



## EUROPEAN COMMISSION

DIRECTORATE-GENERAL JUSTICE AND CONSUMERS

Directorate C: Fundamental rights and rule of law

**Unit C.2: Fundamental rights policy**

Deputy Head of Unit

Brussels

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Dear Petitioner,

Thank you for your letters of 15 May 2020, addressed to President von der Leyen, in which you drew our attention to the measures taken by Spain in the context of the fight of Covid-19 outbreak.

In your letters, you allege in particular that the government of Spain is using the State of Alarm to make far-reaching legislative changes as part of a political and electoral project. You allege that this has resulted in unnecessary deaths, and in a lack of protection of healthcare personnel. You refer also to a 14-day quarantine for those arriving in the country, which in your view leads to the depression of the tourism sector and an absolute restriction on freedom of movement in the EU as well as to the alleged use of the police to suppress fundamental rights and liberties.

You ask the European Commission to exercise greater control over the Government of Spain in order to guarantee respect and protection of the Charter of Fundamental Rights of the European Union and the Treaty of European Union. You request in particular that the Commission exercise control over the management of the Government of Spain in public spending and in the economic measures that it adopts.

Democracy, the rule of law and fundamental rights are founding values of the European project. Since the outbreak of the coronavirus pandemic, several governments took emergency measures to address the health crisis.

The European Commission has made clear from the outset that the response to this crisis must fully respect of the fundamental principles and values as set out in the Treaties. Emergency measures must be limited to what is necessary, strictly proportionate, clearly restricted in time, and in line with constitutionally enshrined safeguards, as well as European and international standards. Moreover, governments must make sure that such measures are subject to regular scrutiny.

The European Commission is closely monitoring the emergency measures taken by Member States, including Spain, and their impact, in particular on the rule of law, on fundamental rights, and on EU law.

Rule of law relevant aspects were reflected in the 2021 Rule of Law Report published by the Commission on 20 July 2021<sup>1</sup>, including in the Spanish country chapter. In particular, the country chapter takes notes that emergency powers were used in the context of the

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<sup>1</sup> [https://ec.europa.eu/info/sites/default/files/2021\\_rolr\\_country\\_chapter\\_spain\\_en.pdf](https://ec.europa.eu/info/sites/default/files/2021_rolr_country_chapter_spain_en.pdf)

COVID-19 pandemic, as the Government declared a state of alarm – the least severe of the three possible states of emergency provided for in the Spanish Constitution – which was further prorogued with the authorisation of Parliament. The Report also refers to the decision of the Constitutional Court of 14 July 2021, declaring unconstitutional certain provisions of the Royal Decree declaring the first state of alarm in relation to limitations to the freedom of movement. The Commission will continue to monitor closely the measures taken by Member States in the fight against COVID-19, until all measures are lifted.

With specific regard to your concerns about violations of fundamental rights allegedly perpetrated through police action, I must inform you that, under the Treaties on which the European Union is based<sup>2</sup>, the European Commission has no general powers to intervene with the Member States. It can only do so if an issue of European Union law is involved.

In particular, the Charter of Fundamental Rights of the European Union does not apply to every situation of an alleged violation of fundamental rights. According to its Article 51(1), the Charter applies to Member States only when they are implementing European Union law. Moreover, Article 6(1) of the Treaty of the European Union states that, “[t]he provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.”<sup>3</sup>

On the basis of the information provided in your letter, it does not appear that the matter to which you refer is related to the implementation of European Union law. For the reasons mentioned above, I have to inform you that it is not possible for the European Commission to follow up on this issue.

In such cases, it is for Member States, including their judicial authorities, to ensure that fundamental rights are effectively respected and protected in accordance with their national legislation and international human rights obligations. You may wish to seek redress at the national level through the competent national authorities, such as through an ombudsman or through the courts. For information on how to obtain a remedy in your Member State, you can consult the European e-Justice Portal<sup>4</sup>.

Regarding restrictions to free movement, the right to move and reside freely within the territory of the Member States is based on Article 21(1) of the Treaty on the Functioning of the European Union, which stipulates that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.

The respective limitations and conditions are to be found in Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States<sup>5</sup> (hereinafter “the Free Movement Directive”). In line with the Free Movement Directive, restrictions to free movement can be justified on grounds of public health, provided they comply with the safeguards of EU law. The Commission has continuously highlighted that any such restrictions should be based

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<sup>2</sup> Treaty on European Union and Treaty on the functioning of the European Union

<sup>3</sup> For more information concerning the Charter and the circumstances in which it applies, you may consult the website of the European Commission's Directorate-General for Justice and Consumers [http://ec.europa.eu/justice/fundamental-rights/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/index_en.htm)

<sup>4</sup> [https://e-justice.europa.eu/content\\_fundamental\\_rights-176-en.do](https://e-justice.europa.eu/content_fundamental_rights-176-en.do)

<sup>5</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158, 30.4.2004, p. 77.

solely on public health considerations and should be designed in a proportionate and non-discriminatory manner. The Commission monitors Member States' compliance with these principles.

Persons can travel to Spain from EU Member States and Schengen countries with the EU Digital COVID Certificate<sup>6</sup>. The Certificate may be of three different types (vaccination, diagnostic test or recovery) and any of them may be used by travellers to enter Spain.

In this context, Spain follows the updated Council Recommendation (EU) 2020/1475 on a coordinated approach to the restriction of free movement in response to the COVID-19<sup>7</sup>.

The Council Recommendation refers to a common map, published every week by the European Centre for Disease Prevention and Control (ECDC), which shows the risk levels across the regions in Europe using a “traffic light” system. Regions are indicated in the colours green, orange, red, dark red and grey (if not enough information is available). Based on this map, Member States decide whether they introduce certain restrictions, such as quarantine or tests, on travellers coming from higher-risk regions.

