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2022 Rule of Law Report Country Chapter on the rule of law situation in Spain

Accompanying the document

**Communication from the Commission to the European Parliament, the Council, the
European Economic and Social Committee and the Committee of the Regions**

2022 Rule of Law Report The rule of law situation in the European Union

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ABSTRACT

The Spanish justice system has continued undergoing important developments. The fact that the renewal of the Council for the Judiciary is pending since December 2018 remains a concern. In this context, there have been further calls to modify the Council's appointment system in line with European standards so that no less than half of judges-members are elected by their peers. Legal amendments were adopted aiming at an increased transparency of relations between the Government and the Prosecutor General, while concerns on the coincidence in the term of office of the Prosecutor General and the Government remain. The Judicial Ethics Committee issued an opinion on the ethical duties of judges who return to their judicial functions after having held political office. Progress is ongoing as regards the quality of the justice system, such as the implementation of measures facilitating access to justice of persons with disabilities. The reform of the Criminal Procedure Code and the law on the right of defence are progressing. The digitalisation of justice is well advanced and shortcomings are being addressed. Efforts continue to address challenges related to the resources of the judiciary. The length of proceedings remains a challenge, though work is ongoing on draft laws aimed to enhance the efficiency of the justice system.

Spain continues to implement a set of measures to fight and prevent corruption. The adoption of a national Anti-Corruption Plan is being considered, which is expected to contribute to creating a comprehensive policy to prevent and reduce corruption. While resources have been increased within the Prosecution Services, the investigation and prosecution of high-level corruption remains a concern as proceedings continue to be lengthy and complex. As regards the prevention of corruption, Spain continues to develop a strong integrity framework for the public administration, including to prevent conflicts of interest and incompatibility rules. A draft Law on Transparency and Integrity of Interest Groups and a draft law on conflict of interests prevention in the public sector are being finalised by the Government. Draft legislation on the protection of whistleblowers is expected to soon be adopted by the Government. The Office for Conflicts of Interest has stepped up its role by providing ethics guidance and training activities to public officials.

The general legislative framework regarding media freedom and pluralism remains solid and stable. A law aimed to transpose the 2018 revision of the Audiovisual Media Services Directive, which would include new legal provisions on the transparency of audiovisual media ownership, has been adopted. However, challenges remain in relation to transparency of written media ownership and the operational autonomy and resources of the Audiovisual Regulator. Work is ongoing to strengthen access to information. The Government has continued the implementation of an agreement aimed at facilitating the work of information professionals, while journalists have continued facing some challenges.

A number of constitutional bodies relevant in the system of checks and balances, including the Ombudsperson, saw their members appointed by Parliament, which put an end to substantial delays. The Constitutional Court issued two decisions reviewing the emergency measures taken to fight the COVID-19 pandemic. A number of initiatives aimed at increasing public participation in policy-making and reinforcing cooperation between the public administration and civil society are ongoing. The reform of the Citizen Security Law, which continues to raise concerns including by civil society, is pending in Parliament. Activities to promote a rule of law culture took place, in particular the launch of a training programme for journalists on the Spanish justice system.

RECOMMENDATIONS

In addition to recalling the commitments made under the national Recovery and Resilience Plan relating to certain aspects of the justice system, it is recommended to Spain to:

- Strengthen the statute of the Prosecutor General, in particular regarding the separation of the terms of office of the Prosecutor General from that of the Government, taking into account European standards on independence and autonomy of the prosecution.
- Proceed with the renewal of the Council for the Judiciary as a matter of priority and initiate, immediately after the renewal, a process in view of adapting the appointment of its judges-members, taking into account European standards.
- Continue efforts to table legislation on lobbying, including the establishment of a mandatory public register of lobbyists.
- Address the challenges related to the length of investigations and prosecutions to increase the efficiency in handling high-level corruption cases.
- Ensure adequate resources for the national audiovisual media regulatory authority to strengthen its operations, taking into account the European standards on the independence of media regulators in particular as regards resource adequacy.
- Pursue work to strengthen access to information, in particular via revision of the Law on Official Secrets.

I. JUSTICE SYSTEM

The Spanish judicial system is composed of courts of general jurisdiction¹ and specialised courts², and is structured in accordance with the territorial organisation of the country. The Supreme Court is the highest judicial body in all areas of law. The General Council for the Judiciary, established by the Spanish Constitution, is the body of judicial self-governance, and ensures the independence of courts and judges³. As such, it does not itself form part of the judiciary. It exercises disciplinary action and is competent to appoint, transfer and promote judges, as well as being responsible for the training and recruitment of judges. The public prosecution service is integrated in the judiciary with functional autonomy, and pursues the mission of promoting justice in defence of the law, the rights of the citizens and the general interest. The Prosecutor General is appointed by the Head of State, upon proposal of the Government, following the consultation of the General Council for the Judiciary⁴. Spain participates in the European Public Prosecutor's Office (EPPO). The Solicitor General of the State is a senior official of the Ministry of Justice in charge of directing the Legal Service of the Government and its relationship with national and foreign organisms, entities and bodies. The Local Bars are public law organisations of professionals, independent from the public administration and do not depend on the budgets of the public authorities, nor are their assets public. They have competences for the organisation of the profession and professional deontology, and approve their own code of ethics.

Independence

The level of perceived judicial independence in Spain continues to be low among the general public and is now average among companies. Overall, 38% of the general population and 41% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2022⁵. According to data in the 2022 EU Justice Scoreboard, no clear trend can be identified in the evolution of the perceived level of independence since 2016. The perceived judicial independence among the general public remains at the same level as in 2021. The perceived judicial independence among companies has increased in comparison with 2021 (39%), as well as with 2016 (33%).

The delay in the renewal of the Council for the Judiciary remains a concern. The Council for the Judiciary has been exercising its functions ad interim since December 2018⁶. This raises concerns that it might be perceived as vulnerable to politicisation, as already

¹ Covering the fields of civil, criminal, administrative and social law. In total, there are 2269 first instance courts of general jurisdiction.

² Commercial courts, EU trademark courts, courts with special duties in the matter of criminal sentencing, juvenile courts, courts dealing with violence against women, and other specialised courts that can be created by resolution of the General Council for the Judiciary. In total, there are 1465 first instance courts of specialised jurisdiction.

³ Art. 117 of the Spanish Constitution enshrines the independence of magistrates and judges.

⁴ Art. 124(4) of the Spanish Constitution.

⁵ Figures 50 and 52, 2022 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

⁶ The Parliament is responsible for the appointment of all its members; that is subject to a qualified majority of three fifths. Since 2018, negotiations between the main political groups are in a stalemate. Judges members of the Council for the Judiciary (which are 12 out of 20) are appointed by the Congress and the Senate among a list of judges who have been pre-selected by judges themselves. In order to be eligible in the pre-selection phase, judges do not need to be part of an association of judges.

referred to in the 2020 and 2021 Rule of Law Reports⁷. Calls have been repeated to proceed with its urgent renewal and the situation has been described by key stakeholders as unsustainable⁸ and anomalous⁹. Following the reform in March 2021 specifying the *ad interim* regime for the General Council for the Judiciary¹⁰, the acting Council cannot proceed to make appointments for top judicial positions¹¹. On 24 June 2022, the Government tabled a reform allowing the Council for the Judiciary to proceed with the appointment of members of the Constitutional Court¹². The Technical Cabinet of the Supreme Court¹³ published on 18 October 2021 a report on the consequences of the lack of renewal of the Council for the Judiciary on the appointment of judges to the Supreme Court¹⁴. The report concludes that the Supreme Court is exercising its functions with 14% fewer judges than required by law¹⁵, and this could result in the Court issuing 1 000 fewer decisions per year, thus undermining the efficiency of justice¹⁶.

In the context of the renewal of the Council for the Judiciary, calls to modify the appointment process of its judges-members, so their peers elect them, have been reiterated. Calls by stakeholders¹⁷ have been reiterated to change the system of appointment of the members of the Council for the Judiciary¹⁸, in line with European standards, so that no less than half of its members be judges chosen by their peers¹⁹. In a joint statement of 13

⁷ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 2; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 2.

⁸ Speech of the President of the Supreme Court and the Council for the Judiciary for the opening of the judicial year, 6 September 2021.

⁹ Input from Spain for the 2022 Rule of Law Report, p. 3.

¹⁰ Organic Law No. 4/2021, of 29 March.

¹¹ The law prevents the acting Council to appoint the president of the Supreme Court, presidents of Provincial Courts and High Courts of Justice, president of the National High Court, and presidents of Chambers and Supreme Court judges.

¹² Draft Law modifying article 570 bis of Organic Law 6/1986, Reference number: 122/000239.

¹³ Technical Cabinet of the Supreme Court is a body integrated in the Supreme Court that assumes functions of technical-legal assistance to the president, the presidents of the chamber, the different chambers of the court and the government chamber in the scope of their respective competences and in matters of institutional relations, as well as public information on the jurisdictional or governmental activity of the court and the performance of the necessary tasks to enable the creation of jurisprudence databases.

