promote a system of organic dependence on the Public Prosecutor's Office, to overcome the problems arising from governmental dependence, lack of coordination and the consequent lack of real control of investigations, especially in a scenario of procedural reform. As a transitory solution: reinforcement of the system of Attached Units, with a prior binding report from the Chief Prosecutors on the assignment and/or dismissal of the members of the Units.

## 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*

To depoliticize the judiciary, the following is required: Recovery of the constitutional design: the members of the judges' management body - General Council of the Judiciary - of judicial origin must be elected by the judges themselves. A majority system is proposed, with open lists, a single national constituency, and with the introduction of correction factors to promote adequate representation (e.g., that only a maximum of 8 candidates can be voted for)

## 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 "type of information".)

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

*3000 character(s) maximum*

It is based on justice accessible to all and free legal assistance to those who prove they do not have the means to satisfy their effective judicial protection, provided they can prove it according to established scales.

Resources of the judiciary (human/financial/material)

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

*3000 character(s) maximum*

First it is necessary to contextualize the Spanish reality as an autonomous State in accordance with art. 137 of the Constitution. Spain is territorially divided into 17 Autonomous Communities and two Autonomous Cities, with different degrees of decentralized competences, among other matters in the Administration of Justice. The bodies of Judges, prosecutors and legal officers of the Administration of Justice are of a national /state nature. Although the civil servants of the Administration of Justice form part of a state corps, some Autonomous Regions have transferred competences in matters of remuneration and work situations. In order to determine the increase in the human resources of prosecutors and judges, a study should be made of the number of judges and prosecutors, the number of the population and litigiousness and the real workload, in order to adapt the staff to the real needs. Next, a comparative study of workload in relation to the rest of the countries of the European Union should be carried out

A study of costs and benefits in the administration of justice is also required in order to evaluate improvements in uneconomic aspects; a study should be carried out to obtain economic results in the administration of justice, taking into account the amounts obtained from the payment of fines, recovery of assets and satisfaction of civil liability (compensation) to the State

In terms of material resources, buildings, headquarters, procedural management systems, matters transferred to most of the Autonomous Regions, there are imbalances between the territories since investment in these depends on the priorities of each autonomous region in relation to the general expenses of their corresponding budgets; hence there are Communities in which they have opted to invest in computerization by creating their own procedural management system and others in which they are still in an initial phase of implementation. Currently there are different systems that are not compatible with each other

A common computerization of the administration of justice is essential, independently of territories, through modern and communicable systems that allow teleworking. To create a true criminal judicial file; it is necessary to favor a comfortable access to the different databases at the service of justice; it is convenient to rationalize the operation of the judicial office and successive implantation of the fiscal office adjusted to its needs, improving the system of judicial auction through a centralized system with the help or management of the Tax Agency to obtain better results in economic terms.

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

*3000 character(s) maximum*

The training of judges and prosecutors is different. The competitive examination is unique, but both initial and continuous training are separated. In the case of judges, they have a School whose management, both with respect to the selection of contents, teaching staff, organization and financially depends exclusively on the General Council of the Judiciary. However, the training of prosecutors is managed and financed by a body under the Ministry of Justice, even though the content of the courses is established through the General Prosecutor's Office. The duration of the initial training of prosecutors does not exceed six months, while that of judges lasts for two academic years with assimilation to a university master's degree. The Association of Prosecutors considers that the training of prosecutors should have a duration and content similar to that of judges and not depend on the Ministry of Justice, thus establishing the separation of the Prosecutor's Office from ministerial "tutelage"

#### 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)

*(Factual information presented in Commission Staff Working Document of 2 December 2020, SWD(2020) 540 final, does not need to be repeated)*

*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*

At present we find a diversity of procedural management systems that are incompatible with each other and incompatible between judicial and fiscal systems, so that it is totally impossible to know in a court of a certain locality if a citizen is requisitioned by another citizen from another locality outside that region or community, which can lead to undesirable results, even in the case of extremely serious crimes. In Spain there are numerous registries and computer systems at the service of justice, however, they are not the same for all autonomous regions, they are not communicable and the data are not accessible, nor are they perfectly connected. The platforms at the service of Prosecutors and Judges are not comfortable and are far from the technical standards of other nations. It is necessary to access many databases (prisoners, assets, etc.) and to use management programs that are not integrated into the platforms in use. In reality, it is not possible to speak of an electronic court file. A performance evaluation system for judges and prosecutors has not yet been developed.

