

**REPORT ON THE COMPLIANCE BY SPAIN  
WITH THE UNITED NATIONS SDGs:  
30 RECOMMENDATIONS TO FIGHT  
AGAINST CORRUPTION**

**INFORME SOBRE EL CUMPLIMIENTO DE LOS ODS  
DE LA ONU POR PARTE DE ESPAÑA:  
30 RECOMENDACIONES PARA LUCHAR  
CONTRA LA CORRUPCIÓN**

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# Executive Summary and Major Findings

## About this Report:

In September 2015, the United Nations General Assembly approved the Agenda 2030 for Sustainable Development, an ambitious international plan of 17 Objectives for the period 2015-2030 that intends to address the major global challenges facing our planet. The Agenda also includes the goal of promoting more just and inclusive societies with more transparent and accountable institutions. Spain signed the Alliance 2030 within the framework of the European Union and together with other 193 United Nations state members.

This report has been produced in May 2018 to monitor the progress of Spain in relation to some of the targets included in the Agenda, with a particular focus on Objective 16 and a review of targets 16.4 (fight against illicit financial flows), 16.5 (fight against corruption and bribery), 16.6 (develop accountable and transparent institutions) and 16.10 (public access to information and fundamental freedoms).

The report is conceived as an independent research and a shadow report to the official comte-rendu on the 17 Objectives and 169 Targets that the Spanish Government will pose to the United Nations High Level Political Forum in mid July 2018.

In order to get started with the scope of work of the Agenda, Spanish Administration has articulated several institutional cross-cutting measures, among others, the appointment of the **Special Ambassador for the Alliance 2030**, Mr. Juan Francisco Montalbán who took office in May 2017, and the creation of a **High Level Inter Ministerial Group** (GAN) in September 2017 to better coordinate the initiatives related to the Agenda and the examination before the UN.

As an additional step, in January 2018, the Spanish Parliament approved a formal pronouncement (a Non-Legislative Proposal) assuming the principles of the Agenda 2030 as a reference guidance for the Government's future course of action and public policies.

The **first draft of the Government's Action Plan** was published in April 3rd 2018, with a limited horizon: 2018 to 2020. As of May 25th, the second version announced to be released by May 15th was unavailable.

Targets related to integrity in Public Administration, transparency, fight against corruption or institutional development are poorly addressed by the Action Plan Draft, superficially reviewed and with limited actions committed (See pages 125 to 128).<sup>1</sup>

Meanwhile, the involvement of civil society in the Plan and its implementation is not intense. Although the Plan has been shared with Local Councils, Regional Governments and with the University Community, the so called "Council of Social Agents" described in the document has not yet been officially called.

Many entities from the third sector have played an active role by posing a number of disseminated initiatives, but the Government shows a lack of coordination and failed to articulate a site where relevant agents could disclose and publish their proposals so far.

## **General situation of Spain in Governance, Transparency and fight against corruption.**

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<sup>1</sup>Acces link to the Draft: [http://femp.femp.es/files/566-2312-archivo/03\\_04\\_2018\\_DRAFT\\_ZERO\\_ACTION\\_PLAN\\_REV.pdf](http://femp.femp.es/files/566-2312-archivo/03_04_2018_DRAFT_ZERO_ACTION_PLAN_REV.pdf)

**Corruption in Spain is currently the second national concern** according to the CIS (Centro de Investigaciones Sociológicas) survey, only behind unemployment. Spain is the country in Europe where the perception of corruption has deteriorated the most since 2000 according to the Transparency International Corruption Perception Index ("TI") of 2017. It ranks 42nd out of 180 countries on the same index, the worst position in 5 years. 80% of Spaniards think that the government is doing badly or very badly in the fight against corruption according to TI's Global Corruption Barometer. This situation reduces confidence in institutions, degrades public life, damages the country's international image and undermines Spain's socio-economic progress.

At the time of writing this report, three breaking news appear in the media:

1. Eduardo Zaplana, a Minister of Labour under President Aznar tenure (2002-2004), Spokesman at the Congress between 2003 and 2004 and a relevant member of the the Popular Party (currently ruling party), President of the Regional Government of Valencia (Generalitat Valenciana 1995-2002) has just been arrested. He is under investigation for the alleged crimes of money laundering, embezzlement, prevaricating, bribery, and influence peddling, among others. These offences are related to the collection of illicit funds during 2002 bidding processes and privatizations. The crimes of bribery and prevaricating are time-barred after 10 years, but this does not apply to money-laundering, which has come to the fore with the attempted repatriation of money. The investigation has been conducted by the UCO, the Central Judicial Police Unit, which investigates and prosecutes serious economic and organised crime along with the Financial Intelligence Unit, SEPBLAC.

Moreover

2. The National Supreme Court has condemned in May 24th 2018 the accountant of the Popular Party (Governmental party) to 33 years of imprisonment for money laundering. The Popular Party has also been condemned as illicit beneficiary from a corruption network and a fine over 240.000 euros has been imposed. The sentence is referred to facts occurred between 1999 and 2005. The Court ruling sentenced 29 individuals to a total of 351 years' of imprisonment. Indictments are: illicit association, fraud against the public administration, bribery, prevaricating, embezzlement of public funds, false documents, money laundering, crimes against the public treasury, influence peddling, misappropriation and procedural fraud.
3. As a consequence of the sentence, a Vote of No Confidence put by the Socialist Party was adopted by the Spanish Parliament in June 1<sup>st</sup> 2018, giving the Government to the opposition parties (socialist, independent parties and far left party) and making of the socialist leader, Pedro Sanchez, the first President in Spanish recent history voted by the Parliament but not elected by people. Former President, Mariano Rajoy, and the entire Government collapsed amid a strong perception of independency of the Court and the Judges.
4. The former president of the Barcelona Provincial Council (Catalonia) has been arrested for the alleged offence of misappropriation and diversion of international cooperation funds to support the catalonian independence referendum.

Despite these shocking circumstances, it is worthy to highlight two relevant issues regarding the betterment of the general perception in governance, transparency and the prevention of corruption:

1. The described events are related to incidents **occurred years behind** (most of them between 2000 and 2010) and a significant degree of political regeneration is emerging after the collapse of bipartisanship.

2. Corruption in Spain is essentially of **political nature and among politicians**, with illicit payments or unlawful bribery among officials, doctors or other civil servants being extremely rare. (1-3% rate of corruptions directly experienced BGC TI 2017)

### **Significant progress in accountability and corruption prevention:**

Spain has gone through a substantial number of legislative modifications in recent years. Laws and other collaborative measures have been approved, first to adequate domestic legal framework to European Union requirements, and secondary to improve public and private integrity framework by preventing and eliminating corruption. Among the most relevant:

- Organic Law 3/2015, of March 30, on the control of the economic and financial activity of political parties, amending Organic Law 8/2007, of 4 July, on the financing of political parties, Organic Law 6/2002, of 27 June, on political parties and Organic Law 2/1982, of 12 May, on the Court of Auditors, which implies that donations to political parties from legal entities are prohibited, as well as debt forgiveness to parties by credit entities and reduces the limit on donations from natural persons to parties to 50,000 euros;
- Law 3/2015, of March 30, Regulatory of the exercise of the Statute of the Designated Political Aides, establishing a clearer regime of integrity, obligations, compatibilities, revolving doors, declarations of income and interest, infractions and sanctions;
- The amendment of the Penal Code of 2015, widening the catalogue of offences associated with corruption in public and private sector and increasing the penalties and establishing criminal liability of legal persons and entities
- The amendment of the Criminal Procedure Code in the same sense as indicated above.
- Law 19/2013 of December 9 on Transparency, Access to Public Information and Good Governance, which has promoted significant levels of active publicity and accountability in the Transparency Portals at all administrative levels of the State.
- Law 9/2017 of November 9 on Public Sector Contracts, which transposes the Community Directives, increases the levels of advertising and transparency of contracts, facilitates resources and creates a supervisory office with broad powers.
- Fourth Directive (EU) 2015/849 of the European Parliament and the Council on the prevention of the use of the financial system for the purposes of Money Laundering or Terrorist financing.
- Law 10/2010 of April 28th on Anti Money Laundering and Terrorist Financing.
- Royal Decree 304/2014 of May 5th that validates the Regulation of the Law 10/2010 of April 28th on Anti Money Laundering and Terrorist Financing.
- Order JUS/319/2018 released in March 21st which approves the new models for the presentation at the Mercantile Register of the annual accounts by the subjects bound by the obligation (relating to the definition of Beneficial Ownership).
- Article 50 of the Royal Decree 304/2014 which approves the Regulation of the Law 10/2010 of April 28, of Prevention of Money Laundering and Terrorist Financing, that creates the beneficial ownership central register under the immediate supervision of

the Executive Committee of the Commission for the Prevention of Money Laundering and Terrorist Financing and accessible for competent authorities.

- Directive 2014/42/EU of the European Parliament and the Council on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, transposed by Spain.
- Spanish Royal Decree 948/2015 of October 23, to regulate the Office for the Recovery and Management of Stolen Assets, in accordance with the EU 2014/42/EU Directive.
- Spanish Royal Decree 873/2014 of October 10<sup>th</sup>, establishing the Intelligence Centre for the fight against Terrorist and Organised Crime, CITCO, under the immediate supervision of the Ministry of Interior.

A number of regional laws have also been adopted, creating different bodies and agencies to fight fraud and prevent corruption, as in the case of the Generalitat Valenciana in 2017.

<sup>2</sup>However, either at State level or at the Regional levels, **the mere legal framework is not always sufficient.**

Public bodies devoted to fight and prevent corruption such as the Anti-Corruption Prosecutor's Office should preserve their total independence from political power interferences. Also, is therefore necessary to facilitate the work of this organism, relieving the high workload and the pressure on the specialized prosecutors on the fight against corruption.

The highest organ of the judiciary, the General Council of the Judiciary, is also at risk of political interference since 12 of its 20 members are elected by the Spanish Parliament.

Spain must increase its ratio of judges by 12/100,000 inhabitants to bring it closer to the European average (21/100,000). Judges must have a Code of Conduct and a clearly stated selection criteria based on merit and capacity should apply in the election of presidents or other members of Courts.

In regard the integrity framework in Public Administration, the Designated Political Aides Act does not cover all relevant officials in office.