¹⁴ Technical Cabinet of the Supreme Court 2021, Report on the current and future impact of the lack of renewal of vacant posts of Magistrates of the Supreme Court.

¹⁵ Law 38/98 of 28 December 1998. The law establishes a total of 79 magistrates for all the Chambers of the Supreme Court.

¹⁶ The report reflects that if the lack of renewal of the Council for the Judiciary continues, this number will increase up to 20% in October 2022.

¹⁷ Contribution from the Association of Prosecutors for the 2022 Rule of Law Report, p. 7; Contribution from the Professional Association of the Magistracy for the 2022 Rule of Law Report, p. 7; Contribution from Civic Platform for the Judicial Independence for the 2022 Rule of Law Report, p. 14; Contribution from the Judges and Magistrates' Association 'Francisco de Vitoria' and the Independent Judicial Forum for the 2022 Rule of Law Report, p. 14; Contribution from the General Council of Spanish Lawyers for the 2022 Rule of Law Report, p. 6.

¹⁸ According to Art. 122(3) of the Spanish Constitution, the Council consists of the President of the Supreme Court (chairing) and of 20 individuals – 12 judges or magistrates, and 8 lawyers or other jurists of recognised competence with more than fifteen years of professional practice. The Parliament is responsible for the appointment of all its members which is subject to a qualified majority of three fifths. While the Constitution requires the eight lawyers and other jurists to be appointed by a three-fifths majority in each chamber of the Parliament (four by the Congress and four by the Senate), it does not specify how the members representing judges are to be appointed.

¹⁹ Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 26 and 27.

September 2021²⁰, the four main associations of judges agreed that a reform of the appointment system of the members of the Council for the Judiciary is needed, so that a majority is elected by their peers, while there were discrepancies on the calendar for such reform. A draft proposal to reform the system of appointment of the Council for the Judiciary²¹ proposing that its judges-members are directly elected by their peers did not get enough support in Parliament to start proceedings.

A new disciplinary regime for prosecutors was established, while questions continue to be raised regarding the autonomy of the prosecution service from the Government. In May 2022, the Government approved new rules of procedure for the prosecution service²². The rules set a regulatory framework for disciplinary matters for prosecutors, as it has been recommended by the Group of States against Corruption (GRECO)²³. The regime is similar to the one applicable to judges and magistrates. The disciplinary procedure is based on the principles of non-retroactivity of unfavourable penalty provisions, adversarial process, proportionality and culpability. It also includes causes of abstention and disqualification, as well as the obligation to notify the agreement of filing to the person having submitted the claim or complaint. It further introduces the position of Prosecutor for Disciplinary Action. In April 2022, legal amendments were tabled in Parliament providing that relations between the Government and the Prosecutor General will be further regulated²⁴. When implemented, this could be considered as a welcome development, as it would reply to concerns raised in the 2020 Rule of Law report²⁵ and also by GRECO²⁶. Stakeholders have signalled that a wider reform of the statute of the Prosecutor General, in particular regarding the coincidence in the term of office of the Prosecutor General and the Government²⁷, remains necessary²⁸. This aspect has been subject to criticism considering in particular that the fact that the Prosecutor General's mandate ends at the same time as the Government's mandate may affect the perception of independence²⁹. The Prosecutor General herself has publicly called on the need to reform the statute of the prosecution service³⁰.

The Judicial Ethics Committee issued an opinion on the ethical duties of judges who return to their judicial functions after having held political office. Although there are rules requiring the notification of the new temporary employment to a specific body by the judge and there are general rules related in abstention and recusal of judges, there are no

²⁰ Associations of Judges (2021), Joint press release of 13 September 2021 on the public statements of politicians in relation to the renewal of the Council for the Judiciary.

²¹ Draft Law 122/000092, Proposal of an Organic Law to modify Organic Law 6/1985, from 30 October 2020.

²² Royal Decree 305/2022, of 3 May 2022.

²³ GRECO Fourth Evaluation Round – Second Compliance Report, recommendation xi, para. 73.

²⁴ Amendment 606. The Government will approve, in six months, the procedural rules regulating communications between the Government and the Prosecutor General.

²⁵ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 4.

²⁶ GRECO Fourth Evaluation Round – Second Interim Compliance Report, recommendation Six.

²⁷ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 5.

²⁸ Contribution from the Association of Prosecutors for the 2022 Rule of Law Report, p. 5; information provided by the Independent Judicial Forum in the context of the country visit to Spain.

²⁹ GRECO Fourth Evaluation Round – Evaluation Report, para 126.

In its Second Compliance Report, from March 2021, GRECO acknowledged that the recommendation had been considered by the Government, although it resulted in no change in the method of selection and the term of tenure of the Prosecutor General. GRECO also reiterated the need for further reflection on the additional safeguards that can be introduced in the Spanish prosecution system to shield it from undue interference.

³⁰ Prosecution Council (2020), The State Attorney General promotes before the associations a plan to face the challenge of the reform of the Code of Criminal Procedure.

specific rules in place establishing safeguards relating to temporary employment of judges as members of the executive or legislative powers³¹. There are provisions establishing that judges continue to acquire seniority in service while they are in political office. As also reflected in the 2021 Rule of Law Report³², stakeholders have criticised this situation³³, as it raises questions from the point of view of the separation of powers and regarding the necessary independence and impartiality of judges in reality and in appearance³⁴. In this context, the Judicial Ethics Committee³⁵ has issued a non-binding opinion on the ethical duties of judges who return to their judicial functions after having held political office³⁶. The opinion focuses on activities where such judges are performing actions for which they can be identified by the public as judges not only in the exercise of jurisdiction, but in all other facets of the office. It is also indicated that when judges return to their judicial functions, special explanatory or pedagogical efforts are needed to reinforce confidence in the judicial system to avoid the perception of interference by the executive and/or legislative powers in decisions taken by the judiciary.

Stakeholders have raised concerns of public statements by politicians, including members of Parliament and the Government, in relation to members of the judiciary³⁷.

In November 2021, the four main associations of judges published a joint press release calling politicians to refrain from comments that could potentially damage judicial independence³⁸. In particular, it was highlighted that the focus has moved from criticism regarding specific court decisions to criticism pertaining to the judges behind those decisions³⁹. The Supreme Court, in a decision issued on 18 March 2022⁴⁰, reflected that while such public statements are protected by the right to freedom of expression, it is important that elected representatives exercising institutional responsibilities are prudent when expressing their opinions. According to European standards, while courts are not immune to criticism and scrutiny, the judiciary must enjoy public confidence to be successful in view of its special role in society⁴¹.

³¹ Figure 58, 2022 EU Justice Scoreboard.

³² 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 4.

³³ Contribution from the Judges and Magistrates' Association 'Francisco de Vitoria' and the Independent Judicial Forum for the 2022 Rule of Law Report, p. 17; Contribution from Civic Platform for the Judicial Independence for the 2022 Rule of Law Report, p. 11; Contribution from the Association of Prosecutors for the 2022 Rule of Law Report, pp. 15-16.

³⁴ GRECO Fourth Evaluation Round – Evaluation Report, paras. 102-103.

³⁵ The Judicial Ethics Committee is an independent body of the Council of the Judiciary.

³⁶ Judicial Ethics Committee 2021, Opinion 1/21.

³⁷ Contribution from Civic Platform for the Judicial Independence for the 2022 Rule of Law Report, p. 16; Contribution from the Judges and Magistrates' Association 'Francisco de Vitoria' and the Independent Judicial Forum for the 2022 Rule of Law Report, p. 14; Contribution from the Professional Association of the Magistracy for the 2022 Rule of Law Report, p. 3.

³⁸ Associations of Judges 2021, Press Release of 21 November 2021 on the statements of politicians on judicial resolutions.

³⁹ Information provided by Judges and Magistrates' Association 'Francisco de Vitoria' in the context of the country visit to Spain.

⁴⁰ Poder Judicial (2022), *Press Release 18 March 2022*.

⁴¹ Venice Commission (CDL-AD(2013)038), Opinion on the legislation on defamation of Italy, para. 21-22. It may prove necessary to protect public confidence on the judiciary against attacks, especially in view of the fact that judges who have been criticised are subject to a duty of discretion that precludes them from replying.

Quality

New measures that facilitate access to justice of persons with disabilities have been implemented. In September 2021, a law aiming to support persons with disabilities on the exercise of their legal capacity⁴² entered into force. The law establishes a new system more respectful of the will and preferences of persons with disabilities and provides legal guarantees to prevent possible abuses. This reform was considered by stakeholders as a positive step contributing to facilitate the access to justice of people with disabilities⁴³. Moreover, on 13 January 2022, a unit was created within the Documentary Center of the Council for the Judiciary (CENDOJ) to guarantee accessibility for persons with disabilities to digital applications of the Council for the Judiciary⁴⁴. In addition, the Spanish Bar offered a course to lawyers on the legal protection of persons with disabilities, to promote the creation of free legal aid shifts for people with disabilities⁴⁵.