The pandemic has highlighted the urgent need to provide the entire Administration of Justice, regardless of the Autonomous Community concerned, with a procedural management system, a digital electronic case file, which allows teleworking in conditions of efficiency and security

Geographical distribution and number of courts/jurisdictions ("judicial map") and their specialization

*3000 character(s) maximum*

## 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 "type of information".)

Length of proceedings

*3000 character(s) maximum*

The current procedural system has generated a delay incompatible with the right to effective judicial protection, and therefore proposals must be made to streamline criminal justice from different points of view. The Penal Code has been reformed on numerous occasions, but important aspects remain to be addressed, such as the poor regulation of the current minor offenses (formerly misdemeanors), i.e., minor infractions, and the rationalization of the system of penalties. All crimes should be prosecuted equally in Spain. Unlike other more efficient legal systems, the Public Prosecutor's Office does not have the principle of opportunity that would allow it to discriminate and thus prioritize serious forms of crime, nor does it encourage conflict resolution through criminal mediation. In fact, there is no study of the costs and economic implications of criminal justice in Spain. The so-called fast-track trials have led to a significant improvement in the processing time of criminal proceedings. But their operability needs to be studied in greater depth. The staffing of Prosecutors and Judges has not been updated and there is a lack of studies to adapt them to the current real circumstances and those of the necessary procedural reforms. The introduction of a time limit that limits the time for the investigation of criminal cases (without attributing the investigation to the Public Prosecutor's Office, to the extent that this limitation has not been established in the rest of the phases of the process, in practice has led to impunity for the most serious and complex crimes, as they are the most difficult to investigate; however, despite the insistence of prosecutors and associations, this time limit has not been abolished, it has simply been modified to increase it. For all these reasons, it would be advisable to rationalize the catalog of penalties, which is currently very extensive; to review the new and unsatisfactory system of prosecution for minor offenses; to satisfy the victims through an effective system of asset tracing and enforcement of the same; to strengthen the principle of regulated opportunity in the criminal process, giving a leading role to the Prosecutor, strengthening at the same time as expanding the assumptions of conformity, criminal mediation and other alternative solutions to the accusation, valuing the public interest and through a legal and feasible procedure; revision of the list of crimes to be prosecuted by the Jury procedure and repeal of the system of deadlines that limits the instruction of the cases, providing more and better human and material resources, attending to adequate parameters for the study of charges in such a way as to guarantee greater speed and efficiency in the investigation of all types of crimes and in their prosecution and execution.

Other - please specify

*3000 character(s) maximum*

The Law of Criminal Procedure is an edifice of 1882, often reformed, lacking in practical sense, with many incongruities and unrecognizable. The inquisitorial model that predominates in its content has been abandoned in almost all the legal systems of our cultural environment. Our procedural system is based on a Law of 1882, as we have said, often reformed, with solutions based on contradictory principles, which offer different solutions to similar situations and are increasingly impracticable. The inquisitorial model has been abandoned by almost all laws due to its impracticality and is incompatible with institutions that we must imminently incorporate into our internal system, such as the European Public Prosecutor. There is no room for patches and its reform must be faced in depth. Council Regulation (EU) 2017/1939 of October 12, 2017, establishing enhanced cooperation for the establishment of the European Public Prosecutor's Office is incompatible with the model of judicial investigation for crimes within its jurisdiction, as it can give mandatory instructions to national authorities during the pre-trial phase. The model of the examining magistrate has been abandoned in the world. the pre-trial phase does not have the complexity of the Spanish instruction, it is more agile and is entrusted to the respective Public Prosecutor's Offices, more agile, able to understand each procedure from the beginning of the investigation to the completion of the execution and capable of specializing, establishing in the Judge the function of guaranteeing fundamental rights and adopting some decisions. This situation turns Spain into an island, where foreign interlocutors find gaps in the understanding of the system and makes cooperation difficult, especially in the face of serious forms of crime. International standards encounter severe problems of incorporation in Spain, with increasingly convoluted solutions. The creation of the European Public Prosecutor's Office is incompatible with the Spanish inquisitorial model. The participation of popular and private prosecutors is an exclusive feature of Spanish law. On the contrary, the monopoly of the exercise of the criminal action is entrusted to the Public Prosecutor's Office. The presence of these types of accusations has served on certain occasions to politically instrumentalize justice, and on rare occasions has led to convictions in cases in which the Public Prosecutor's Office has not prosecuted. Therefore, the pre-trial phase should be simplified, entrusting the investigation to the Judicial Police, under the control of the Public Prosecutor's Office, which should bear the weight of the development of the procedural actions, and the Judges should assume the control of fundamental rights and the resolution of certain precautionary measures, as in the majority of comparative models. To regulate the intervention of the popular and private accusations, indicating the criminal modalities in which th