The Office for Conflicts of Interests, the Supervisory Body in charge of monitoring political aides and high-rank officials at State level, has not proved effective independency when pronouncing on conflicts of interests, supervising assets or revolving doors.

There is a lack of national regulation on the Lobbys, and there is no Whistleblower Protection Act as such.

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<sup>2</sup> Direct link to a news article that provides details about the creation of the Valencia Anti-fraud Agency <http://www.lavanguardia.com/local/valencia/20171123/433105323154/joan-llinares-agencias-valenciana-contra-fraude-y-corpcion-estatuto-denunciante.html>

Congressmen, Senators and the Judiciary do not yet have an specific Code of Conduct, despite the persistant claim of International Institutions such as GRECO.

Leaving aside the Law on Political Party Financing, there is still some weakness in regard its subsidiary Entities and Foundations. Spain also faces the challenge of achieving a homogeneous and well coordinated legal framework in matters concerning public integrity and accountability at all Administrative Levels (State, Regions and Municipalities).

In order to remediate a significant number of the described shortcomings, a comprehensive Draft Law on anti-corruption and whistleblower protection is currently under parliamentary study, with the final approval expected by September 2018. TI Spain has submitted several amendments and specific comments on Draft, with the outcome of some of them being considered for its inclusion<sup>3</sup>.

At the present moment, there are two key issues that represent a perception of regeneration in relation to governance, transparency and the prevention of corruption:

1. The invigorated and more active role played by supervisory Authorities and regulatory bodies such as the Court of Auditors, the Chambers of Accounts, the Anti-Corruption Prosecutor's Office, the Council for Transparency and Good Governance or the National Commission for Markets and Competition (CNMC), The investigative work of the LEAS, the UCO, the UDEF (Central Police Units for the investigation of relevant crimes) and the Financial Intelligence are based on more independent, transparent and accountable principles that turn out in more effectiveness
2. Leaving aside the fact that, probably due to the severe economic crisis of recent years, corruption did not sufficiently punished current parties in Office (Popular Party at State level, CIU in Catalonia or Socialist Party in Andalusia), it is important to remark the crescent involvement of Civil Society on transparency and integrity discussions and initiatives. Different organizations, together with Transparency International Spain, have exerted a relevant task rising social and political awareness that has been transferred to some of the legislative measures adopted. It is worthy to note the investigative journalism displayed by the media amid the serious difficulties that affect traditional newspapers. And the remarkable example of the whistleblowers that showed the red flags to others by reporting the majority of corruption cases in Spain even when they had to stand still against all forms of external pressure.
3. Transparency International Spain has taken some actions with good results about rising of social and political awareness<sup>4</sup>:
  - a. The Transparency public indices applicable to organizations and institutions, which have encouraged the implementation of transparency portals with a high level of active publicity and a paradigm shift in the culture of accountability.

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<sup>3</sup> Information to the Draft Law and its course of adoption: [http://www.congreso.es/public\\_oficiales/L12/CONG/BOCG/B/BOCG-12-B-33-1.PDF#page=1](http://www.congreso.es/public_oficiales/L12/CONG/BOCG/B/BOCG-12-B-33-1.PDF#page=1)

<sup>4</sup> [https://politica.elpais.com/politica/2018/05/26/actualidad/1527364974\\_528568.html](https://politica.elpais.com/politica/2018/05/26/actualidad/1527364974_528568.html)

- b. Collaboration agreements with institutions such as the Public Prosecutor's Office, the General Council of the Judiciary and political parties to support its progress on transparency and accountability
- c. Integrity conventions to enhance transparency in public procurement processes.
- d. The Integrity Project that seeks to promote a comprehensive integrity culture in public management and private business
- e. Amendments to draft laws, achieving the inclusion of many of the proposed measures in both the current Public Sector Contracts Act 9/2017 and the imminent Comprehensive Anti-Corruption and Whistleblower Protection Act.

**Key recommendations:**

1. Inclusion of real measures in connection with Goal 16 and targets related to integrity, transparency and corruption prevention into the Action Plan for the Alliance 2030, to set a sort of “leverage policies” to maximise the positive impact.
2. To broaden the debate regarding the Draft Law Anti-Corruption Omnibus Act, known as *Integral Law against corruption and for the protection of the whistleblower*, incorporating the improvement proposals and recommendations undertaken by Civil Society and experts in the subject.
3. Extend the scope of application of this Law to all relevant public officials, any private sector employee, individuals, providers and contractors.
4. Ensure that the intended Independent Public Integrity Authority has the necessary resources to monitor and supervise the entire tenure of high-rank officials (profile suitability, updated information on assets declaration and potential conflict of interests, revolving doors and imposing of sanctions when applicable). Also, the competences of this body should be reviewed, specially relating the established procedures, with the aim that these not interfere with the legal proceedings and its terms.
5. Promote integrity in all branches of the Government, the Judiciary and the Parliament (Congress and Senate) by approving the proper Code of Conduct and Good Governance to improve the impact of integrity and good practices at all levels.
6. The Court of Auditors should adopt a Code of Ethics or Good Governance and increase its powers with prior checking and advisory functions.
7. Guarantee the legal assistance and labour indemnity and the non-imposition of strict constraints that may restrict or affect reporting on the Draft Law against corruption and protection of whistleblowers.
8. Grant the enforcement of the measures relative to Lobbies regulation and Whistleblower Protection to all Administrative and Governmental levels (State level, and also Regional and Municipal levels) by reaching out a national agreement for the standardization of public integrity compliance and monitoring.
9. Improve the effectiveness of the Court of Auditors' control over political parties financing by incorporating the obligation for parties to publish their annual external audits.
10. Accelerate the implementation of the 75 measures approved by the opposition parties to reform the financing of political parties.

11. Maintain progress in transparency and consolidate the progress made thanks to the Court of Auditors' Political Parties Platform and TI's evaluations.
12. Promulgate a comprehensive Lobby Regulation applicable to all levels of the State that includes a mandatory register for the Government, the Judiciary, Congress and senate, with public agendas reflecting meeting related to parliamentary procedures in progress.
13. Improve the competences of the Council for Transparency and Good Governance, granting the proper reinforcement to its resolutions, making them binding, avoiding the judicialization by the Government and other Entities that litigate against with public money.
14. Increase the resources of the Transparency Council by providing a structure capable of monitoring compliance of all public bodies, especially public sector companies.
15. Public supervision of an adequate level of Transparency in Public Companies at all levels of the State through agreements between the National Transparency Council and the Autonomous Councils.
16. Ministries should require its subsidiary public entities for the effective law enforcement and to carry out a proper control or active monitoring of such enforcement.
17. Review of the offences associated with corruption, in particular bribery, influence peddling, prevaricating and embezzlement. Raising of the temporary terms for the prescription of these offences according to the general rules of prescription and within the frame of the offence.
18. Incorporate the following issues to the developing Regulation of Law 19/2013 on Transparency, currently in the process of receiving contributions:
  - That the Resolutions of the Transparency Council have a binding character to avoid the current judicialization.
  - That the obligation to publish data and the right of access be established on the public bodies' own websites and not indirectly on the State Transparency Portal.
  - An annual evaluation of the Board should be established for key bodies: public entities and companies, regulatory bodies and political parties.
  - An effective control mechanism with dissuasive infringements and administrative sanctions is in place.
  - Active publicity should include agendas for senior management, remuneration, code of ethics and conduct and quality assessments of public services by citizens accompanied by quality improvement plans.
  - The right of access can be channelled in a multi-channel manner: face-to-face, telematic and with ID and email.
19. Regarding Anti Money Laundering good practices, Designated Non Financial Business Professions should follow the below recommendations to mitigate potential risks:
  - Promoting Compliance Culture even in small and medium businesses (SMB)
  - Know Your Customer: Customer Due Diligence
  - Records Keeping
  - Training employees on AML/TF
  - Detection of unusual or suspicious transactions
  - Report to Law Enforcement Agencies in case of suspicious transactions

20. Spain is, at the time of the research, still dealing with relevant cases of corruption occurred in recent years. Most of the corruption events are revealed by money laundering felonies which are detected following the money by the Financial Intelligence Units in a forensic process that may take years. For undetermined reasons, social perception does not yet equally contemplate the receiver and the payer or the advisor, though the Law does, and Judges act against all parties involved with logic impartiality. Press covers are normally devoted to the persons who receive illicit money, rather than to the facilitators, and that creates a sort of implicit double standard.
21. In order to improve the access to public information on beneficial ownership, Spanish Government should encourage companies to update Company Registry every six months when a significant variation on beneficial owner takes place. Access to the Registry must be free of charge in all cases and proportional sanctions should be imposed if companies are not compliant.
22. At the time of this research, partial enhancements are still required in the Spanish Assets Recovery Office ORGA, some regarding legislative developments and some other referred to the need of more resources to be assigned. In order to improve its capacity and to comply with the commitments assumed in International Agreements, Spain should promptly devote to the Agency the required resources and take the necessary steps to its fully legal operability.
23. The Government must provide detailed and transparent information of the ongoing cases of organised crime, offering a detailed explanation about the incidents occurred and the necessary measures to deal with these cases.
24. In addition, Spain should actively pursue a specific *statu quo* as European Union South and South-West State Border in order to improve its resources and operative capacity when facing global challenges such as cross-borders migrations or drug trafficking.
25. On private sector anti corruption good practices, and in order to improve its commitment with other international partners and for the betterment of its reputation on anti foreign bribery practices, Spain should be much more active in pursuing all forms of foreign bribery and follow the recommendations of bodies such as OECD and the EU. A better culture on whistleblowing channels may contribute to achieve the goal.
26. In addition, Spanish National Commission for the Markets and Competition should preserve its independency to fight against prohibited practices to effectively grant transparency and good practices in private sectors. A legal redefinition process to split Markets defence and Competition preservation may be carried out in order to assimilate to those homologous institutions in the European Union.
27. Regarding fiscal transparency enhancements, and to improve its global ranking position, Spain should better explain and timely disclose its Budget Execution by ensuring a Legislative Committee that examines and publishes mid-year review, in-year review, year-end report and a Citizens Budget, in open data format.
28. There is also room for improvements on fiscal transparency by increasing the information provided in the Executive's Budget Proposal that should include data on the macroeconomic forecast. In addition, a mid-year and a year-end report should be included along with key Budget Documents.
29. Review such rules and provisions that could limit the full exercise of the fundamental freedoms in question such as Organic Law 4/2015, of 30 March, on the protection of public safety.<sup>5</sup>
30. Urgently approve the law on the Board of RTVE to ensure its maximum independence.