Work on the revision of the Code of Criminal Procedure continues⁴⁶. In July 2021, the Prosecutor General's Office published a technical report on the draft law reforming the Code of Criminal Procedure that had been tabled on 24 November 2020⁴⁷. The report welcomes the reform, in particular the changes on the system for judicial investigation, which would be led by prosecutors instead of investigative judges, as it is currently the case⁴⁸. However, the report also pointed to some aspects that could contribute to an increase of the length of proceedings. In this context, the Ministry of Justice put on hold discussions on the tabled draft law and created an *ad-hoc* working group in order to discuss a new draft law aiming to obtain a wide consensus of relevant stakeholders⁴⁹. The Working Group is expected to publish its findings in June 2022.

Efforts are ongoing to address challenges regarding resources of the justice system. The number of judges per inhabitant remains one of the lowest in the EU⁵⁰. In this context, the Government plans the creation of 70 new posts by the end of 2022⁵¹. In addition, the total budget allocated to the justice system increased by 7% in comparison with 2020⁵². Moreover, concerns have been raised in relation to difficulties to fill vacant positions in some regions of

⁴² Law 8/2021 reforming civil and procedural legislation to support people with disabilities on the exercise of their legal capacity.

⁴³ Information provided by the General Council of Spanish Lawyers in the context of the country visit to Spain.

⁴⁴ Contribution from Council for the Judiciary for the 2022 Rule of Law Report, p. 13.

⁴⁵ Contribution from the General Council of Spanish Lawyers for the 2022 Rule of Law Report, p. 18.

⁴⁶ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 6.

⁴⁷ Written contribution received from the Prosecutor General's Office in the context of the country visit to Spain.

⁴⁸ Currently, the system confers on the investigative judge the power to lead the investigation, while prosecutors can only demand the adoption of precautionary or investigative measures to be taken by the judge (Art. 5, Law No. 50/1981 of 30 December).

⁴⁹ Input from Spain for the 2022 Rule of Law Report, p. 10. The Working Group is formed by the Ministry of Justice, the Ministry of Home Affairs, the technical cabinet of the Council for the Judiciary, the technical secretariat of the General Prosecutor, the General Council of Procuradores, the General Council of Spanish Lawyers, and academics.

⁵⁰ Figure 36, 2022 EU Justice Scoreboard. This category consists of judges working full-time, in accordance with the CEPEJ methodology. It does not include the *Rechtspfleger*/court clerks/*letrados* that exist in some Member States such as Spain.

⁵¹ Input from Spain for the 2022 Rule of Law Report, p. 6. Written contribution received from the Ministry of Justice in the context of the country visit to Spain.

⁵² Contribution from the Judges and Magistrates' Association 'Francisco de Vitoria' and the Independent Judicial Forum for the 2022 Rule of Law Report, p. 15.

Spain⁵³. These vacancies are often covered by substitute-judges⁵⁴. In December 2021, the Government announced a scholarship programme to support the access to the judicial and prosecutorial careers⁵⁵. The programme is formed by 245 scholarships and a total budget of EUR 1 619 940. The main objective of the programme is to reduce the impact of socio-economic barriers limiting the access to said careers.

The use of ICT tools is well established and shortcomings of the digitalisation of justice, such as interoperability issues, are being addressed. As reflected in the 2021 Rule of Law Report⁵⁶, the use of ICT tools in the justice system is widespread⁵⁷. The Government is working on a law on digital efficiency. The law would promote the use of electronic case records, electronic processing of legal procedures and the use of digital solutions to conduct and follow court proceedings⁵⁸. Shortcomings in relation to interoperability between the management systems used in the different Autonomous Regions, as mentioned in the 2021 Rule of Law Report⁵⁹, are being addressed in the context of the improvement of the digital ecosystem of the public administration⁶⁰. In particular, the exchange of files is already possible between the regions where the management of the Justice system is carried out by the Ministry of Justice⁶¹ and the Autonomous Regions of Andalusia, Canary Islands and Madrid⁶². This is currently done via an independent tool in the frame of the so-called “Judicial Interoperability HUB” project; and the next phases of the project envisage a closer interoperability between IT systems⁶³. Further investments on the digitalisation of justice are planned within the Spanish Recovery and Resilience Plan⁶⁴.

The Government is working on a draft law on the right of defence. The Government is working on a draft law on the right of defence. The draft law compiles in one legal document the different aspects of the right of defence, which are currently spread in a number of pieces of specialised legislation. It also provides for additional guarantees to the right of access to effective judicial protection and incorporates suggestions from the General Council of Spanish Lawyers and other relevant stakeholders.

⁵³ Contribution from Council for the Judiciary for the 2022 Rule of Law Report, p. 11.

⁵⁴ Information provided by the Ministry of Justice and the Council for the Judiciary in the context of the country visit to Spain. These substitute-judges, appointed by the Council for the Judiciary on the proposal of High Regional Courts, although not subject to the same recruitment procedure and training programme as career judges, may exercise judicial functions in courts of the different jurisdictions.

⁵⁵ Written contribution received from the Ministry of Justice in the context of the country visit to Spain.

⁵⁶ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 6.

⁵⁷ Figures 41-49, 2022 EU Justice Scoreboard.

⁵⁸ Input from Spain for the 2022 Rule of Law Report, p. 8.

⁵⁹ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, pp. 5-6.

⁶⁰ Input from Spain for the 2022 Rule of Law Report, pp. 7-8. That includes, among others, Civil Registries, Administrative Registries of the Administration of Justice, forensic institutes, State Security Forces and Bodies, penal institutions and other public administrations.

⁶¹ The management of the Justice system is carried out by the Ministry of Justice in the Autonomous Regions of Castilla and León, Castilla-La Mancha, Murcia, Baleares, Extremadura and the Autonomous Cities of Ceuta and Melilla.

⁶² Input from Spain for the 2022 Rule of Law Report, p. 8.

⁶³ Written contribution received from the Ministry of Justice in the context of the country visit to Spain.

⁶⁴ Recovery and Resilience Plan 2021, Component 11, p. 42. Investments include among others the improvement of digital services, the creation of an electronic case record, the modernisation of infrastructure and the development of interoperability and cybersecurity mechanisms.

Efficiency

Challenges regarding the efficiency of the justice system are increasing, including as a result of the COVID-19 pandemic. The disposition time in civil, commercial, and administrative cases in first instance increased from 274 days in 2019 to 349 days in 2020⁶⁵, possibly as a result of the COVID-19 pandemic. Furthermore, the disposition time for civil and commercial cases in the Supreme Court significantly increased since 2019, reaching 888 days⁶⁶ (in 2019 this figure was 681 days⁶⁷). The clearance rate for litigious civil and commercial cases decreased in 2020 to 89.8% and it is now one of the lowest of the EU⁶⁸. On the positive side, the clearance rate for the second instance civil and commercial cases has increased from 93.0% to 116.9% and the disposition time has decreased from 279 to 227 days. Moreover, the clearance rate in administrative cases first instance has increased from 92.2% to 99.5%. However, the number of pending litigious civil, commercial, and administrative cases remains very high and has continued to increase steadily⁶⁹. Concerns about the efficiency of the Spanish justice system were raised by stakeholders⁷⁰, including in connection with deficiencies of the current procedural system.

The Government has tabled several legal initiatives aimed to increase the efficiency of the justice system. The Parliament started discussions on the laws on the organisational and procedural efficiency of the justice system in April 2022. As reflected in the 2021 Rule of Law Report⁷¹, these draft laws aim to shorten the length of procedures in all four jurisdictions while preserving the procedural guarantees of citizens. The adoption of these legislative proposals are milestones covered within the Spanish Recovery and Resilience Plan⁷².

II. ANTI-CORRUPTION FRAMEWORK

In Spain, the Anti-Corruption Prosecutor's Office (ACPO)⁷³ is responsible for the investigation, detection and prosecution of corruption with the assistance of law enforcement agencies. Attached Units – from the National Police⁷⁴ and the Civil Guard⁷⁵ - and Support Units of the State Tax Administration Agency (AEAT) and the General Intervention Board of the State Administration (IGAE), all of whom contribute with analytical work⁷⁶. The National Anti-Fraud Coordination Service⁷⁷ oversees anti-fraud measures and conducts investigations at national level while several Autonomous Regions have their own offices to fight fraud in

⁶⁵ Figure 6, 2022 EU Justice Scoreboard.

⁶⁶ Figure 8, 2022 EU Justice Scoreboard.

⁶⁷ Figure 8, 2021 EU Justice Scoreboard.

⁶⁸ Figure 11, 2022 EU Justice Scoreboard.

⁶⁹ Figure 14, 2022 EU Justice Scoreboard.

⁷⁰ Defensor del Pueblo (2022), Annual Report 2021, p. 29; Contribution from the Judges and Magistrates' Association Francisco de Vitoria and the Independent Judicial Forum for the 2022 Rule of Law Report, p. 16; Contribution from the Association of Prosecutors for the 2022 Rule of Law Report, p. 13.