## Anti-Corruption Framework - Spain

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

List of relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Please indicate the resources allocated to these (the human, financial, legal, and practical resources as relevant).

*3000 character(s) maximum*

The fight against corruption is an unavoidable necessity in democracy and requires deepening in some open but not closed, lines. Spain has a specific Public Prosecutor's Office to fight corruption and organized crime that must be strengthened, recovering for society the assets obtained from crime, promoting clear and decisive measures in the field of international judicial cooperation

The members of the Anti-Corruption Prosecutor's Office have achieved important results and suffer permanent politically interested attacks for the exercise of their actions. Articles 127 ff. CP establishes several modalities of extended confiscations, however, its jurisprudential application is low, among other things due to lack of training and regulation of some criminal figure such as illicit enrichment. The Office for the Recovery and Management of Assets (commonly known as ORGA) is capable of managing a much lower number of assets than in neighboring countries such as France and Italy. The ORGA depends on the Ministry of Justice and is an office managed by a Deputy Director General, unlike the majority of European models, with a greater significance and presence of the corresponding Public Prosecutor's Offices. There is no practice dedicated to promoting the recovery of proceeds of crime, neither in the police nor in the Public Prosecutor's Office itself, nor are there any connections with ORGA. In relation to non-EU states, which includes tax havens, international cooperation in the recovery of assets goes through units dependent on the Ministry of Justice, the so-called Central Authority for International Judicial Cooperation, dependent on a governmental authority such as the Ministry of Justice, which slows down the procedure, and the formal cooperation agreements (multilateral and bilateral) do not meet current needs. Spanish legislation hinders and the practice of the central authority prevents the use of modern techniques in the fight against corruption, especially the creation of joint investigation teams with Prosecutor's Offices of non-EU states, where the investigation of crimes is necessary, making the investigation more difficult. It is therefore advisable to strengthen the Anti-Corruption Prosecutor's Office and extend its capabilities, increasing its means of action with the assets recovered from corrupt politicians, actively defend the members of the Anti-Corruption Prosecutor's Office; create within the scope of the central Prosecutor's Offices (Anti-Corruption, National Court, Anti-Drug) specialized organizational units in the recovery of assets. Update the statute of the ORGA, establishing a structure that allows a more direct relationship with the State Attorney General's Office, which should have a greater role in its operation for the sake of efficiency and allocate part of the amount of confiscated assets to it; assign the Central Authority for international cooperation in criminal matters to the State Attorney General's Office

## Prevention

Integrity framework including incompatibility rules (e.g.: revolving doors)