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<sup>5</sup> Access link to the text of the law: <https://www.boe.es/buscar/pdf/2015/BOE-A-2015-3442-consolidado.pdf>

## **The 2030 Agenda for Sustainable Development**

Spearheaded by the United Nations, the sustainable development goals (SDGs), also known as *Transforming our World: the 2030 Agenda for Sustainable Development*, is a set of 17 aspirational “global goals” and 169 targets adopted in 2015 by the 193 UN member states. All UN member states have committed to these global goals that are intended to steer policy-making and development funding for the next 15 years. Of particular relevance to the anti-corruption agenda is SDG 16 on sustainable governance, most notably targets 16.4 on illicit financial flows, 16.5 on bribery and corruption, 16.6 on transparent and accountable institutions, and 16.10 on access to information

Global targets and indicators have been set for each goal with the expectation that they will be incorporated into national planning processes and policies. Countries are also encouraged to define national targets tailored to their specific circumstances and identify locally relevant indicators and data sources that will be used to measure progress towards achieving each of the SDG targets.

As part of its follow-up and review mechanisms, the 2030 Agenda for Sustainable Development encourages member states to conduct regular national reviews of progress made towards the achievement of these goals through an inclusive, voluntary and country-led process. In addition, each year certain state parties volunteer to report on national progress to the High-Level Political Forum (HLPF), which will next meet in July 2018 in New York. Transparency International Chapter’s Spain will be among the countries reporting this year. While SDG 16 will not be reviewed in depth by the HLPF until 2019, integrity risks across the SDG framework make it essential to monitor national progress against corruption from the outset.

## **Rationale for this Shadow Report**

While governments are expected to take the lead in reviewing progress towards the Sustainable Development Goals (SDGs), national-level monitoring needs to go beyond the remit of governments to include civil society and other stakeholders.

This shadow report is based on data collected by [Transparency International Chapter]. The report has been developed in response to three key issues related to the official SDG monitoring processes: the multi-dimensional nature of SDG targets, data availability and perceived credibility of data generated by government agencies. Collectively, these limitations provide a strong rationale for an independent appraisal of the government’s anti-corruption efforts in the context of the Sustainable Development Goals.

Firstly, several of the targets under Goal 16 are multi-dimensional in the sense that they measure broad concepts like “corruption” which cannot be adequately captured by a single indicator. Moreover, the indicators in the official global set do not sufficiently cover the full ambition of the targets. For instance, target 16.5 seeks a substantial reduction in corruption and bribery “in all their forms”, but the only approved global indicators measure bribery between public officials and the public or business. There are no measures of corruption within or between governments or other forms of non-governmental corruption. For some targets, the selected global indicators fail to capture critical aspects. For instance, target 16.4 seeks to combat all forms of organised crime, but there is no official indicator that measures organised crime nor an indicator related to strengthening the recovery and return of stolen assets.

*This shadow report seeks to provide a more comprehensive picture of national anti-corruption progress across a range of policy areas.*

Secondly, even where the official indicators are themselves capable of capturing progress towards SDG 16 targets, there is an absence of data to speak to these indicators. Many of the global SDG 16 indicators rely on data that is not regularly produced or currently have no established methodology or standards for data collection.

*This shadow reporting exercise is partly an effort to compensate for insufficient coverage of and data availability for official SDG 16 indicators by presenting alternative indicators, data sources and proxies.*

Finally, the official assessment of progress made towards the SDG targets will rely on data generated by government agencies, particularly national statistics offices. The reliability and credibility of official data may be open to question for two reasons. First, in some settings, national statistics offices may simply be overwhelmed by the task of producing data for 169 targets. Second, politically sensitive targets, such as those related to corruption and governance, require that governments assess their own efficacy; illicit financial flows (16.4) may involve government officials, corruption (16.5) may involve government elites, while governments may be restricting information, or even targeting journalists, trade unionists or civil society activists (16.10).

*Given the challenges described above, independent analysis is vital to complement and scrutinise official government progress reports related to SDGs 16.4, 16.5, 16.6 and 16.10. This shadow report is an attempt to do just that.*

The information gleaned from the shadow reporting exercise and presented here in this report can be used as an input into two key processes. At the global level, this information can be used to complement National Voluntary Reviews at the High Level Political Forum in July 2018. Nationally, this information generated can feed into the governmental SDG review processes taking place on a rolling basis in each country.

## **Methodology**

The research was conducted from end of April to end of May 2018.

The sources used by the team included: state and regional legislation on the subject; expert reports on legal matters; assessments and studies of NGOs specialising in transparency and the fight against corruption such as Hay Derecho, the Civio Foundation and TI itself; statistics and third-party documentation provided by TI; news and investigative articles from the media.

The limitations or challenges encountered were: the three-level territorial model of the state (central, regional and local); a legislative framework comprising several recent laws and regulations whose implementation has not yet been effective in practice, as well as bills that are expected to be passed soon and that will change the current legislation on the subject; the absence of an action plan for the implementation of the SDGs in Spain (the first draft of the plan was presented on 3 April and it barely addresses the goals related to transparency and the fight against corruption; besides, civil society was not sufficiently involved in the preparation of the plan, which made it impossible for TI to recommend specific measures or suggest indicators); the fact that Spain is presenting its follow-up report on the SDGs for the first time this year to the UN Assembly, and that there are no reports on previous measures in progress or other government baseline information with which to compare.

## **National progress report**

In September 2015, the United Nations General Assembly approved the Agenda 2030 for Sustainable Development, an ambitious international plan of action for the period 2015-2030 that aims to address the major global challenges facing our planet. An international agenda that also includes the goal of more just and inclusive societies with transparent and accountable institutions.

All UN member states have committed themselves to working on Agenda 2030, both at state and international level. In Spain, the proposal for articulation at the state level has been worked on since 2017 by a High Level Group (HLG) led by the special ambassador for Agenda 2030, Francisco Montalbán, and where all the ministries involved are represented. The decision of this HLG has been to draw up a first action plan for the period 2018-2020 prior to Spain's first progress review in July in front of the UN High Level Political Forum. The action plan for the implementation of the Alliance was presented in April 2018 after involving local councils and autonomous communities and was opened to some institutions such as universities. The process of opening up to civil society is not yet fully open, transparent and participatory, there is no website with the Plan and the associated information, and the Council of Social Agents planned for social participation in the Plan has not been set up so far.

On the other hand, the first draft of the Action Plan for the implementation of the Alliance 2030 devotes just two pages to the diagnosis of the situation concerning measures related to Goal 16 and the goals associated with Transparency and the prevention of corruption. The actions mentioned are not even directly related to targets 16.4, 16.5, 16.6 or 16.10.

It is therefore suggested that these issues receive greater attention in the context of the implementation and monitoring of the National Plan, as they are crucial to ensuring progress in transparency and the prevention of corruption, which are so important in the national context. In addition, specific indicators related to these priority issues need to be included in order to better monitor progress in these areas in future national reports. To this end, it is urgent that the planned Council of Social Agents be set up and that recognised organisations in this field be called to collaborate with the INE National Institute of statistics in the identification of the most appropriate indicators.

## **Recent Developments**

### **Significant progress in accountability and corruption prevention :**

In recent years, numerous laws and measures have been approved to improve the public integrity framework and prevent or punish corruption. Among them the most significant are:

- Organic Law 3/2015, of 30 March, on the Control of the Economic and Financial Activity of Political Parties, amending Organic Law 8/2007, of 4 July, on the Financing of Political Parties; Organic Law 6/2002, of 27 June, on Political Parties; and Organic Law 2/1982, of 12 May, on the Court of Auditors. These laws prohibit donations to political parties by legal entities and debt forgiveness to parties by credit entities and reduce the limit on donations by natural persons to parties to 50,000 euros;
- Law 3/ 2015 on the Statute of Senior Officials, establishing a clearer regime of integrity, obligations, compatibilities, revolving doors, declarations of income and interest, infractions and sanctions;

- The reform of the Penal Code of 2015, widening the catalogue of offences associated with corruption and increasing the penalties.
- The amendment of the Criminal Procedure Code in the same sense.
- Law 19/2013 on Transparency, Access to Public Information and Good Governance, which has promoted important levels of active publicity and accountability in the Transparency Portals at all levels of the State.
- Law 9/2017 on Public Sector Contracts, which transposes the EU Directives, increases the levels of publicity and the opening of contracts, facilitates appeals and creates a supervisory office with broad powers.

Many international conventions and controls have also been approved to combat money laundering, identify beneficial ownership, or prevent corruption in the private sector, incorporating the criminal liability of the legal person, **which has led to the implementation of compliance and corruption avoidance programs in most major private companies as well as in public corporations.**

Another developments are:

- **Law 10/2010 released April 28th on Anti Money Laundering and Terrorist Financing** in application of European Union Fourth Directive of the European Parliament 2015 /849 of May 20th 2015 on on the prevention of the use of the financial system for the purposes of Money Laundering or Terrorist financing
- **Royal Decree 304/2014 of May 5th that validates the Regalement of the Law 10/2010 of April 28th on Anti Money Laundering and Terrorist Financing**
- Order 319/2018 released in March 21st on the definition of **Beneficial Ownership**
- Article 50 of the Royal Decree 304/2014 creates the beneficial **ownership central register** under the immediate supervision of the Executive Committee of the Commission for the Prevention of Money Laundering and Terrorist Financing and accessible for competent authorities
- EU Directive of the European Parliament 42/2014 3 April 2014 transposed by Spain on the **freezing and confiscation of instrumentalities and proceeds of crime** in the European Union
- Spanish Royal Decree 948/2015 23 October creating the **Agency for the Recovery of Stolen Assets**, in accordance with the EU 42 Directive
- Spanish Royal Decree 873/2014 of October 10th 2014 creating the Intelligence Centre for the fight against Terrorist and Organised Crime, **CITCO**, under the immediate supervision of the Ministry of Interior.