⁷¹ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 7.

⁷² Recovery and Resilience Plan 2021, Component 11, pp. 26-28.

⁷³ Law 10/1995, of 24 April, amending Law 50/1981, of 30 December, which regulates the Organic Statute of the Public Prosecutor's Office and creates the Special Prosecutor's Office for the Repression of Economic Crimes Related to Corruption. Official State Bulletin, 25 April 1995, n. 98, pp. 12102-2103.

⁷⁴ Royal Decree 769/1987, of June 19, on regulation of the Judicial Police.

⁷⁵ Royal Decree 769/1987, of June 19, on regulation of the Judicial Police.

⁷⁶ Anti-Corruption Prosecutor's Office (2020), Annual Report 2019, p. 698.

⁷⁷ Governed by the Additional Provision 25 of General Subsidies Law 38/2003, of 17 November.

their territories⁷⁸. The Office of Conflicts of Interest oversees asset declarations for Government officials and political appointees⁷⁹. Rules on transparency, access to public information and good governance are monitored by the Council of Transparency and Good Governance whereas a number of Autonomous Regions have their own Council to perform the same role than the Council of Transparency and Good Governance⁸⁰. The Court of Auditors is in charge of the audit of the financial-economic activity and regular accounting of political parties, as well as of the contributions received by foundations and associations linked to the political parties represented in the Spanish Parliament⁸¹.

The perception among experts and the business community is that the level of corruption in the public sector remains relatively low. In the 2021 Corruption Perceptions Index by Transparency International, Spain scores 61/100 and ranks 10th in the European Union and 34th globally⁸². This perception has improved over the past five years⁸³. The 2022 Special Eurobarometer on Corruption shows that 89% of respondents consider corruption widespread in their country (EU average 68%) and 46% of respondents feel personally affected by corruption in their daily lives (EU average 24%)⁸⁴. As regards businesses, 86% of companies consider that corruption is widespread (EU average 63%) and 59% consider that that corruption is a problem when doing business (EU average 34%)⁸⁵. Furthermore, 32% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 34%)⁸⁶, while 11% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 29%)⁸⁷.

The adoption of a national anti-corruption plan is being considered, which is expected to contribute to creating a comprehensive policy to prevent and reduce corruption. A set of actions are also under implementation in the framework of the Strategy against Organised

⁷⁸ Catalonia Anti-Fraud Office, which is regulated by Law 14/2008, of 5 November 2015 of the Autonomous Region of Catalonia; Valencia Agency for the Prevention and Fight against Fraud and Corruption, which is regulated by Law 11/2016 of 28 November 2015 of the Autonomous Region of Valencia; Office for Prevention and Fight against Corruption of the Balearic Islands, regulated by Law 16/2016 of 9 December 2016 on the Balearic Islands; Municipal Anti-Fraud and Corruption Office of the Madrid City Council, which is governed by its Organic Regulation approved by agreement of the Madrid City Council of 23 December 2016; Office for Transparency and Good Practice of the City of Barcelona (Directorate of the Analysis Service).

⁷⁹ These are political appointments made by Government decree and include secretaries of State, senior officials in ministries, ambassadors and chefs of public companies, among others.

⁸⁰ Transparency Agency of the Barcelona Metropolitan Area's government, created on 14 December 2015, Anti-Fraud and Anti-Corruption Office of Andalucía, created by Law 2/2021, June 18th.

⁸¹ Law 2/1982, of 2 May 1982. To be noted that while the Court of Auditors is not an anti-corruption body per se, its work is still relevant in the topics covered under the Anti-Corruption Framework section of the report.

⁸² Transparency International (2022), Corruption Perceptions Index 2021. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

⁸³ In 2017, the score was 57, while, in 2021, the score is 61. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

⁸⁴ Special Eurobarometer 523 (2022). The Eurobarometer data on citizens' corruption perception and experience is updated every second year. The previous data set is the Special Eurobarometer 502 (2020).

⁸⁵ Flash Eurobarometer 507 (2022). The Eurobarometer data on business attitudes towards corruption as is updated every second year. The previous data set is the Flash Eurobarometer 482 (2019).

⁸⁶ Special Eurobarometer 523 (2022).

⁸⁷ Flash Eurobarometer 507 (2022).

Crime 2019-2023⁸⁸. The strategy aims to minimise corruption risks by increasing the transparency and efficiency of law enforcement agencies when investigating corruption-related crimes. In this regard, two ongoing strategic plans for the National Police and the Guardia Civil will include specific objectives to improve indicators of corruption risks to better detect and fight corruption crimes, for instance, the percentage of prosecuted investigations out of total public corruption investigations⁸⁹. The Ministry of the Interior approved in March 2022 the Third Special Security Plan for Campo de Gibraltar against drug trafficking, with a focus on corruption and other economic related crimes⁹⁰. Meanwhile, the National Anti-Fraud Strategy is currently being drafted by the National Anti-Fraud Coordination Service in close cooperation with the auditing authority and the national tax administration law enforcement Agencies (National Police and Civil Guard) and the National Prosecutor's Office⁹¹. The preparation of the strategy is being supported by an EU-funded project with the technical support of the OECD, focusing on enhancing public accountability, promoting the use of data, and strengthening coordination mechanisms across Government⁹². Moreover, the adoption of a national anticorruption plan is being considered, which is expected to contribute to creating a comprehensive policy to prevent and reduce corruption⁹³.

Several initiatives to enhance integrity in the public sector are in the process of implementation. Those include guidelines of conduct for public employees and senior officials, models of risk maps in organisations, models for ethical climate surveys, models of ethics committees, guides for the development of internal reporting channels, guides for the management of institutional ethics mailboxes, activities and means of training and dissemination, and mechanisms for monitoring, evaluating and reviewing the system. The Government is currently assessing the integrity systems in the public administration in order to develop and implement codes of conduct which set common standards to prevent corruption in public office⁹⁴. The approach is to enact tailor made codes based on the characteristics, risks and specificities of each public service and with the aim to develop follow-up strategies⁹⁵. In addition, to strengthen the integrity within the National Police and the Civil Guard, a new National Office for Human Rights Guarantees⁹⁶ was set up in February 2022. The Office has the aim to promote the professional and ethical integrity of members of the law enforcement agencies through application of rules governing general

⁸⁸ 2019-2023 Strategy against Organised Crime and Serious Crime.

⁸⁹ Input from Spain for the 2022 Rule of Law Report, p. 16.

⁹⁰ Information received from the Ministry of Home Affairs in the context of the country visit in Spain.

⁹¹ Information provided by the Ministry of Interior in the context of the country visit in Spain. The scope of the National Anti-Fraud Strategy has extended to the protection of the financial interest of Spain, including integrity policies for civil servants. Also, Spain chairs the Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE Network), under the auspicious of the UN Convention against Corruption, through the Spanish Law Enforcement and the National Anti-Fraud Coordination Service.

⁹² OECD (2021), Enhancing Public Accountability in Spain Through Continuous Supervision.

⁹³ GRECO Fifth Evaluation Round - Compliance Report, para. 15; information provided by IGAE in the context of the country visit in Spain.

⁹⁴ Ministry of Regional Planning and Public Administration (2021), Preventive systems of public integrity in the General Administration of the State.

⁹⁵ Input from Spain for the 2022 Rule of Law Report, p. 18.

⁹⁶ Instruction by the Secretary of State of Security 1/2022, of 22 February 2022.

staff of the administration⁹⁷, and in particular through the application of their respective codes of ethics⁹⁸.

The length of corruption investigations and prosecutions remains a concern, in particular with regard to high-level corruption cases. Bribery, fraud and corruption in the public administration continue to be the main risks of serious corruption in Spain⁹⁹. The number of procedures opened on corruption charges amounted to 53 in 2021¹⁰⁰. In addition, of all adjudicated cases of corruption crimes in the course of 2021, a total of 44 cases were convictions or partial convictions, while 21 were acquittals¹⁰¹. The Government has assigned nine extra posts to the Anti-Corruption Prosecutor's Office which is competent for two major areas of offences, namely economic offences and offences committed by public officials in the exercise of their official duties. With this increase, the Office has reached a total of 29 prosecutors at national level as well as 30 delegated prosecutors at regional level¹⁰². In addition, specific corruption-focused training sessions were carried out in order to improve investigation of economic crime and corruption¹⁰³. However, as highlighted in the 2021 Rule of Law Report¹⁰⁴, investigation and prosecution of high-level corruption continue to be lengthy and delayed which generates concern¹⁰⁵. This lack of efficiency in handling high-level corruption cases is still mostly due to shortage of adequate funding and expertise despite the efforts made on training¹⁰⁶. Lack of communication between anti-corruption prosecutors is also considered a shortcoming¹⁰⁷. The Government expects that the revision of the Code of Criminal Procedure would contribute in tackling these issues¹⁰⁸.