*3000 character(s) maximum*

Regarding senior officials, in the General State Administration, the regulations are contained in Law 3/2015, of March 30, regulating the exercise of senior positions in the General State Administration (hereinafter, LAC) and in Title II of Law 19/2013, of December 9, on transparency, access to public information and good governance (hereinafter, LTBG). It is noteworthy that the precepts of this Title also apply to senior officials or similar who have such consideration in accordance with regional or local regulations, which is an advance in the control of those responsible for all Administrations. Transparency of public activity with the right of access to information. Law 3/2005 creates and regulates the Council for Transparency and Good Governance, as an independent body with powers to promote a culture of transparency in the activity of the Public Administration, to control compliance with the obligations of active publicity, and to guarantee the right of access to public information and the observance of the provisions of Good Governance, although it suffers from a notable lack of independence, given, firstly, that the President of the Council for Transparency and Good Governance is appointed by the Government, and although his endorsement is conferred on the Congress of Deputies and an absolute majority is required, it would have been advisable, in order to ensure an adequate level of consensus, that his appointment should be approved by a qualified parliamentary majority. Secondly, because a Transparency Commission is created without specifying either the manner in which its members will be elected, or the powers entrusted to it, so it will be the Council of Ministers who "will approve by Royal Decree the Statute of the Council for Transparency and Good Governance, which will establish its organization, structure, operation, as well as all aspects that are necessary for the fulfillment of its functions".

One of the most common practices is the revolving door policy. The system effectively allows a senior public official to be hired by a large private company the moment he/she leaves his/her position. Regarding this issue for Greco, there are good standards "on paper". But "what undermines the credibility of the system is its operation. For this reason, it is recommended that the legislation "be reviewed by an independent body and strengthened where necessary" and also that more resources be provided to the Conflict of Interest Office in charge of approving revolving doors.

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

*3000 character(s) maximum*

Rules on preventing conflict of interests in the public sector.

*3000 character(s) maximum*

On the other hand, the regime of public employees is included, in general, in Law 53/1984, of December 26, 1984, on Incompatibilities of personnel in the service of the Public Administrations, whose very name refers to its broad scope of application, since it covers all personnel, regardless of their employment relationship (civil servant, contracted, labor, etc.). In addition, there are other rules that contain specific precepts that affect conflicts of interest such as the Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law of the Basic Statute of the Public Employee (hereinafter, 3 EBEP), Law 40/2015, of October 1, on the Legal Regime of the Public Sector (hereinafter, LRJSP), or those of other entities (Bank of Spain, National Securities Market Commission, National Commission for Markets and Competition...).

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 relevant measures taken/envisaged for preventing corruption and conflict of interest in these sectors. (e.g. public procurement, healthcare, other).

*3000 character(s) maximum*

Measures taken to address corruption risks in the context of the COVID-19 pandemic

*3000 character(s) maximum*

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

*3000 character(s) maximum*

## Repressive measures

Criminalisation of corruption and related offences.

*3000 character(s) maximum*

Spain criminalizes and punishes in its Penal Code, all the conducts to which it is obliged by the United Nations Convention against Corruption, except for illicit or undue enrichment. Thus, bribery of national public officials is punishable (Art 15 Convention). Bribery of foreign public officials and officials of public international organizations (Article 16 of the Convention). Embezzlement, misappropriation or other detour of property by a public official (Art 17 of the Convention), trading in influence (Art 18); Abuse of functions ( Art 19) Bribery in the private sector ( Art 21) Embezzlement of property in the private sector ( Art 22) Laundering of proceeds of crime ( Art 23) Concealment ( Art 24) Obstruction of justice ( Art 25) Liability of legal persons ( Art 26) , attempt and imperfect forms of execution ( Articles 27 and 28). Thus, Title XIX of Book II of the Penal Code punishes: Chapter I, prevarication of public officials and other unjust behaviors (Art 404 to 406); Chapter II, Abandonment of duty and omission to prosecute crimes (Art 407 to 409). Chapter III of disobedience and refusal of assistance (Art 410 to 412); Chapter IV. Of the infidelity in the custody of documents and violation of secrets (Art 413 to 418); Chapter V: Bribery (Art 419 to 427 bis); Chapter VI: Trading in influence (Art 428 to 431); Chapter VII: Embezzlement (Art 432 to 435); Chapter VIII: Fraud and illegal exactions (Art 436 to 439). Chapter IX: Negotiations and activities prohibited to public officials and abuses in the exercise of their functions (Art 439 to 444). Title XIX BIS punishes crimes of corruption in international commercial transactions (Art. 445 bis).