**A number of regional laws have also been adopted, creating bodies and agencies to fight fraud and prevent corruption**, as in the case of the Generalitat Valenciana in 2017.<sup>6</sup>

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<sup>6</sup> <http://www.lavanguardia.com/local/valencia/20171123/433105323154/joan-llinares-agencias-valenciana-contra-fraude-y-corrupcion-estatuto-denunciante.html>

However, at state level and in many Autonomous Communities the legislative framework is not sufficient. Institutions working on corruption prevention such as the Attorney General's Office and the Anti-Corruption Prosecutor's Office should improve their independence from political power and increase their resources. The highest organ of the judiciary, the General Council of the Judiciary, is also at risk of politicization as the Parliament elects 12 of its 20 members. Spain must increase its ratio of judges by 12/100,000 inhabitants to bring it closer to the European average (21/100,000); judges must have a Code of Integrity and there should be clear criteria of merit and capacity for the election of presidents of courts. In relation to the Integrity Framework in Public Administration, the Law on Senior Officials does not cover all relevant officials or all branches of government; the current Supervisory Body for the entire cycle of monitoring of senior officials in public life, the Office for Conflicts of Interest, has not proved independent and effective in monitoring and supervising declarations of assets, interests and activities and in detecting contraventions or imposing sanctions. There is no national regulation of the Lobby and no Whistleblower Protection Act. Members of Congress and Senators or the judiciary do not yet have a code of conduct or code of ethics. Despite the Law on Party Financing, there are still loopholes in the financing of their associate entities or fundations. Spain also faces the challenge of achieving a homogeneous and effective legal framework in all matters concerning public integrity and accountability and at all territorial levels (State, Autonomous Communities and Local Governments). The differences in the legal framework between the different Communities in matters so relevant to public life and social development are contrary to equal rights.

To remedy an important number of these shortcomings, the draft Comprehensive Anti-corruption and Whistleblower Protection Law is currently under parliamentary consideration<sup>7</sup> and expected to be approved in September 2018. TI Spain has submitted several amendments to this draft law, many of which have been accepted.

There are also two important social keys that have represented an improvement in Spain in relation to governance, transparency and the prevention of corruption:

1. The enhancement of the actions and powers of regulation and control by responsible institutions, regulatory bodies and constitutionally relevant bodies, such as the Court of Auditors, the Chambers of Accounts, the Anti-Corruption Prosecutor's Office, the Council for Transparency and Good Governance or the National Commission for Markets and Competition (CNMV), in addition to the work of the OCU and the UDEF (Central Police Units for the investigation of relevant crimes). They have increased their levels of effectiveness in promoting accountability and the detection of violations or illicit activities, as well as the progress and improvement of their own transparency policies.
2. Despite the fact that corruption cases did not result in sufficient punishment of current parties in government at the polls (PP at state level, CIU in Catalonia or PSOE in Andalusia), it is important to highlight the improvement in the involvement of Civil Society through the creation and the activity of institutions in charge of ensuring the improvement of Transparency. Examples of this are Hay Derecho, Fundación Civio, Fundación Compromiso y Democracia, ACREDITRA, and others which, together with Transparency International, have exerted an important task of social and political awareness and pressure for the development and improvement of the legislative measures approved and in progress. Also noteworthy is the work of the media in investigating and publishing news about the integrity of institutions or allegations of irregularities despite the crisis in the print media and their difficulties in addressing the necessary investigative journalism, although most corruption detections have been made through internal whistleblowers who have subsequently been retaliated against.

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<sup>7</sup> [http://www.congreso.es/public\\_oficiales/L12/CONG/BOCG/B/BOCG-12-B-33-1.PDF#page=1](http://www.congreso.es/public_oficiales/L12/CONG/BOCG/B/BOCG-12-B-33-1.PDF#page=1)

3. In particular, Transparency International Spain has worked along several lines that have had very positive results:
  - a. The Transparency indices of organizations and institutions, which have encouraged the implementation of transparency portals with a high level of active publicity and a paradigm shift in the culture of accountability.
  - b. Collaboration agreements with institutions such as the Public Prosecutor's Office, the General Council of the Judiciary and political parties to support the progress of these institutions in this area and to advise on the implementation of measures.
  - c. Integrity pacts, to enhance transparency in public procurement processes.
  - d. The Integrity Project that seeks to promote integrity in public management and businesses in our country with measures to generate a culture of ethics and good governance in the private sphere.
  - e. Amendments to the draft laws, achieving the inclusion of many of the proposed measures in both the current Public Sector Contracts Law 9/2017 and the imminent Comprehensive Anti-Corruption and Whistleblower Protection Law.

## **Transparency International Spain's findings on national progress towards SDG 16.4, 16.5, 16.6 and 16.10**

### **Target 16.4: By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime**

#### **Anti-money laundering**

According to TI Questionnaire, Spain scores 9,75/10 on Anti Money Laundering Indicators which represent a compliance rate of 97%.

Spain is ranked in the Anti Money Laundering Basel Index at the 114 position out of 146, and gets a score of 4.87 out of 10, preceded by South Korea and followed by Cyprus. Among EU countries, Spain is ranked between Portugal (4,90) and Cyprus (4,87). Highest risk of ML is assigned to Iran, Afghanistan and Guinea-Bissau.

According to the Financial Secrecy Index for 2018, Spain ranks in the position 52 out of 112, and gets a Secrecy Score of 48%, preceded by Poland (57%) and followed by Belgium (secrecy score of 44%). Switzerland ranks position 1 of the Index. The Index is a compound rate built up on twenty indicators. Spain performs well and is fully compliant in personal income tax, automatic information exchange and in the application of bilateral treaties, where it gets a 0% of Secrecy. The country performs reasonably well in banking secrecy (7%), international legal cooperation (7%) and Anti Money Laundering (20%).

Red flags are related to public Agencies accounts, publicly listed companies recorded ownership or limited partnership transparency, where Spain is not compliant.

As stated in the questionnaire, Spain has up-to-date laws and regulations in place which implement the revised Financial Action Task Force (or Groupe d'Action Financière GAFTA) Standards, and is compliant or largely compliant with most of its Recommendations. EU Fourth Directive 849/2015, Law 10/2010 released April 28th on Anti Money Laundering and

Terrorist Financing, the Royal Decree 304/2014 of May 5th that validates the Regalement of the Law 10/2010 of April 28th, Article 301 of the Spanish Penal Code 2015 and Law 19/2013 on Transparency, Public Access to Information and Governance are some of the legal tools that Spain applies to AML/TF issues.

In deep link with these de jure instruments, there are also operative bodies related to fight against ML/TF such as SEPBLAC. SEPBLAC is the Spanish Intelligence Financial Unit, that has a strong risk-based analysis approach which drives both the risk assessment process and the supervisory functions. The other two institutions working in close collaboration are the Bank of Spain and the Spanish Commission for Money Laundering and Terrorist Financing Prevention.

As described, these are both, the legal instruments and the operative institutions, to fight against Money Laundering and Terrorist Financing and seems to be adequate and in line with other OECD countries.

### **Key Findings:**

- Directives, Regalement or Laws may *per se* be insufficient to address such a challenging and global goal, and the reinforcement approach needs to be analysed. Concerns in Spain come on the side of an absence of effective preventive measures or low and untargeted sanctions that, in the end, are not as dissuasive as it should be.
- Natural persons are normally sentenced in the lower range of six months to two years of imprisonment, while penalties of six or more years are rarely imposed. Relatively short disbarment period on those professionals who collaborates with ML is also a concern (from two years in the majority of cases, to five years).
- Fines of one to three times the value of the assets appear to be the most utilised type of sanction.
- Prevention culture in Spain is undeniably stronger in the financial sector and amid the Notaries, whereas risk awareness seems to be lower among other Designated Non Financial Businesses or Professions or DNFBPs (Casinos, Real Estate Agents, Wholesale Dealers or manufacturers in precious metals and precious stones. Lawyers, or other independent legal professionals and accountants who prepare or carry out transactions for their clients

### **Key Recommendations:**

DNFBPs should follow the below recommendations to mitigate potential risks:

- Promoting Compliance Culture even in small and medium businesses (SMB)
- Know Your Customer: Customer Due Diligence
- Records Keeping
- Training employees on AML/TF
- Detection of unusual or suspicious transactions
- Report to Law Enforcement Agencies in case of suspicious transactions

Spain is, at the time of the research, still dealing with relevant cases of corruption occurred in recent years. Most of the corruption events turn into money laundering felonies, and are detected by the Financial Intelligence Units by *following the money* in a forensic process that may take years.

For undetermined reasons, social perception does not yet equally contemplate the receiver and the payer or the advisor, though the Law does, and Judges act against three parties with presumably impartiality. Press covers are normally devoted to the persons who receive illicit money, rather than to the facilitators, and that creates a sort of implicit double standard.

To improve a holistic integrity culture in public and private sector, public scrutiny and the rule of law should be equally placed over all parties involved in the potential felony, even when entities involved are prestigious Spanish companies or highly regarded individuals.

## **Beneficial ownership transparency**

Spain scores 6,5/8 on Beneficial Ownership indicators of the Questionnaire which represents a compliance rate of 81%. Indicator 4.9 related to Trusts Registry is not applicable since Spanish Legal Framework does not recognize Trusts as legal entities.

As for international Indices, the Open Company Data Index produced by Open Corporates is based on online visits occurred between March and June 2012, with a later unspecified update. The Index is referring to Registry information retrieved from Spanish Mercantile Registry in Spring 2014. Spain scores 0/100 in an uneven outcome, with a number of European countries getting a 0/100 as well. However, this assessment may no longer reflect the *status quo*.

### **Key Findings:**

Evaluations carried out by OECD, UN, EU, World Bank or GAFI during the last ten years have stated that a clearly definition of beneficial ownership should be adopted by countries in order to effectively fight against Money Laundering and Terrorist Financing.

Spain lingered in the adoption of the measure, but finally approved in March 2018 the Order JUS 319/2018 to comply with the definition of beneficial owner as the natural person that owns the 25% of the share capital or, alternatively, exercise the control over the 25% of the voting rights.

In addition to the definition, the Order regulates the obligation for legal persons and entities to identify the natural persons meeting the mentioned requirements when submitting the annual accounts, on an annual basis.

The Article 30 of the 4th EU Anti Money Laundering Directive released in 2015 established the obligation for all member states to comply with the creation of a beneficial ownership central register. In this case, Spanish anticipated EU regulations and the Article 50 of the Royal Decree 304/2014 creates the beneficial ownership central register under the immediate supervision of the Executive Committee of the Commission for the Prevention of Money Laundering and Terrorist Financing and accessible for competent authorities. Clearly definition and proper registry in place seems to be adequate.