On 14 June 2021, the Council updated the Council Recommendation to make best use of the EU Digital COVID Certificate framework.

Holders of vaccination and recovery certificates travelling within the EU should in principle not be subject to additional restrictions, such as testing for COVID-19 infection or quarantine. Persons with a valid test certificate in line with the EU Digital COVID Certificate should also be exempted from possible quarantine requirements.

Under these considerations, it appears that no breach of any provision of EU law on the right to free movement has been established.

The European Commission closely monitors the economic policies of the Member States and discusses their economic and budgetary plans in the context of the European Semester. As part of its fiscal policy surveillance role under the Stability and Growth Pact, the Commission also continuously assesses the public finance situation of the Member States. Specifically with respect to the Next Generation EU and the Recovery and Resilience Facility, the Commission is working closely with the national authorities to ensure that their Recovery and Resilience Plans are in accordance with Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility.

In particular, recitals 54 and 55 of the Regulation stipulate how the Commission shall ensure that the financial interests of the Union are effectively protected. While it is primarily the responsibility of the Member State itself to ensure that the Facility is implemented in compliance with relevant Union and national law, the Commission

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<sup>6</sup> Regulation (EU) 2021/953 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic. [EUR-Lex - 32021R0953 - EN - EUR-Lex \(europa.eu\)](#)

<sup>7</sup> Council Recommendation (EU) 2021/961 of 14 June 2021 amending Recommendation (EU) 2020/1475 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic. [EUR-Lex - 32021H0961 - EN - EUR-Lex \(europa.eu\)](#) Council Recommendation (EU) 2021/119 of 1 February 2021 amending Recommendation (EU) 2020/1475 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic [EUR-Lex - 32021H0119 - EN - EUR-Lex \(europa.eu\)](#) Council recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic. [EUR-Lex - 32020H1475 - EN - EUR-Lex \(europa.eu\)](#)

should be able to receive sufficient assurance from Member States in that regard. To that end, in implementing the Facility, the Member States should ensure the functioning of an effective and efficient internal control system and recover amounts unduly paid or misused. In that regard, Member States should be able to rely on their regular national budget management systems. Member States should collect standardised categories of data and information allowing the prevention, detection and correction of serious irregularities, meaning fraud, corruption and conflicts of interests, in relation to the measures supported by the Facility. The Commission should make available an information and monitoring system, including a single data-mining and risk-scoring tool, to access and analyse this data and information, with a view to a generalised application by the Member States.

The Commission, the European Anti-Fraud Office (OLAF), the Court of Auditors and, where applicable, the European Public Prosecutor's Office (EPPO) should be able to use the information and monitoring system within their competences and rights.

As far as occupational health and safety is concerned, the central piece of EU legislation in this area is Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work<sup>8</sup>. This directive lays down, inter alia, the general principles concerning the prevention of risks, the protection of safety and health of workers at the workplace as well as general guidelines for the implementation of the said principles, establishing a number of obligations on the employer. It applies to all sectors of activity, among which is also the healthcare sector, and covers all risks, including those arising from the Covid-19 outbreak. The assessment of all possible risks at work and putting in place adequate preventive and protective measures are the responsibility of employers. They are also obliged to provide workers with related information, as well as protective equipment or hygiene products, when and as necessary, taking into account the particular circumstances raised by the COVID-19 pandemic. In the context of occupational exposure to COVID-19, the Biological Agents Directive<sup>9</sup> is particularly important as it sets the minimum legal requirements for the prevention and protection of workers in case of exposure to biological agents, including SARS-CoV-2.

However, it is for the competent national authorities to monitor and enforce the implementation of the national provisions transposing the Union rules in this area. Any issue related to non-respect of those obligations should be referred to the national enforcement authorities.

Furthermore, the European Agency for Health and Safety at Work (EU-OSHA) has published relevant guidance addressing COVID-19 at the workplace<sup>10</sup>. These guidance documents assist employers in dealing with health and safety aspects at work. They are available in all EU languages and are updated regularly. They also refer to available national guidance for specific sectors and occupations. EU-OSHA has also made available a specific Online Risk Assessment Tool to support COVID-19 workplace risk

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<sup>8</sup> OJ L 183, 29.6.1989, p.1.

<sup>9</sup> OJ L 262, 17.10.2000, p. 21, as amended by Commission Directive (EU) 2020/739 amending Annex III to Directive 2000/54/EC of the European Parliament and of the Council as regards the inclusion of SARS-CoV-2 in the list of biological agents known to infect humans and amending Commission Directive (EU) 2019/1833 (OJ L 175, 4.6.2020, p. 11).

<sup>10</sup> [https://oshwiki.eu/wiki/COVID-19: guidance for the workplace#See](https://oshwiki.eu/wiki/COVID-19:_guidance_for_the_workplace#See) as well as [https://oshwiki.eu/wiki/COVID-19: Back to the workplace - Adapting workplaces and protecting workers](https://oshwiki.eu/wiki/COVID-19:_Back_to_the_workplace_-_Adapting_workplaces_and_protecting_workers)

assessment<sup>11</sup>. The tool is also based on non-binding guidelines that aim at helping employers and workers to stay safe and healthy in a working environment.

I hope you find the above information helpful.

Yours sincerely,

Georgia Georgiadou

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<sup>11</sup>[https://oiraproject.eu/oiraproject/eu/covid-19/covid-19/++session++1116349/@@start?initial\\_view=1&new\\_session=1](https://oiraproject.eu/oiraproject/eu/covid-19/covid-19/++session++1116349/@@start?initial_view=1&new_session=1)