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 the implementation of EU funds

*3000 character(s) maximum*

Criminal penalties comply with the standards established in the convention, establishing prison sentences and special disqualification and suspension depending on the cases, extending to individuals who benefit, imposing penalties such as disqualification from obtaining subsidies and public aid to contract with entities, agencies or entities that are part of the public sector and to enjoy the benefits or tax incentives and social security. As for the liability of legal entities, it is set forth in articles 31 ter and subsequent articles of the Criminal Code.

Potential obstacles to investigation and prosecution of high-level and complex corruption cases(e.g. political immunity regulation).

*3000 character(s) maximum*

The limitation of a procedural term to investigate serious and complex crimes makes it difficult to prosecute crimes such as those related to corruption (Art 324 of the Criminal Law). Article 71 of our Constitution establishes that the Deputies and Senators shall enjoy inviolability for the opinions expressed in the exercise of their functions, that during the period of their mandate they shall also enjoy immunity and may only be detained in case of flagrante delicto, that they may not be indicted or prosecuted without the prior authorization of the respective Chamber and that the Criminal Chamber of the Supreme Court shall have jurisdiction in the cases against them

Other – please specify

*3000 character(s) maximum*

## Media Pluralism - Spain

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### Media authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

Independence, enforcement powers and adequacy of resources 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*

## Transparency of media ownership and government interference

The transparent allocation of state advertising (including any rules regulating the matter); other safeguards against state / political interference

*3000 character(s) maximum*

Rules governing transparency of media ownership and public availability of media ownership information

*3000 character(s) maximum*

## Framework for journalists' protection

Rules and practices guaranteeing journalist's independence and safety

*3000 character(s) maximum*

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists

*3000 character(s) maximum*

Access to information and public documents

*3000 character(s) maximum*

Lawsuits against journalists (incl. defamation)

*3000 character(s) maximum*

Other - please specify

*3000 character(s) maximum*

In terms of communication, the Attorney General's Office has a very limited number of staff to perform press office functions (two people) to carry out a huge informative, pedagogical and educational task that is certainly not achieved. In the Prosecutor's Offices, one of the prosecutors acts as spokesperson of the same, combining such functions with those that are proper to his function as prosecutor, lacking any training in communicative matters. The dependence on the Ministry of Justice in budgetary matters makes it tremendously difficult to obtain more and better means of communication, thus making it difficult to make known the relevance of the function performed in defense of the interests of citizens, leaving spaces of obscurity where there should be transparency and relegating to the ignorance of citizens the work of the Public Prosecutor's Office.

## Other institutional issues related to checks and balances - Spain

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### The process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms) and transparency and quality of the legislative process

*3000 character(s) maximum*

A distinction is made between organic laws and ordinary laws, the former being those relating to the development of fundamental rights and public freedoms, those approving the Statutes of Autonomy and the general electoral system and the others provided for in the Constitution, the approval, amendment or repeal of which will require an absolute majority of the Congress, in a final vote on the bill as a whole. The Cortes Generales may delegate to the Government the power to issue regulations with the rank of law on specific matters (Legislative Decrees). In cases of extraordinary and urgent necessity, the Government may issue provisional legislative provisions which will take the form of Decree-Laws and which may not affect the organization of the basic institutions of the State, the rights, duties and freedoms of the citizens regulated in Title I of the Constitution, the regime of the Autonomous Communities or the general electoral law. The Decree-laws must be immediately submitted to the Congress of Deputies, summoned for this purpose if it is not already in session, for debate and a vote on their totality within thirty days of their promulgation. The Congress must expressly decide within said period on their validation or repeal, for which purpose the Regulations shall establish a special and summary procedure. During the period established in the preceding paragraph, the Cortes may process them as bills under the urgency procedure. The legislative initiative corresponds to the Government, the Congress and the Senate, in accordance with the Constitution and the Regulations of the Houses. The Assemblies of the Autonomous Communities may request from the Government the adoption of a bill or submit to the Bureau of the Congress a bill, delegating to the said Chamber a maximum of three members of the Assembly in charge of its defense. An organic law shall regulate the forms of exercise and requirements of the popular initiative for the presentation of bills. In any case, no less than 500,000 accredited signatures shall be required. Such initiative shall not proceed in matters pertaining to organic law, taxation or of an international nature, nor in matters relating to the prerogative of pardon.