Resources of the Council of Transparency and Good Governance have been strengthened. The Council of Transparency and Good Governance having as aim ensuring transparency, public access to information and good governance, has received additional funding and its 2021 budget increased by 4,7% in comparison with 2020¹⁰⁹. In terms of human resources, the Council of Transparency and Good Governance has also recruited four additional technical posts and two administrative staff¹¹⁰. In addition, a new document management system is now in place and will enhance the development of the complaint

⁹⁷ Written contribution received from the National Police and the Civil Guard in the context of the country visit to Spain.

⁹⁸ Most recent legislative acts include: Code of ethics of the National Police Force for 2013; Royal Decree 176/2022 of 4 March approving the Code of Conduct for Civil Guard staff. Its implementation is ensured through awareness raising and training, the exercise of command work, supervision and, ultimately, through the relevant disciplinary legislation which provides for and penalises conduct in contravention of human rights.

⁹⁹ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 10.

¹⁰⁰ Information obtained from the database of the Council for the Judiciary.

¹⁰¹ Ibid.

¹⁰² Anti-Corruption Prosecutor's Office (2021), Annual Report 2020, p. 646.

¹⁰³ Written contribution received from the Ministry of Justice in the context of the country visit to Spain.

¹⁰⁴ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 10.

¹⁰⁵ Information received from the Association of Prosecutors in the context of the country visit to Spain.

¹⁰⁶ Information received from the Association of Prosecutors in the context of the country visit to Spain.

¹⁰⁷ Information received from the Progressive Union of Prosecutors in the context of the country visit to Spain.

¹⁰⁸ One of the main novelties of the reform are the new powers of the investigating prosecutor and the judge responsible for guarantees, as well as the alignment of the reform with other ongoing projects such as the procedural rules on efficiency, which seek to modernise judicial proceedings. - Written contribution received from the Ministry of Justice in the context of the country visit to Spain.

¹⁰⁹ GRECO Fifth Evaluation Round - Compliance Report, para. 38.

¹¹⁰ Information received from the Council of Transparency and Good Governance in the context of the country visit to Spain.

procedure by improving the relation with all parts involved (including citizens and regional and local transparency entities) and reducing formalities¹¹¹. While the Council of Transparency and Good Governance has welcomed the strengthening of resources, it has highlighted that given the increased trend of workload since 2019¹¹², additional efforts would still be needed to guarantee the proper performance of its tasks – an observation that has also been made by GRECO¹¹³.

Ethics and integrity rules for civil servants are being amended in view of improving the rules on conflicts of interest. As already reflected in the 2021 Rule of Law Report¹¹⁴, one commitment under the Fourth Open Government Plan¹¹⁵ is to strengthen the system to prevent conflicts of interests and incompatibilities¹¹⁶ of employees working for all public administrations¹¹⁷. The Government is currently finalising the draft law on incompatibilities including improved conflicts of interest rules¹¹⁸. The draft law would apply to all public employees and civil servants. While the Office of Conflicts of Interest continues overseeing and enforcing conflicts of interest rules and the system for asset declaration of senior officials and members of Government, GRECO has insisted on the reinforcement of the independence and autonomy of the Office¹¹⁹. Moreover, draft legislation is being prepared in relation to the regime of incompatibilities for civil servants of the National Police¹²⁰ and the Civil Guard¹²¹; the latter is planned for adoption in 2023. This new regulation will update and develop the one already in force¹²². In relation to asset disclosure, systematic publication of asset declarations is done on a yearly basis by digital means. The information is gathered in new forms has been further categorised to provide overall sums regarding real estate property, bank deposits, capital stock and equity shares, life insurances and retirement plans, other financial assets and property rights, and liabilities. The individual forms are then collated in a single document which is published in the Official Journal and also made available online¹²³. Those developments were welcomed by GRECO¹²⁴.

¹¹¹ Ibid.

¹¹² Council of Transparency and Good Governance, Strategic Plan 2022-2025.

¹¹³ GRECO Fifth Evaluation Round - Compliance Report, para. 39.

¹¹⁴ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 11.

¹¹⁵ Fourth Open Government Action Plan for Spain (2020-2024).

¹¹⁶ The system of incompatibilities is a system of measures to prevent conflicts of interest in the exercise of the duties as public representatives by establishing activities that are not compatible with the duty in public office.

¹¹⁷ Following a public consultation on the project initiative, a working group was established to discuss the reinforcement of the prevention regime of conflicts of interests for political advisors including improved transparency requirements and post-employment limitations, p. 3.

¹¹⁸ Replacing Law 53/1984 on Incompatibilities of Public Administration Personnel.

¹¹⁹ GRECO Fifth Evaluation Round - Compliance Report, p. 6.

¹²⁰ This is based on the legal framework established by Organic Law 9/2015 of 28 July 1992 on the Staff Regulations of the National Police, Article 15 of which provides that, by regulation, the rules for implementing and applying the general rules on incompatibilities of staff serving the Public Administrations shall be adopted in order to adapt it to the specific structure and functions of the National Police.

¹²¹ This relates to the provisions of Law 29/2014 of 28 November 1992 on the Conditions of Employment of Civil Guard Staff and Article 22 of Organic Law 11/2007 of 22 October 2003 regulating the rights and duties of members of the Civil Guard.

¹²² Written contribution received from the Ministry of Home Affairs in the context of the country visit to Spain.

¹²³ Assets declarations: mptfp.gob.es.

¹²⁴ GRECO Fifth Evaluation Round - Compliance Report, para. 51-54. GRECO has stated that these rules can be further strengthened. For instance, there can be a more detailed disaggregation of information and assets, shortening the timeframes for reporting and including information on spouses and dependent family members.

Preparations are progressing on a draft law on lobbying, which would contribute to strengthening transparency on contacts between high-level officials and interest groups¹²⁵. Currently, lobbying remains unregulated in Spain. The Government has recently progressed in efforts aiming at enacting a lobbying legislation. Following the results from the public consultation referred to in the 2021 report, the Integrity Working Group of the Open Government Forum has advanced on the draft law, which was intended to be presented to the Parliament in the next months²⁰²²¹²⁶. A key achievement of this draft law would be the establishment of a mandatory public register of lobbyists¹²⁷. [The draft law is expected to cover, among others, aspects related to the definition of interest groups; duties and obligations of members and representatives of interest groups; a code of conduct applying to lobbyists; limitations of revolving doors between high-level officials and interest groups; and sanctions. The adoption of this draft law would complement positive actions already implemented by the Spanish Parliament, such as the disclosure of contacts by members of Parliament with third parties¹²⁸.

New whistleblower protection legislation expected to align national legislation with EU law requirements is awaiting adoption by the Government. Spain remains without a stand-alone legislation to ensure protection of persons reporting criminal offences including corruption. On 4 March 2022, the Council of Ministers received a report on the draft law¹²⁹ to transpose Directive (EU) 2019/1937¹³⁰, increasing the levels of protection for those who report on corruption and other wrongdoings. This scope of the Law would cover violations of national law, thereby going beyond the material scope of Directive (EU) 2019/1937.

The Court of Auditors has issued recommendations aimed at strengthening the legal framework regulating funding of political parties. On 27 July 2021, the Court of Auditors published an opinion regarding funding and financial-economic activities of political parties¹³¹. The opinion includes a number of recommendations related to, among others, private donations, new ways of party financing, such as crowdfunding and microloans, developments related to the tracing of the origin and destination of private financing, and clarifications on the categorisation of electoral costs subject to reimbursement; for example ensuring that rules on donations for electoral and ordinary activities are applied accordingly or limiting donations in cash in order to document the origin of donations. Moreover, on 27 January 2022¹³², the Court of Auditors formally requested the Parliament to reform the Organic Law governing the financing of political parties¹³³, in particular the aspects related to

¹²⁵ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 12.

¹²⁶ GRECO Fifth Evaluation Round - Compliance Report, p. 8.

¹²⁷ Input from Spain for the 2022 Rule of Law Report, p. 3.

¹²⁸ GRECO Fifth Evaluation Round - Compliance Report, para. 44. The Parliament is publishing members' agendas on the 'Transparency Portal' of the Congress and Senate, as well as tracking third party involvement in the elaboration of legislation.

¹²⁹ The urgent administrative procedure provided for in Article 27 (1) (a) of Government Law 50/1997 of 27 November on the procedure for drafting and approving the aforementioned preliminary draft law was agreed. The draft law introduces rules on effective protection of whistleblowers with regard to possible breaches of the EU and national law.

¹³⁰ Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law.

¹³¹ Court of Auditors (2021), Opinion 1445 regarding funding, financial-economic activities and control of political parties and foundations and other entities linked to political parties.

¹³² Court of Auditors (2022), Press release 31 January 2022, 'The Court of Auditors agrees to request a modification of the Organic Law on the Financing of Political Parties for the second time to the Parliament'.

¹³³ Organic Law 8/2007, of 4 July 2007.

the thresholds for sanctions and the disproportionate impact on small political parties mostly operating at local level.