Despite this, public information of the Mercantile Registry (Company Registry) on beneficial ownership may be traced with some delay. Even when publicly listed companies need to immediately report noteworthy changes on beneficial owner to the National Exchange Commission, that information may not reach the Company Registry until the submission of the Annual Accounts.

With non-publicly listed companies, Company Registry information may be traced only on an annual basis.

#### **Key Recommendations:**

In order to improve the access to public information on beneficial ownership, Spanish Government should encourage companies to update Company Registry every six months when a significant variation on beneficial owner takes place. Registration certificate will be free of any charge. Proportional sanctions will be imposed if companies are not compliant.

## **Recovery of stolen assets**

Spain scores 2,5/3 on Stolen Assets Recovery indicators which represents a compliance rate of 83%.

Spanish legal framework has established a wide range of asset recovery mechanisms, including a) measures that allow for the seizure and confiscation of proceeds from money laundering without requiring a criminal conviction (non-conviction based confiscation), b) a policy that requires an offender to demonstrate that the assets were acquired lawfully, and c) the recognition of foreign non-conviction based confiscation orders.

#### **Key Findings:**

The Articles 127, 128 and 374 of the Spanish Penal Code collects up to six sub-types of freezing procedures and confiscating alternatives, further described in the Law 1/2015 that allows confiscation on non-judicial sentence based cases. In addition, Spain transposed the UE Directive 42/2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.

Legal tools in place seems to be adequate and in line with international recommendations.

When in 2015 Spanish Royal Decree 948/2015 created the Agency for the Recovery of Stolen Assets, in accordance with the EU 42 Directive, further action was taken to improve the capacity to deal with freeze and confiscations. But the concerns came on the side of the underfunding and the lack of resources of the new from scratch Agency.

Irrespectively of its limitations, the Agency seems to be a proactive and collaborative body with international institutions and other LEAs.

#### **Key Recommendations:**

At the time of the research, partial enhancements are still required, some regarding legislative developments and some other referred to more resources. In order to improve its capacity and to comply with the commitments assumed in International Agreements, Spain

should promptly devote to the Agency the required resources and take the necessary steps to its fully legal development.

## **Fight against organised crime (optional)**

The Transparency International Global Corruption Barometer for Europe and Central Asia released in 2017 collected the data in Spain between December 15th and December 22nd 2015, and describes the highest percentage as the most untrusted and the lowest percentage as the most trusted. The report ranks the Police with a 63% as untrusted institution, specially in Central Asia Countries, whereas Members of the Parliament reach 88% as most untrusted institutions and Government Officials get 85%. In the TI Survey, there are no specific disaggregated data for Spain.

Per contrary, the Eurobarometer 470 Corruption Report referred to October 2017 points out that six in ten (60%) of the total respondents say that they trust the police to deal with cases of corruption.

In Spain, a survey produced by Metroscopia in December 2016, a regarded private Institute devoted to sociological analysis, the Police reached out a 87% among the most trusted institutions, preceded by the public healthcare system with a 95% and followed by the Chief of State (The King Felipe VI) with a 71%.

### **Key Findings:**

Spain has taken solid steps to effectively fight against organised crime.

The Spanish Intelligence Centre for the fight against Organised Crime and Terrorism (CITCO) was created in October 2014 by the Royal Decree 874/2014 depending of the Ministry of Interior. With the aim of integrating and coordinating a number of law enforcement bodies, CITCO is conceived to better concentrate resources, capacity and technology to fight against organised crime and terrorist from a domestic and international perspective and in close collaboration with the Ministry of Defence.

Legal tools and capacity of empowered bodies seems to be adequate.

Nevertheless, due to its geostrategic situation and only 15km away from Africa, Spain faces multiple cross-border challenges as south west European border.

Information about the penetration of organised crime into the police, public prosecution or the judiciary is generally released by the media. When this penetration occurs, major affairs are related to drug trafficking and corruption.

As described above, reports of the involvement of some LEA members on drug trafficking in the Area of the Strait of Gibraltar have been disclosed by the media in recent years. In some of the cases occurred within the last five years, penetration reached out Customs Officers and the Algeciras Port Authority personnel. However, there are no public indications that the penetration was systemic. No members of the Judicial or Prosecution Authority were associated with the incidents.

However, a public alert launched by the LEA and released by the media at the time of the research highlight the risk of two drug cartels settled in Algeciras (Strait of Gibraltar Area) with violent gangs of young people developing active operatives in the area. At least four episodes of civil coordinated attacks to the LEA (two with fire arms documented) have

occurred in the last three months. Violent confrontations between members of the same cartel have been reported by the National Police and the Civil Guard.

Central Government and sub-central Authorities have held at least one reported meeting for the better coordination of the actions to be taken. Both have invoked secrecy as the intelligence response is already under way. The tone of the official public speech is, however, of a certain denial. While a reliable report of the extent of the incidents has been described by the media, there is no such detailed information on the Authorities side. Unspecific information comes more often from the Mayor of Algeciras (Gibraltar Strait Area) that is probably reluctant to declare that the city is going through a potential narco conflict.

#### **Key Recommendations:**

- Even when precaution in public statements needs to be taken into account, in order to improve communication when a crisis related to fight against crime occurs, Spanish Government should provide a more transparent and detailed information on the extent of the incidents in the Strait of Gibraltar Area and what exactly are the measures to put in place in order to tackle the situation shortly.
- In addition, Spain should actively pursue a specific *statu quo* as European Union South and South-West State Border in order to improve its resources and operative capacity when facing global challenges such as cross-borders migrations or drug trafficking,

## **Target 16.5: Substantially reduce corruption and bribery in all their forms**

### **Experience and perceptions of corruption**

**Corruption in Spain is currently the second national problem** according to the CIS (Centro de Investigaciones Sociológicas) survey, only behind unemployment. 66% of respondents state that corruption or bribery is one of the three most important problems facing this country that the government should address according to TI's 2017 Global Corruption Barometer. Spain is the country in Europe where the perception of corruption has worsened the most since 2000 according to the Transparency International Corruption Perception Index ("TI") of 2017. It ranks 42<sup>nd</sup> out of 180 countries on the same index, the worst position in 5 years. 80% of Spaniards think that the government is doing badly or very badly in the fight against corruption according to TI's Global Corruption Barometer. This situation reduces confidence in institutions, degrades public life, damages the country's international image and undermines Spain's socio-economic progress.

However, it is worth highlighting two relevant issues regarding the better general situation in Governance, Transparency and the prevention of corruption:

1. That the perception of current corruption corresponds to events that **have occurred in previous years** (most of them between 2000 and 2010) and that some political regeneration has emerged to the surface after economic crisis and the rupture of bipartisanship.
2. And that corruption in Spain is fundamentally **of a political nature**, with the payment or bribery of civil servants being very rare (1-3% rate of corruption cases directly experienced BGC TI 2017).

**Key Finding:** 66% of respondents state that corruption or bribery is one of the three most important problems facing this country that the government should address according to TI's 2017 Global Corruption Barometer. 80% of Spaniards think that the government is doing badly or very badly in the fight against corruption according to TI's Global Corruption Barometer. And this in spite of the fact that corruption in Spain is fundamentally **of a political nature**, with the payment or bribery of officials being very rare (1-3% rate of corruption cases directly experienced BGC TI 2017).

**Key recommendation:** Approve the draft Comprehensive Anti-corruption and Whistleblower Protection Law, activating its mechanisms with maximum ambition, providing effective remedies to the independent Public Integrity Authority. Coordinate the adoption of laws and similar measures in all the Regions and local entities for a homogeneous national effectiveness.

## Anti-Corruption Framework and Institutions

### Score 9 out of 10

**Statistical data from the General Council of the Judiciary** reveal the following: 411 allegedly corrupt individuals in 97 trials. Of the 126 first instance trials on corruption cases, 73.8% ended in convictions, including both politicians and civil servants accused of corruption offences, the most common being urban planning prevarication, bribery or influence peddling, embezzlement or money laundering.

### In relation to Anticorruption Institutions:

TI Spain and other civil society forums have stressed **the need to improve the real and effective independence of Anti-corruption prosecution**, as well as that of the Office of the General Prosecutor. According to an interview with the Anti-Corruption Prosecutor in TI Spain's Integrity Magazine, this should also lead to progress in the expansion of institutional and international cooperation mechanisms, which requires an adequate number of staff, including prosecutors and support staff, attached units and other officials.

<sup>8</sup>

GRECO in its latest 2017 report on Spain <sup>9</sup>has also pointed to the **need to advance the independence of the Office of the Attorney General**, but has also called for more specific issues such as the need for communication between the Government and the Office of the Attorney General to be written and adequately publicized.

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<sup>8</sup> [https://revistainternacionaltransparencia.org/wp-content/uploads/2018/04/entrevista\\_a\\_leonardo\\_luzon.pdf](https://revistainternacionaltransparencia.org/wp-content/uploads/2018/04/entrevista_a_leonardo_luzon.pdf)

<sup>9</sup> <https://transparencia.org.es/el-greco-del-consejo-de-europa-vuelve-a-sacar-los-colores-a-espana-en-relacion-con-la-corrupcion/>

The seriousness of the situation of the Attorney General's Office in Spain has prompted Transparency International Spain to publish in 2017 a detailed document with proposals in the framework of the fight against corruption relating to the Attorney General's Office (pages 2 and following).

<sup>10</sup>

#### **In relation to the judiciary branch:**

GRECO also points to the absence of transparent criteria for the **appointment of "presidents" of Provincial Courts**, High Courts of Justice, National High Court and Supreme Court justices, since there is no law establishing criteria of merit and capacity. GRECO also insists on the need to **extend the investigation time in disciplinary cases** for judges and suggests that it be extended to 12 months. Last but not least, it is recommended that judges be provided with a public **Code of Conduct regulating aspects of integrity** or conflicts of interest, which is currently being adopted.