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*

The Constitutional Court has jurisdiction throughout Spain and is competent to hear appeals of unconstitutionality against laws and regulations having the force of law. The declaration of unconstitutionality of a legal rule with the force of law, interpreted by case law, will affect the latter, although the sentence or sentences handed down will not lose the value of *res judicata*; the appeal for protection for violation of the rights and freedoms referred to in Article 53, 2, of the Constitution, in the cases and forms established by law; conflicts of competence between the State and the Autonomous Communities or between the latter and themselves. The Government may challenge before the Constitutional Court the provisions and resolutions adopted by the bodies of the Autonomous Communities. The challenge will produce the suspension of the provision or resolution appealed against, but the Court, as the case may be, must ratify or lift it within a period not exceeding five months. Likewise, when a judicial body considers, in any proceedings, that a regulation with the rank of law, applicable to the case, on the validity of which the ruling depends, may be contrary to the Constitution, it will raise the question before the Constitutional Court in the cases, in the manner and with the effects established by law, which in no case will be suspensive.

COVID-19: provide update on significant developments with regard to emergency regimes 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 by Parliament of emergency regimes and measures in the context of COVID-19 pandemic
- measures taken to ensure the continued activity of Parliament (including possible best practices)

*3000 character(s) maximum*

## Independent authorities

Independence, 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*

The Ombudsman is the High Commissioner of the Cortes Generales in charge of defending the fundamental rights and public liberties of citizens by supervising the activity of the Spanish public administrations. The Ombudsman is elected by the Congress of Deputies and the Senate, by a three-fifths majority. His term of office lasts five years and he does not receive orders or instructions from any authority. He performs his duties with independence and impartiality, with autonomy and at his own discretion. He enjoys inviolability and immunity in the exercise of his office. Any citizen may turn to the Ombudsman and request his intervention, which is free of charge, to investigate any allegedly irregular action by the Spanish public administration or its agents. He may also intervene ex officio in cases that come to his attention, even if no complaint has been filed. The Ombudsman reports to the Spanish Parliament in an annual report and may submit monographic reports on matters he considers to be serious, urgent or requiring special attention. Following the ratification by the Spanish State of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations Assembly in New York on December 18, 2002, the Cortes Generales attributed to the Ombudsman the functions of National Mechanism for the Prevention of Torture (NPM) in November 2009. The Ombudsman, in his capacity as NPM, carries out preventive visits to any centre of deprivation of liberty aimed at detecting problems that could favour the commission of torture or ill-treatment practices. The conclusions of these visits are reflected in the report it submits each year to the Spanish Parliament and to the United Nations Subcommittee on Prevention of Torture, based in Geneva

## Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data) and judicial review (incl. scope, suspensive effect)

*3000 character(s) maximum*

The publication of the acts will be made in the corresponding official journal, depending on the Administration from which the act to be notified originates. The publication of acts and communications that, by law or regulation, must be made on a notice board or edicts, will be understood to be complied with by publication in the corresponding official journal. The Judiciary controls the legality of the administrative action exercised exclusively by the Judiciary under the terms established in Article 106 of our Constitution, without prejudice to internal controls (Council of State). This control is carried out by specialized bodies that fall under the so-called contentious-administrative jurisdiction

Implementation by the public administration and State institutions of final court decisions

*3000 character(s) maximum*

## The enabling framework for civil society

Measures regarding the framework for civil society organisations (e.g. access to funding, registration rules, measures capable of affecting the public perception of civil society organisations, etc.)

*3000 character(s) maximum*

## 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, etc.)

*3000 character(s) maximum*

Other – please specify

*3000 character(s) maximum*

## Contact

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