Efforts have been made to assess fraud risks and to target control activities linked to spending A specific project was carried out in 2021 by the General Controller of the State Administration with the support of the OECD on assessing fraud risks and targeting control activities linked to spending on recovery funding which is expected to also contribute to the fight against corruption as the two are interlinked. Overall, the project should strengthen the oversight and control also in terms of corruption-related activities. Specifically, the project developed machine-learning techniques to enhance existing fraud risk assessments, focusing on the use of data for detecting fraud risks linked to public grants and subsidies. The project resulted in a model to detect risks, developed with specific datasets, and a mapping of datasets to use in the future. The project also assessed the preconditions for IGAE's adoption of advanced analytics and data-driven risk assessments, including ways for it to improve data governance and data management¹³⁴.

III. MEDIA PLURALISM AND MEDIA FREEDOM

The Constitution enshrines the rights to freedom of expression and media freedom¹³⁵. The general legislative framework concerning media freedom and pluralism in Spain remains solid and stable. An independent multi-regulatory body, the National Commission for Markets and Competition (CNMC), assumes the role of audiovisual regulator¹³⁶.

A law on Audiovisual communication attributing new competences to the Audiovisual regulator was adopted, while concerns on its resources remain. The Draft General Law on Audiovisual Communication was adopted by Parliament on 26 May 2022¹³⁷. The law provides that new competences would be attributed to the Audiovisual Sub-Directorate of the National Commission for Markets and Competition (CNMC). Those new competences include, among others, supervision of providers of video sharing platform services, monitoring the compliance of the public service mission of the national public broadcaster, new reporting obligations on media literacy and supervision of radio-on-demand services ('podcasts'). However, the law does not address the adequacy of resources requirement in the Audio-Visual Media Services Directive (AVMSD)¹³⁸. This has been indicated by stakeholders, including the CNMC itself, as problematic¹³⁹, as also indicated in the 2021 Rule of Law Report¹⁴⁰. Equally, concerns as to the operational autonomy of CNMC in organisational and functioning matters, like recruitment, salaries or staff numbers remain¹⁴¹. Three regions (Andalusia, Catalonia and Valencia) have established independent regulators,

¹³⁴ OECD (2021), Countering Public Grant Fraud in Spain: Machine Learning for Assessing Risks and Targeting Control Activities.

¹³⁵ Art. 20 of the Spanish Constitution.

¹³⁶ Spain ranks 32th in the 2022 Reporters without Borders World Press Freedom Index compared to 29th in the previous year.

¹³⁷ General Law on Audiovisual Communication, of 26 May 2022. To be noted that the European Commission on 19 May 2022 had referred Spain (and four other Member States) to the Court of Justice of the European Union over the failure to transpose the revised AVMSD.

¹³⁸ Art. 30.4 AVMSD.

¹³⁹ Written contribution received from the CNMC in the context of the country visit to Spain; 2022 Media Pluralism Monitor, Country Report on Spain, p. 10; information received from the Association of Media Users in the context of the country visit to Spain.

¹⁴⁰ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 14.

¹⁴¹ Information received from the CNMC in the context of the country visit to Spain.

while others have opted for other regulatory arrangements, such as operating as part of the regional ministries. The law includes provisions setting up a Group of Audiovisual Regulatory Authorities, composed of representatives at national and regional level, to foster the exchange of expertise and best practices on the application of legislation audiovisual communications¹⁴².

New legal provisions on the transparency of media ownership have been adopted, while challenges remain. As indicated in the 2020 and 2021 Rule of Law Reports¹⁴³, ownership data is publicly accessible, but ownership information is not exhaustive (provided only for radio and television) and there are difficulties to assess beneficial ownership. Spain has a National Registry of Audiovisual Communication Service Providers, which can be accessed freely by the public and contains information on owners with significant participation in the capital of service providers. In line with the provisions in the revised AVMD, the law on Audiovisual Communication provides that video sharing platforms have to register with the National Registry indicating significant shares in the capital of the service providers¹⁴⁴ and requires that service providers publish in their web pages the information regarding ownership shares and editorial responsibility. The supervision of these obligations is entrusted to the CNMC¹⁴⁵. However, the registry is not under the responsibility of the regulator but under that of the Ministry of Economy.

The legal framework for institutional advertising is varied and complex, while there have been calls for a more equitable distribution of institutional advertising. Besides the legislation concerning the national administration that was covered in 2020 Report¹⁴⁶, thirteen regional laws govern institutional advertising within the regions¹⁴⁷. Basic common principles applying to all administrations are established in the national Law on Advertising and Institutional Communication¹⁴⁸. Independent media have urged the Government to protect the plurality and quality of information by applying a more equitable distribution of institutional advertising, ensuring that it benefits media that are providing public service information according to professional quality standards¹⁴⁹.

A regulatory environment sustaining independent and impartial public service media is in place. A state-wide radio and TV broadcaster, RTVE (*Radio Television Española*), coexists with regional and numerous local public service media providers. The Law on State Owned Radio and Television¹⁵⁰ provides for the competences, system of appointment and other aspects of the functioning of RTVE, while regional and local public service media providers are regulated by the relevant legislation at regional level¹⁵¹. The law defines public

¹⁴² Second additional provision, General Law on Audiovisual Communication, of 26 May 2022.

¹⁴³ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 10; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 14.

¹⁴⁴ Art. 37. General Law on Audiovisual Communication, of 26 May 2022. Significant participation understood to represent directly or indirectly: a) 3% of the capital, b) 30% of the voting rights, or less if it would allow to designate in the 24 months following the acquisition more than half of members of the management board.

¹⁴⁵ Information provided by the Ministry of the Presidency in the context of the country visit to Spain.

¹⁴⁶ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 14.

¹⁴⁷ Information provided by the Ministry of the Presidency in the context of the country visit to Spain.

¹⁴⁸ Law 29/2005 of 29 December 2005.

¹⁴⁹ 2022 Media Pluralism Monitor, Country Report on Spain, p. 14.

¹⁵⁰ Law 17/2006 of 5 June 2006.

¹⁵¹ However, regional and local service media providers must respect the general principles established in the General Law 7/2010 on Audiovisual Communication, which is currently under review.

service media as “an essential service for the community and the cohesion of democratic societies” and amongst its objectives includes ‘favouring pluralism’¹⁵². RTVE is managed by a Management Board of ten members¹⁵³ elected by the Parliament by a two-thirds majority for a six-year non-renewable mandate. The candidates must be sufficiently qualified professionals. The Court of Auditors is in charge of the financial control of RTVE. The law also establishes the incompatibilities and the reasons for termination of the mandate of the members of the Board, who cannot act upon instructions from other institutions or political interests. Two additional bodies complete the governance structure in RTVE: the Advisory Council, with 16 representatives from civil society organisations representing the plural interests of society; and the News Council, an internal body where journalists in RTVE monitor the independence, the objectivity and the veracity of the news.

Special financial support to digital terrestrial televisions during the COVID-19 pandemic were disbursed. This aid was granted exceptionally to digital terrestrial televisions, which are required to cover rural areas. The aid was granted in December 2021 by the Council of Ministers after state aid notification to the Commission.

Work continues on several initiatives to strengthen access to information. The committee¹⁵⁴ set up in 2021¹⁵⁵ to revise the Law on Official Secrets¹⁵⁶ has continued its work with the aim to review it by the end of 2022¹⁵⁷. The updated law is expected to make access to official information easier for journalists and the general public. Moreover, a charter of services of the Transparency Portal of the General State Administration has been published¹⁵⁸. The charter identifies the services available in the portal, the indicators for their evaluation, as well as the quality commitments acquired on them and the rights to access information¹⁵⁹. Furthermore, Spain signed the Council of Europe’s Convention on Access to Public Documents (*Tromsø* Convention) on 23 November 2021¹⁶⁰. The Government has also initiated the reflection and consultations on the reform of the law¹⁶¹ on Transparency, Access to Public Information and Good¹⁶².

Journalists have continued to face some challenges in the performance of their professional activities. The Government has continued with the implementation of the Agreement signed in December 2020 between the Ministry of Home Affairs, the Federation of Associations of Journalists of Spain, and the National Association of Graphic Press and Television Informants, as reported in the 2021 Rule of Law Report¹⁶³. The purpose of the Agreement is to facilitate the work of information professionals in places and events where situations of violence may occur. The implementation of the agreement has been considered

¹⁵² Art. 1.1, Law 17/2006 of 5 June 2006.

¹⁵³ Six by the Congress and four by the Senate.

¹⁵⁴ Formed by the Ministries of the Presidency, Defence, Home Affairs and Foreign Affairs.

¹⁵⁵ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 15.

¹⁵⁶ Law 9/1968 of 5 April on official secrets.

¹⁵⁷ Written contribution received from the Ministry of the Presidency in the context of the country visit to Spain.

¹⁵⁸ Resolution of the Minister of Finance and Public Administration of 21 October 2021, approving a Charter of services of the Transparency Portal of the General State Administration.

¹⁵⁹ Information provided by the Ministry of the Presidency in the context of the country visit to Spain.