Moreover, Spain often ranks in the lower part in European reports on justice. The European Commission, in its biannual report on "Efficiency and Quality of Justice in European judicial systems, with data relating to the year 2014", mentions Spain for its cuts in recent years in the budgets allocated to the judiciary and legal aid in the country. Spain also ranks poorly in terms of the number of judges **per 100,000 inhabitants, as there are only 12, when the European average is 21**. Spain is also one of the countries with the lowest prosecutors ratios in Europe: there are 5 per 100,000 inhabitants, when the average is 11. With regard to the publication of data and transparency of activity, the General Council of the Judiciary has made significant progress in the publication and availability of information to the public based on the Organic Law of the Judiciary (LO 7/2015 of 21 July), in order to establish new transparency mechanisms for the members of the General Council of the Judiciary.

<sup>11</sup>

#### **Key finding.**

- The anti-corruption legal framework and the typification of criminal offences associated with corruption is in line with the highest international recommendations and the score is 9 out of 10.
- Anti-corruption institutions are advancing in independence, integrity, resources and accountability, although GRECO has identified needs for improvement in the independence of the Public Prosecutor and the General Council of the Judiciary, and has called for more objective criteria in the appointment of court presidents, a code of integrity for judges and an increase in the ratio of judges per inhabitant, well below the European average.

#### **Key Recomendation**

- To improve independence, integrity, resources and accountability of the Public Prosecutor and the General Council of the Judiciary, with more objective criteria in the appointment of court presidents, a code of integrity for judges and prosecutors, and an increase in the ratio of judges and prosecutors per inhabitant, which is well below the European average according to GRECO 2017 Spain report.

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<sup>10</sup> [https://transparencia.org.es/wp-content/uploads/2017/05/manifiesto\\_propuestas\\_ti\\_corrupcion\\_eng.pdf](https://transparencia.org.es/wp-content/uploads/2017/05/manifiesto_propuestas_ti_corrupcion_eng.pdf)

<sup>11</sup> <http://www.poderjudicial.es/cpj/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Estructura-judicial-y-recursos-humanos--en-la-administracion-de-justicia/>

## Private Sector corruption

Spain scores 2/2 on Private Sector Corruption Indicators evaluated in the Questionnaire, which represents a theoretical compliance rate of 100%.

In the reviews on free competition practices and anti collusion measures, Spain plays an active role derived from the transposition of Articles 101 and 102 of the Treaty on the Functioning of the European Union. The referred articles ban any undertaking and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market. Article 102 prohibits firms from abusing their dominant marketing position.

In addition, The Article 284 Section Third (Felonies against free market and consumers) of the Spanish Penal Code enacted in March 31st 2015 and effective in July 1st prohibits practices to restrict free competition or collusion. Finally, the Article 1 of the Law 15/2007 of Competition released July 3rd states that any agreement, decision or collective recommendation, (or consciously parallel practice) that may produce the effect of preventing, restricting or distorting competition will be prohibited.

### Key Findings:

The National Regulatory Authority, Spanish National Commission for the Markets and the Competition (CNMC), monitors companies and a number of sectors (telecommunications, energy, transportation, among others) to prosecute prohibited practices such as collusion, price fixing or anti competition activities. The CNMC was created in 2013 under the immediate supervision of the Spanish Parliament. Its capacity and resources seems to be adequate. The Commission publishes in its site a fair number of documents such as Board minutes, sanctions proposals, fines, initiated files and closed files. The CNMC created an anonymous whistleblower channel in 2014. The level of transparency on its web site seems to be adequate. The site has a transparency measurement tool sponsored by TI Spain.

Since 2013, the Commission has gone through some disagreements with the Ministry of Industry in regard with the scope of work of the first and its attributed functions, in particular referred to Energy and Telecommunications markets. Political interference has often overflies the relations between CNMC and the Spanish Government, in occasions to the extent as to freeze its activities: according to a press release dated October 2017, the Commission failed to submit to the European Commission a mandatory appraisal on Spanish Telecommunications sector.

While issues related to anti collusion and free competition measures are lingered but sorted out by the CNMC with the serious encouragement of the European Commission, additional zone of concern comes from the side of foreign bribery fight.

Spain joined the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 2000. In December 2012 the OECD reported concerns that Spain's enforcement of its foreign bribery laws had been extremely low, with only seven investigations and not a single prosecution in the 12 years since Spain had joined the Convention. In 2014, the number reached 14 initiated investigations.

The OECD has emphasised in the past that Spain must energetically pursue foreign bribery. The amendment of the Penal Code produced in 2015 in significant elements, made possible in February 2017 that Spanish prosecutors made their first convictions for foreign bribery against two individuals at Spanish publishing company APYCE in respect of bribes allegedly paid to a foreign public official to win contracts to sell school textbooks into Equatorial Guinea.

In February 2018, according to press releases, Miami-Dade prosecutor office presented charges on bribery against the Founder and Managing Director of RIU Hotels, Luis Riu. A former director of the Miami Beach Building Department, is charged for official behavior and conspiracy to commit unlawful compensation.

There is no indication that Spanish Government has initiated an investigative file to better determine if the cases falls into the scope of the anti foreign bribery applicable legalframework.

#### **Key Recommendations:**

- In order to improve its commitment with other international partners and for the betterment of its reputation on anti foreign bribery practices, Spain should be much more active in pursuing all forms of foreign bribery. A better culture on whistleblowing channels may contribute to achieve the goal.
- In addition, Spanish National Commission for the Markets and Competition CNMC should preserve its independency and avoid political interference to fight against prohibited practices and effectively grant transparency and free competition in private sector. A legal redefinition of its competences may be required to get assimilated to other homologous European Institutions to improve its capacity.<sup>12</sup>

## **Lobbying transparency**

Score: 0,75 out of 3

There is no state legislation on lobbies, but there are laws and regulations governing them in some of the Autonomous Communities such as Castilla La Mancha, Valencia or Catalonia. The Castile-La Mancha register of lobbies is the first regional register in operation since February 2018. At the state level, the proposed Comprehensive Anti-Corruption Law, currently under consideration by Parliament, is intended to amend the Transparency, Access to Public Information and Good Governance Law to include a section on lobbying. An amendment to the Congressional Rules of Procedure is also in the pipeline to create a register of lobbies. At the local level, some local councils have created registers of lobbies, such as the one in Madrid. In addition, the National Commission on Markets and Competition has had a voluntary register of lobbies since 2016.

The regional and local rules on lobbying contain clear definitions and cover all types of lobbyists. All of them provide for the mandatory registration of lobbies and require the publicity of the identity and contact details of lobbyists, and of the meetings they hold with public representatives, the subjects covered and the documentation presented and received at or resulting from those meetings. There are guidelines and codes of conduct for senior officials and civil servants at the state level, but they are not effective in preventing the use of confidential information and do not regulate the relations of public administrators with lobbyists. Most of the Autonomous Communities and Municipalities have adopted ethical codes and many of them regulate the communication of public administrators with lobbyists. There are also similar codes adopted by business organizations. Existing regional laws and

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<sup>12</sup> <http://www.elmundo.es/baleares/2018/02/13/5a82909322601d7c368b460c.html>

<https://www.local10.com/news/florida/miami-beach/former-miami-beach-official-arrested-on-corruption-charges-1>

bills in the parliamentary process at the state level define the rights and duties of lobbyists and provide for sanctions in the event of non-compliance. They also provide for complaint procedures.

There are documented cases of malpractice, but not yet of sanctions imposed. A notable case was the Trillo-Pujalte scandal, which came to light in 2015: the former defence minister Federico Trillo and the PP deputy Vicente Martínez Pujalte received payments of 354,000 and 75,000 euros respectively from a construction company in exchange for "verbal advice", without any proof of these payments for tax purposes. Lately, there have been significant efforts at all levels of government (state, regional and local) to promote transparency and integrity in relation to lobbying, but the process is slow and the legislative framework is still insufficient. The pressure exerted by GRECO and TI Spain has contributed to raising awareness of the urgency of adapting the legislative framework to ensure transparency in meetings between parliamentarians and senior officials and lobbyists.

### Key Findings

- There is no state legislation on lobbies, but there is regional legislation in some Communities such Valencia or Castilla La Mancha and local legislation in several municipalities, including Madrid.
- There are bills in the pipeline to regulate lobbies at the state level and to create a register of lobbies in parliament.
- The existing regional legislation and the legislation currently in parliamentary procedure at state level contain clear definitions, provide for the compulsory registration of lobbyists and the publicity of their meetings with senior officials and parliamentarians, define the rights and obligations of lobbyists and provide for sanctions and complaint procedures.

### Key recommendations

- Accelerate the parliamentary approval of the current proposals and the adoption of regional laws and complementary local regulations in the rest of the regions and local authorities.
- Ensure their effective implementation in such a way as to guarantee that the agendas of senior officials are publicized at all levels of the State.

## Party and Campaign finance transparency

Score: 2 out of 5

Global Integrity's Money Politics and Transparency evaluation score: 81 points - strong

There is a legislative framework applicable to the financing of political parties and candidates' finances. The parties are financed with public subsidies according to their parliamentary representation (75%) and with contributions from their members or donations from individuals, with a ceiling of 50,000 euros per person per year. The law prohibits, among other things, parties from receiving anonymous donations, donations from companies or any other legal entity, and from individuals who have contracts with the State; it obliges them to submit their annual accounts to the Court of Auditors, including a list of donors and bank loans; it also obliges them to notify the Court of any donation over 25,000 euros or donation of real estate. However, the law has important deficiencies: it allows party-related foundations to receive donations from natural or legal persons without any limit and permits parties to submit summary information to the Court of Auditors, which limits the effectiveness of the control exercised by this body.

Parties and candidates are required to disclose their campaign accounts detailing income and expenses. However, they do not comply with this obligation on time or do so late. In addition, accounts are published in an unfriendly way for the user. Much progress has been made in the right direction with the Political Parties Platform, which the Court of Auditors launched in 2016 and which allows for the submission of annual accounts by telematic means. TI's evaluations of political parties since 2015 have also contributed to progress in transparency. The last report of the Court of Auditors on party finances was adopted in December 2017. According to this report, 20 political parties were rated favourably and 9 formations were rated unfavourably in 2015. In addition, 13 parties did not publish their general accounts in 2015 despite the obligation to do so. In March 2018, opposition parties approved 75 measures to reform party financing, including limiting donations to foundations or sanctions for failure to submit accounts to the Court of Auditors.