¹⁶⁰ Input from Spain for the 2022 Rule of Law Report, p. 40.

¹⁶¹ Law 19/2013 of 9 December 2013.

¹⁶² The process is expected to lead to a draft amending law being adopted by the Government in the first half of 2023.

¹⁶³ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 15.

overall positive¹⁶⁴. SLAPP-related concerns were voiced over a number of speech-related offences with respect to freedom of expression standards and possible misuse of the offence of revelation of secret information against those reporting on corruption¹⁶⁵. In this context, the Government is currently assessing a legal initiative to regulate the right of professional secrecy of journalists, as provided in the Constitution¹⁶⁶ and requested by journalists' associations¹⁶⁷. Since the publication of last year's Rule of Law Report, three alerts were registered for Spain in the Council of Europe's Platform to Promote the Protection of Journalism and Safety of Journalists¹⁶⁸, relating to cyber-attacks on several media websites and on criminal prosecutions for alleged perjury to four Spanish journalists; two out of the three alerts had been replied by Spain.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Spain is a parliamentary monarchy, with a bicameral Parliament¹⁶⁹. It is also a decentralised unitary state where the State and the Autonomous Regions have both exclusive and shared competences¹⁷⁰. The Constitutional Court¹⁷¹ is exclusively competent to review the constitutionality of laws, as well as appeals for constitutional protection of fundamental rights and to decide on potential conflicts between constitutional bodies of the State¹⁷². Both chambers of Parliament – the Congress and the Senate – have legislative competence, which they can delegate to the Government, subject to certain limitations¹⁷³. The Government, the two Chambers of Parliament, the assemblies of the autonomous regions, and a group of at least 500 000 citizens have the right of legislative initiative.

Members of a number of constitutional bodies were appointed by Parliament, which put an end to substantial delays. In October and November 2021, Parliament proceeded with the appointment of members of a number of constitutional bodies, including the Ombudsperson, a third of the members of the Constitutional Court and the board of the Court

¹⁶⁴ Information provided by the associations of journalists (European Journalists' Association and FAPE) in the context of the country visit to Spain.

¹⁶⁵ See Judit Bayer, Petra Bárd, Lina Vosyliute, Ngo Chun Luk (2021), Strategic Lawsuits Against Public Participation (SLAPP) in the European Union, A comparative study, Country note Spain, EU-Citizen: Academic Network on European Citizenship Rights, pp. 317 (study commissioned by the European Commission in the context of the preparation of the SLAPP initiatives adopted on 27 April 2022; contribution from 'Article 19' for the 2022 Rule of Law Report, p. 18. In addition, some media freedom groups have expressed concerns on the launch of a SLAPP against a media outlet (Media Freedom Rapid Response (2022), Statement coordinated by Media Freedom Rapid Response and signed by European Centre for Press and Media Freedom, European Federation of Journalists, Free Press Unlimited, International Press Institute, Article 19 and OBC Transeuropa).

¹⁶⁶ Art. 20 d) of the Spanish Constitution.

¹⁶⁷ La Moncloa – Government of Spain (2022), Press release 28 April 2022.

¹⁶⁸ Council of Europe, Platform to promote the protection of journalism and safety of journalists, Spain.

¹⁶⁹ It consists of the Congress of Deputies (the lower house), and the Senate (the upper house). Both are directly elected.

¹⁷⁰ Autonomous Regions have political and financial autonomy, having an institutional organisation based on a Legislative Assembly, a Governing Council with executive and administrative functions and a President, elected by the Assembly from among its members. Autonomous Regions hold the power to pass laws on a wide range of areas over which they have exclusive competence, but also secondary legislation in certain matters that are competence of the State, as well as the execution of State regulations.

¹⁷¹ The Constitutional Court does not form part of the judiciary.

¹⁷² Title IX of the Spanish Constitution.

¹⁷³ Art. 82 of the Spanish Constitution.

of Auditors¹⁷⁴. The appointment of these office holders has been welcomed, as there were long delays in their appointment. The Venice Commission stressed the importance of providing for qualified majorities for appointments of members of constitutional institutions but has warned about the risk of stalemates and has recommended to devise effective and solid mechanisms to minimise the risk of deadlock¹⁷⁵.

The Constitutional Court exercised judicial review in relation to emergency measures taken to fight the COVID-19 pandemic. As noted in the 2021 Rule of Law Report¹⁷⁶, on 14 July 2021, the Constitutional Court issued a decision on the Royal Decree declaring the first state of alarm¹⁷⁷. The Court did not question the measures taken by the Government to fight the COVID-19 pandemic. However, it declared unconstitutional some provisions imposing limitations on the freedom of movement, as it considered that such limitations should have been taken under a “state of emergency”¹⁷⁸ rather than under a state of alarm¹⁷⁹. The Court clarified in its decision that the declaration of unconstitutionality of those provisions did not entail an automatic right for compensation resulting from state liability. On 27 October 2021, the Constitutional Court issued another decision in relation to the extension of the state of alarm by Congress¹⁸⁰. The Court considered that the reasons provided by Congress to extend the state of alarm for six months were not justified, as there was no certainty on the measures that were going to be taken by the Government. Moreover, it considered that the designation of the Autonomous Governments (Regional Governments) as competent authorities for the implementation of the emergency measures was unconstitutional. According to the Constitutional Court, the Congress’ decision to extend the state of alarm for six months without reviewing the measures which could be taken by the Government and the delegation blurred the accountability of the President of the Government and the Ministry of Health in front of Congress, as the Presidents of the Autonomous Governments were not subject to their political control.

The Ombudsperson continued dealing with a high number of complaints. The Ombudsperson is the national human rights institution, accredited with A status by the UN Global Alliance of National Human Rights Institutions (GANHRI). The number of

¹⁷⁴ The Parliament also proceeded with the appointment of the President and the Deputy-President of the Data Protection Agency. The appointment was suspended by the Supreme Court on 21 March 2022 (Decision of the Supreme Court 3787/2022).

¹⁷⁵ Venice Commission (CDL-AD(2018)015-f), para. 12. Anti-deadlock mechanisms have to discourage the opposition from behaving irresponsibly but should not create opportunities for the majority by impossible proposals to lead to the necessity for the application of such mechanisms. This is why they should be limited in time and, while avoiding permanent blockages they should not aim at avoiding any blockage at all, which can be an expression of the need for political change. Also Venice Commission (CDL-AD(2015)037-e), para. 162. In that vein, European standards provide that it is important that a political culture is well developed allowing for compromises between majority and opposition forces. At the same time, trade-offs, where both sides accept less qualified candidates in exchange for the acceptance of their own less qualified candidates, are discouraged.

¹⁷⁶ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 17.

¹⁷⁷ Decision 148/2021 of the Spanish Constitutional Court, 14 July 2021.

¹⁷⁸ ‘Estado de excepción’ under Spanish law.

¹⁷⁹ Art. 116 Spanish Constitution. A state of alarm shall be declared by the Government, by means of a decree decided upon by the Council of Ministers, for a maximum period of fifteen days. The Congress of Deputies shall be informed and must meet immediately for this purpose. On the other hand, a state of emergency shall be declared by the Government by means of a decree decided upon by the Council of Ministers, after prior authorisation by the Congress of Deputies.

¹⁸⁰ Decision 183/2021 of the Spanish Constitutional Court, 27 October 2021.

complaints received by the Ombudsperson in 2021 was similar than in 2020¹⁸¹, which had been significantly higher than before the COVID-19 pandemic, as highlighted in the 2021 Rule of Law Report¹⁸². The time of reply from public administrations to queries from the institution followed a positive trend, as it decreased from the 63 days on average in 2020 to 51 days in 2021¹⁸³.

The use of Pegasus and equivalent spyware surveillance software was subject to an investigation by the Ombudsperson and judicial proceedings. On 24 April 2022, the office of the Ombudsperson announced a public investigation into the use of the Pegasus and equivalent spyware surveillance software¹⁸⁴. It has been revealed that a number of political representatives, including high-ranking members of the Government¹⁸⁵, as well as several lawyers¹⁸⁶, had been allegedly targeted by said spyware. Two judicial investigations have also been launched¹⁸⁷. Under Spanish law, the use of measures such as telephone taps by intelligence services requires prior judicial authorisation and there are additional legal guarantees ensuring the right of privacy¹⁸⁸.

On 1 January 2022, Spain had 23 leading judgments from the European Court of Human Rights pending implementation¹⁸⁹. At that time, Spain's rate of leading judgments from the past 10 years that remained pending was at 61%, the average time that the judgments had been pending implementation was 3 years and 1 month¹⁹⁰. The oldest leading judgment, which became final 10 years ago, that is pending implementation, concerns the lack of effective investigation into allegations of racially motivated ill-treatment inflicted by police agents to the applicant¹⁹¹. On 1 July 2022, the number of leading judgments pending implementation has decreased to 22¹⁹².

The Government is undertaking several initiatives aimed at increasing public participation in policy-making. As referred in the 2021 Rule of Law Report¹⁹³, the

¹⁸¹ Defensor del Pueblo (2022), Annual Report 2021, p. 14.