The independence of the Court of Auditors has been called into question by the politicisation of appointments and cases of nepotism in the selection of its members. Furthermore, by law the Court of Auditors does not have sufficient powers of investigation to verify the financial information it receives from the parties. The Court of Auditors has recently acknowledged that its recommendations are often not followed up by Parliament.

Political parties can be held criminally liable as legal persons since the reform of the Penal Code of 2015 that introduced the offence of illegal financing of political parties. Until then, parties that received illegal financing and were discovered by the Court of Auditors were only sanctioned with an administrative fine. The new Penal Code provides for fines of three to five times the value of the illegal donation received and for the most serious cases the dissolution or suspension of activity, the closure of premises or the prohibition of future activity by which the offence was committed.

## Key Findings

- The parties are financed with public subsidies according to their parliamentary representation (75%) and with contributions from their members or donations from individuals, with a ceiling of 50,000 euros per person per year. The law sets limits on the donations that parties can receive and requires them to submit their annual accounts to the Court of Auditors.
- However, the law allows party-related foundations to receive donations from natural or legal persons without any limit and permits parties to submit summary information to the Court of Auditors, which limits the effectiveness of the control exercised by this body.
- Much progress has been made in transparency with the Political Parties Platform launched by the Court of Auditors in 2016, which allows for the submission of annual accounts by telematic means. TI's evaluations of political parties since 2015 have also contributed to progress.
- The independence of the Court of Auditors has been called into question by the politicisation of appointments and cases of nepotism in the selection of its members. Furthermore, by law the Court of Auditors does not have sufficient powers of investigation to verify the financial information it receives from the parties.
- Political parties may be criminally liable as legal persons since the reform of the Penal Code of 2015 that introduced the crime of illegal financing of political parties.

## Key recommendations

- Accelerate the implementation of the 75 measures approved by the opposition parties to reform the financing of political parties.
- Maintain progress in transparency and consolidate the progress made thanks to the Court of Auditors' Political Parties Platform and TI's evaluations.

## Target 16.6: Develop effective, accountable and transparent institutions at all levels

### Transparency and integrity in public administration

The legal framework that regulates integrity in the Public Administration and the limitations of senior officials in relation to conflicts of interest, revolving doors, ethical and good governance issues and declarations of assets, interests and activities is, mainly, **Law 3/2015 on the exercise of Senior Offices of the Central State Administration**

<sup>13</sup>which is complementary to **Law 19/2013 on Transparency, Access to Public Information and Good Governance**,<sup>14</sup>

Both state laws are applicable in the regions and have been developed or even extended by the certain regions in more demanding terms (Valencia, Catalonia, Andalusia...). An example is Law 11/2016 of the Agency for the Prevention and Fight against Fraud of the Community of Valencia.<sup>15</sup>

**The legal framework is not currently effective** in guaranteeing integrity and preventing corruption in the Public Administration, even in spite of the penal reforms to expand crimes and strengthen the related sanctions, since the aforementioned Law 3/2015 on Senior Officials does not cover all relevant officials, only at the level of Director General or higher (art. 1 Law 3/2015 on Senior Officials), leaving out relevant senior officials as well as the judiciary and the legislature, whose regulation is established in their own Regulations and for which the **last GRECO report** has demanded both a Code of Conduct that regulates these aspects and an extension of the data that must be reflected in their Declarations of assets<sup>16</sup>

This is due to the fact that there is no independent supervisory authority that effectively controls aspects of integrity, since the current **Office for Conflict of Interest**, with powers over verification of the suitability of senior officials, authorisation of compatibilities and control of revolving doors, as well as receipt and control of declarations of assets, interests and compatibilities, has not adequately performed any of these functions, as has been pointed out in numerous studies and reports, most notably that of the Court of Auditors itself:<sup>17</sup>

With regard to the mechanism for controlling enrichment, asset declarations are only submitted at the beginning and end of activity, therefore every four years and with no annual monitoring, and the current obligation to report changes is not complied with, since in practice there is no control over them, as has been stated by the body in charge, and the associated sanctioning system is weak.

At the operational level, however, progress has been made in some factual control mechanisms: the active publication of Declarations of assets, interests and activities is generally carried out in the national, regional and local Transparency Portals; this is due to the work of monitoring and control of civil society organisations and especially to the

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<sup>13</sup> <https://www.boe.es/buscar/pdf/2015/BOE-A-2015-3444-consolidado.pdf>,

<sup>14</sup> <https://www.boe.es/buscar/doc.php?id=BOE-A-2013-12887>.

<sup>15</sup> <https://www.boe.es/buscar/pdf/2016/BOE-A-2016-12048-consolidado.pdf>

<sup>16</sup> <https://www.coe.int/en/web/human-rights-rule-of-law/-/spain-greco-interim-compliance-report-regarding-corruption-prevention-in-respect-of-members-of-parliament-judges-and-prosecutors>.

<sup>17</sup> <http://www.europapress.es/nacional/noticia-tribunal-cuentas-presenta-informe-cuestiono-vigilancia-intereses-altos-cargos-20171029113053.html>

momentum achieved through the Transparency Indexes and Evaluations carried out by TI Spain for bodies such as municipal and provincial councils.  
<https://transparencia.org.es/indices-transparencia-espana/>

The imminent Comprehensive Anti-Corruption and Whistleblower Protection Law, currently under parliamentary consideration and tabled by minority groups,

<sup>18</sup>aims to put an end to these inefficiencies with a more solid framework: an Independent Public Integrity Authority that will watch over conflicts of interest, compatibilities, revolving doors, declarations of assets and interests and other related issues, and will also have an appropriate sanctioning regime. All this remains to be seen and the challenge remains to ensure an effective and unambiguous framework of integrity throughout the State for all public officials and all branches of government.

It is also imperative to continue to advance an ethical culture of integrity, accountability and compliance in the whole Public Sector.

#### Key Finding:

1. **The legal framework is not currently effective** in guaranteeing integrity and preventing corruption in the Public Administration, even in spite of the penal reforms to expand crimes and strengthen the related sanctions, since the aforementioned Law 3/2015 on Senior Officials does not cover all relevant officials, as well as the judiciary and the legislature.
2. This is due to the fact that there is no independent supervisory authority that effectively controls aspects of integrity, since the current **Office for Conflict of Interest**, with powers over verification of the suitability of senior officials, authorisation of compatibilities and control of revolving doors, as well as receipt and control of declarations of assets, interests and compatibilities, has not adequately performed any of these functions, as has been pointed out in numerous studies and reports, most notably that of the Court of Auditors itself: <sup>19</sup>
3. Members of Congress, Senators and Judges have not yet adopted Codes of Integrity and Public Ethics that regulate their activity with regard to aspects such as conflicts of interest, acceptance of gifts, preferential treatment, relations with lobbies and others, as stated in the last GRECO report in 2017.

#### Key recommendations:

1. To continue to advance an ethical culture of integrity, accountability and compliance in the whole Public Sector.
2. To ensure an effective and unambiguous framework of integrity throughout the State for all public officials and all branches of government.
3. Adopt as a matter of urgency the draft Comprehensive Anti-corruption and Whistleblower Protection Law and strengthen the resources of the future independent Public Integrity Authority. This Body shall monitor the entire life cycle of the relevant senior officials and civil servants: suitability of CVs, declarations of assets, interests

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[http://www.congreso.es/portal/page/portal/Congress/Congress/Initiatives?\\_poref73\\_2148295\\_73\\_1335437\\_1335437.next\\_page=/wc/serverCGI&CMD=VERLST&BASE=IW12&FMT=INITDSS.fmt&DOCS=1-1&DOCORDER=FIFO&QUERY=%28122%2F00000022\\*.NDOC.%29](http://www.congreso.es/portal/page/portal/Congress/Congress/Initiatives?_poref73_2148295_73_1335437_1335437.next_page=/wc/serverCGI&CMD=VERLST&BASE=IW12&FMT=INITDSS.fmt&DOCS=1-1&DOCORDER=FIFO&QUERY=%28122%2F00000022*.NDOC.%29)

<sup>19</sup> <http://www.europapress.es/nacional/noticia-tribunal-cuentas-presenta-informe-cuestiono-vigilancia-intereses-altos-cargos-20171029113053.html>

- and activities each year, compatibility and revolving door checks, infractions and sanctions.
4. The legislative and judicial branches must urgently adopt their codes of ethics and good governance as required by GRECO.

## **Fiscal transparency**

Spain scores 0,75 on the Fiscal Transparency Indicators which represents a compliance rate of 75%.

According to the Open Budget Survey for 2017 conducted by the International Budget Partnership, Spain ranks an 54/100 overall, following Ukraine and preceding Honduras. Most European countries score between 66/100 and 85/100. Top country ranked in 2017 is New Zealand.

Spain gets 54/100 in Transparency, 2/100 in Participation and a 56/100 in Budget Oversight.

Legal sources pertaining Budget enact are Spanish Constitution of 1978 (Art 134), Law 47/2003 issued in November 28th of Budgetary Procedure, Law 2/2012 of April 27th for Financial Sustainability and Budget Stability and the UE Treaty of March 2nd 2012 for Stability, Coordination and Governance in the Economic and Monetary Union. The involvement of these four high rank legal pillars grant transparency whereas Law 19/2013 of Transparency, Public Access to Information and Governance issued December 9th reinforces effective publication of the six key Budget Documents.

### **Key Findings:**

Even when formal transparency is assured, the information provided (probably the kind of charts and executive summaries produced for internal use) is highly technical and unfriendly to third parties. Efforts to improve production of a comprehensive and explanatory analysis on main chapters such as healthcare, education, security or justice should be taken.

In conclusion, Spain holds a fairly high level of fiscal transparency as per its legal framework though Authorities limited awareness to publish easily understandable Budget reviews.

### **Key Recommendations:**

- To improve its global ranking position, Spain should better explain and timely disclose its Budget Execution by ensuring a Legislative Committee that examines and publishes mid-year review, in-year review, year-end report and a Citizens Budget, in open data format.
- There is also room for improvements by increasing the information provided in the Executive's Budget Proposal that should include data on the macroeconomic forecast. In addition, a mid-year and a year-end report should be included along with key Budget Documents.
- The mentioned initiatives would have a positive impact in terms of common knowledge and will help citizens and investors to better appreciate the effectiveness of the Government course of action.