¹⁸² 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 18.

¹⁸³ Ibid. p. 16.

¹⁸⁴ Defensor del Pueblo (2022), Press release 24 April 2022. The investigation was aimed at ascertaining whether the use of the software has jeopardised fundamental rights, most notably the right to privacy. Findings were published on 18 May 2022.

¹⁸⁵ That includes the President of the Government, several Ministers, the President of an Autonomous Government, as well as a number of regional politicians. La Moncloa – Government of Spain (2022), Press release 10 May 2022.

¹⁸⁶ General Council of Spanish Lawyers (2022), Statement of 29 April 2022.

¹⁸⁷ La Moncloa – Government of Spain (2022), Press release 10 May 2022.

¹⁸⁸ Organic Law 2/2002, of 6 May 2002, Art. 1.

¹⁸⁹ The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

¹⁹⁰ All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2022. See the Contribution from the European Implementation Network for the 2022 Rule of Law Report, p. 72.

¹⁹¹ Judgment of the European Court of Human Rights of 24 July 2012, *B.S. v. Spain*, 47159/08, pending implementation since 2012. The judgment is pending evaluation by the Committee of Ministers of the action plan submitted by Spain in 2019.

¹⁹² Data according to the online database of the Council of Europe (HUDOC).

¹⁹³ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 16.

implementation of the Fourth Open Government Plan has started¹⁹⁴. A pilot project setting up a participation platform open to all citizens has been carried out. The platform is expected to become operational on 1 November 2022 and to allow launching citizen consultations, collecting contributions on Government plans or projects open to participation and publishing anonymous contributions, as well as reporting on ongoing participatory processes. Moreover, work is ongoing for the establishment of “innovation labs”, which will gather representatives from the administration and civil society to explore new ideas on the promotion, design and implementation of public participation. These initiatives are complemented with the set-up of a community of experts for the exchange of information and good practices¹⁹⁵. In addition, the Government published a Charter of Digital Rights in July 2021, which enshrines the right of citizen participation by digital means in policy-making and other relations with the administration¹⁹⁶.

Actions aimed to reinforce the cooperation between the public administration and civil society are being taken. Civil society space continues to be considered to be narrowed¹⁹⁷. Several measures have been taken to promote cooperation between the public administration and civil society organisations. On 10 December 2021, a collaboration agreement was signed between the Ministry of Finance and Public Administration and the Third Sector Platform for the inclusive communication of open government¹⁹⁸. This agreement focuses on the development of initiatives for inclusive communication of the values of open government, mainly aimed at people living in poverty, at risk of social exclusion or affected by the digital divide due to their special vulnerability¹⁹⁹. A study conducted by the Coordinator of Non-Governmental Organisations for Development²⁰⁰ includes a number of recommendations on good practices in the relations between Government and NGOs, such as the establishment of a monitoring mechanism to control the implementation of the collaboration agreement between the Government and Civil Society Organisations. In relation to funding, the study recommends e.g. for the Government to provide more stability in the funding of Civil Society Organisations with the publication of a multiannual financial programme.

The reform of the Citizen Security Law continues to be discussed in Parliament. On 8 February 2022, the Council of Europe Commissioner for Human Rights sent a letter on the Citizen Security Law²⁰¹ to the Spanish Parliament²⁰² welcoming the current review procedure and noting the opportunity to bring the law fully in line with European standards, in particular with the recommendations made by the Venice Commission in March 2021²⁰³. In particular, the letter acknowledges that a number of the proposed amendments seem to address some of the human rights issues raised so far. However, it also points out that the reform is still not

¹⁹⁴ Input from Spain for the 2022 Rule of Law Report, pp. 46-49.

¹⁹⁵ The community of practice was launched on 29 November 2021 with an event in Zaragoza.

¹⁹⁶ Government of Spain 2021, Charter of Digital Rights.

¹⁹⁷ Rating by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

¹⁹⁸ Resolution of 10 December 2021 of the Secretary of State of Public Function.

¹⁹⁹ Resolution of 10 December 2021 of the Secretary of State of Public Function.

²⁰⁰ Coordinator of Non-Governmental Organisations for Development in Spain (2022), Keys for a strategic Government – NGO relationship in the promotion of global justice.

²⁰¹ Organic Law 4/2015.

²⁰² Letter of 8 February 2022 from the Council of Europe Commissioner for Human Rights to the Spanish Parliament.

²⁰³ Venice Commission (CDL-AD(2021)004). The opinion highlighted that even in cases when a norm is considered to be constitutionally acceptable, if in practice it has led to abuses it should be changed, circumscribed, or accompanied by additional safeguards.

addressing important aspects affecting the rights of freedom of expression and freedom of assembly and makes a number of recommendations to tackle these aspects²⁰⁴. Stakeholders have continued raising concerns²⁰⁵ about the law, as already noted in the 2021 Rule of Law Report²⁰⁶. Those concerns relate to, among others, offences in the context of meetings and demonstrations, and the use of images or data by the police. In December 2021, the Congress Commission of Home Affairs started discussing the reform of the Citizens Security Law²⁰⁷.

Activities to promote a rule of law culture took place, in particular the launch of an annual training programme for journalists on the Spanish justice system. The Council for the Judiciary and Madrid's Press Association made an agreement in August 2021 to launch an annual training programme for journalists on the Spanish justice system²⁰⁸. The aim of the programme is to familiarise journalists with the functions and competencies of the governing body of judges and of the courts, so that they can appropriately report on the functioning of the justice system, thus contributing to the creation of an informed public opinion and promoting public confidence in the administration of justice. The first edition of the annual training course took place from 15 to 26 November 2021.

²⁰⁴ In particular, the letter highlights that the draft law continues to give a wide margin of discretion to law enforcement bodies in interpreting it and allows for its potential disproportionate and arbitrary application. In addition, the letter reflects that the administrative nature of these sanctions continues to make it difficult to appeal them. According to the letter, the overall accountability framework of law enforcement officials should be strengthened, including with a view to ensuring adequate oversight of the use of coercive powers and imposed sanctions. The letter also notes that amendments of the law are not currently covering provisions regulating sanctions on grounds such as resistance or disobedience to police officers and lack of respect of or consideration for police officers.

²⁰⁵ Contribution from ENNHRI for the 2022 Rule of Law Report, p. 5; Contribution from Rights International Spain for the 2022 Rule of Law Report, p. 10; Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Spain, p. 3; Contribution from European Civic Forum for the 2022 Rule of Law Report, pp. 18-19.

²⁰⁶ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Spain, p. 18.

²⁰⁷ The Government of Spain is at the moment preparing the Second Plan on Human Rights (2023-2027), in which legal undertakings stemming from the United Nations and provisions on public policies of the European Union Action Plan on Human Rights and Democracy 2020-2024 are taken into account. Special attention is paid on the safeguard of freedoms of expression, peaceful assembly and demonstration.

²⁰⁸ Madrid's Press Association (2021) The APM and the CGPJ launch a programme for journalists on 'The Justice System in Spain'; written contribution received from the Council for the Judiciary in the context of the country visit to Spain.

Annex I: List of sources in alphabetical order*

* *The list of contributions received in the context of the consultation for the 2022 Rule of Law report can be found at https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en.*

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Annex II: Country visit to Spain

The Commission services held virtual meetings in March 2022 with:

- Association of ‘Abogados del Estado’
- Association of Media Users
- Association of Prosecutors
- Civic Platform for the Judicial Independence
- Civil Guard
- College of Registrars
- Constitutional Court
- Coordinator of Non-Governmental Organisations for Development in Spain
- Court of Auditors
- European Journalists’ Association
- FAPE
- Foundation ‘Hay Derecho’
- General Council of Spanish Lawyers
- General Council for the Judiciary
- IGAE
- Independent Judicial Forum
- Judges and Magistrates’ Association “Francisco de Vitoria”
- Judges for Democracy
- Madrid Press Association
- Ministry of Economy
- Ministry of Foreign Affairs
- Ministry of Home Affairs
- Ministry of Justice
- Ministry of Finance
- Ministry of the Presidency
- National Commission of Markets and Competition
- National Police
- Office of Conflict of interests
- Ombudsperson’s Cabinet
- Platform in Defense of Freedom of Information
- Platform “Tercer Sector”
- Professional Association of the Magistracy
- Progressive Union of Prosecutors
- Representatives of Congress and Senate
- Rights International Spain
- RTVE
- Prosecutor's Office Against Corruption and Organised Crime
- Supreme Court
- Technical Cabinet of the Prosecutor General’s Office
- Transparency Council
- Transparency International España

* The Commission also met the following organisations in a number of horizontal meetings:

- Amnesty International
- Article 19
- Civil Liberties Union for Europe
- Civil Society Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Human Rights Watch
- ILGA Europe
- International Federation for Human Rights (FIDH)
- International Press Institute
- Open Society European Policy Institute (OSEPI)
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- Transparency International Europe