## Public procurement and government contracting

Score 3 points out of 4

**The new Public Sector Contracts Law 9/2017, which came into force on 9 March 2018,** establishes an effective framework of integrity in public procurement, which in Spain accounts for more than 20% of GDP. It transposes the European Community Directives, incorporates multiple contributions from Civil Society Organisations such as Transparency International, regulates a series of collegial control bodies such as the independent Office for the Supervision of Public Procurement, avoids discretion by lowering the threshold for minor contracts that do not require publication and establishes in a general manner, with limited exceptions for defence contracts, the obligation for open competition, debureaucratisation and complete publicity, which must be verified in a single central repository: the State's public procurement platform. <https://contrataciondelestado.es/wps/portal/plataforma> Contracts that have not been concluded in accordance with these requirements are null and void and a system of free appeals is established for all administrative decisions related to the tenders. These provisions shall also apply at regional and local levels. It remains to be seen how the implementation of the law will develop, which can be blamed for excessive detail, technical complexity and difficulty of interpretation for SMEs and the self-employed.

Some pioneering Administrations, such as the Madrid City Council, have joined the Integrity Pacts promoted by TI.

<sup>20</sup>

The Integrity Pact <http://integridad.org.es/> is a public management initiative created by Transparency International in the 1990s to improve transparency and participation and prevent corruption in public procurement with the participation of civil society, and to monitor the integrity and subsequent execution of public contracts. More than 20 countries have joined this initiative.

Organisations such as Transparency International Spain have promoted the inclusion of publicity on aspects such as the number of bidders, minutes of contracting procedures and roundtables, list of main suppliers and others. Currently, publicity of public sector contracts is full at all levels of government (Central, Regional and Local) on their own contracting platforms or contractor profiles, e.g.<sup>21</sup> but they are not yet generally published in the central repository of the Public Sector Contract Platform.

Key findings:

1. **The new Public Sector Contracts Law 9/2017, which came into force on 9 March 2018,** establishes an effective framework of integrity in public procurement, which in Spain accounts for more than 20% of GDP.
2. The obligation for open competition, debureaucratisation and complete publicity, which must be verified in a single central repository: the State's public procurement platform. <https://contrataciondelestado.es/wps/portal/plataforma> Contracts that have not been concluded in accordance with these requirements are null and void and a system of free appeals is established for all administrative decisions related to the tenders.

**Key recommendation:**

- Promote the effective functioning of the Office for Public Procurement, which analyses dysfunctions, proposes improvements, audits the compliance of publication

<sup>20</sup> [https://transparencia.org.es/wp-content/uploads/2017/04/contenidos\\_basicos\\_pacto\\_integridad\\_ayto\\_madrid.pdf](https://transparencia.org.es/wp-content/uploads/2017/04/contenidos_basicos_pacto_integridad_ayto_madrid.pdf)

<sup>21</sup> <https://www.mecd.gob.es/giec/perfil-contratante.html>

requirements on the public sector procurement platform, and promotes greater understanding and agility of the law for the opening of procurement to SMEs.

## Whistleblowing and reporting mechanisms

Score 1.5 out of 7

At the state level, there is no Whistleblower Protection Act in force and no independent public authority responsible for channelling complaints and whistleblower protection. At the regional level, six Regional Governments have passed sufficiently protective laws that guarantee the principles laid down by TI.<sup>22</sup> A good practice is the Law 1/2016 for the Creation of the Anti-Fraud Agency of the Community of Valencia that activates a complete statute of protection of the complainant<sup>23</sup>

There is a bill for a Comprehensive Law against Corruption and for the Protection of Whistleblowers in the process of parliamentary approval

<sup>24</sup> which will implement a strong protection framework but does not incorporate the right to legal representation, does not allow external complainants (for example, a contractor) and requires evidence for the complaint. At the national level, the challenge of unifying the legislative panorama of whistleblower protection throughout the State remains.

In recent years, there have been very prominent cases in which whistleblowers who have revealed important corruption schemes have been exposed to a total lack of protection, job losses, harassment, defencelessness, payment of lawsuits with economic losses and even danger to their physical integrity. The most notable cases have taken place at the regional level (cases named by police ACUAMED, LEZO, GURTEL), despite which the Autonomous Community of Madrid has not approved any regulations on whistleblower protection. There have also been important national cases, such as false invoices from the General Workers Union (UGT), in which the complainant is still in the middle of trials for revealing secrets. All of this has prompted the draft Comprehensive state Law against Corruption and for Whistleblower Protection,

<sup>25</sup> even if the initiative has not been taken by the national government but by the opposition parties. At the national level, the challenge of unifying the legislative landscape of whistleblower protection throughout the State is fundamental.

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<sup>22</sup> <https://revistainternacionaltransparencia.org/wp-content/uploads/2017/09/Daniel-Amoedo.-pdf>

<sup>23</sup> <https://valenciaplaza.com/la-agencia-antifraude-aprueba-la-resolucion-por-la-que-se-aplica-el-estatuto-del-denunciante>

<sup>24</sup> [http://www.congreso.es/portal/page/portal/Congreso/PopUpCGI?CMD=VERLST&BASE=pu12&FMTT=PUWTXDTS\(fmt&DOCS=1-1&DOCORDER=LIFO&QUERY=%28BOCG-12-B-33-1.CODI.%29#\(P%C3%A1gina1,](http://www.congreso.es/portal/page/portal/Congreso/PopUpCGI?CMD=VERLST&BASE=pu12&FMTT=PUWTXDTS(fmt&DOCS=1-1&DOCORDER=LIFO&QUERY=%28BOCG-12-B-33-1.CODI.%29#(P%C3%A1gina1,)

<sup>25</sup> [http://www.congreso.es/portal/page/portal/Congreso/PopUpCGI?CMD=VERLST&BASE=pu12&FMT=PUWTXDTS\(fmt&DOCS=1-1&DOCORDER=LIFO&QUERY=%28BOCG-12-B-33-1.CODI.%29#\(P%C3%A1gina1\)](http://www.congreso.es/portal/page/portal/Congreso/PopUpCGI?CMD=VERLST&BASE=pu12&FMT=PUWTXDTS(fmt&DOCS=1-1&DOCORDER=LIFO&QUERY=%28BOCG-12-B-33-1.CODI.%29#(P%C3%A1gina1))

<sup>26</sup> <https://www.nytimes.com/2016/05/15/world/europe/spanish-activists-push-for-laws-to-protect-whistle-blowers.html>

[https://www.eldiario.es/politica/puede-pasarte-denuncias-corruptos-enteran\\_0\\_0\\_756624527.html](https://www.eldiario.es/politica/puede-pasarte-denuncias-corruptos-enteran_0_0_756624527.html)

Key finding:

- There is no specific law or regulation at the state level.
  - The situation in the regions is heterogeneous: some advanced legislation coexists with regions that have not developed laws on the subject.
  - At the state level, confidentiality is not guaranteed.
  - Whistleblowers of corruption in recent years have been severely harmed.
  - The recently adopted EU Whistleblower Protection Directive <sup>27</sup> will ensure a single EU-wide protection framework in both the public and private sectors.
  - There is a bill for a Comprehensive Law against Corruption and for the Protection of Whistleblowers in the process of parliamentary approval.
- <sup>28</sup>which will implement a strong protection framework but does not incorporate the right to legal representation, does not allow external complainants (for example, a contractor) and requires evidence for the complaint. At the national level, the challenge of unifying the legislative panorama of whistleblower protection throughout the State remains.

Key recommendation:

1. Incorporate into the draft Comprehensive Anti-corruption and Whistleblower Protection Law the possibility of reporting by outsiders, such as contractors or suppliers, the option of reporting without hard evidence, legal assistance to the whistleblower and the obligation to report to the whistleblower on the investigation.
2. Promote the extension of homogeneous and broad guarantees to the complainant throughout the state territory and for all levels of government: state, regional and local.

## **Target 16.10: Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements**

### Protection of fundamental freedoms

Spain's Freedom House score in 2018: 1 in political rights, 1 in civil liberties and free country rating.

The World Press Freedom Index ranks Spain 31<sup>st</sup> out of 180 countries with a score of 20.51.

The Constitution guarantees ideological and religious freedom, freedom of expression, the right of assembly and the right of association, recognizing maximum protection for them. On the other hand, the different rankings and evaluations of the situation of civil and political rights such as the Freedom House Index, the World Press Freedom Index or The Economist Democratic Index, give Spain a good rating. However, the current legal framework contains rules and provisions, and faces situations of legislative deadlock, that may threaten or restrict the exercise of these freedoms and rights.

They are as follows: a) Organic Law 4/2015, of 30 March, for the protection of citizen security (LOPSC) (known as the "Gag Law"), which punishes with heavy fines demonstrations not

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<sup>27</sup> [https://ec.europa.eu/info/sites/info/files/placeholder\\_8.pdf](https://ec.europa.eu/info/sites/info/files/placeholder_8.pdf)

<sup>28</sup> [http://www.congreso.es/portal/page/portal/Congreso/PopUpCGI?CMD=VERLST&BASE=pu12&FMTT=PUWTXDTS.fmt&DOCS=1-1&DOCORDER=LIFO&QUERY=%28BOCG-12-B-33-1.CODI.%29#\(P%C3%A1gina1,](http://www.congreso.es/portal/page/portal/Congreso/PopUpCGI?CMD=VERLST&BASE=pu12&FMTT=PUWTXDTS.fmt&DOCS=1-1&DOCORDER=LIFO&QUERY=%28BOCG-12-B-33-1.CODI.%29#(P%C3%A1gina1,)

authorized by the government and prohibits the unauthorized use of images or personal or professional data of members of the Security Forces and Corps; b) the blocking of the Law on the Board of Directors of the State Public Television (RTVE) approved at the end of March 2017, which extends the independence and changes the procedure for electing the members of the Board; (c) Article 578 of the Criminal Code, which lays down the offence of glorification of terrorism and humiliation of victims and which, according to Amnesty International, provides for disproportionate penalties that restrict freedom of expression.

In addition, there are government policies and practices and court rulings that restrict the freedoms of expression and assembly, as denounced in their reports on Spain by organisations such as Amnesty International (AI), Human Rights Watch (HRW) and Reporters Without Borders (RWB). The cases in question are related to: a) the independence movement in Catalonia, b) the manipulation on the State and the Catalan public televisions, c) judicial proceedings against journalists for reporting on cases of corruption and d) judicial proceedings against artists and users of social networks for glorifying terrorism and offending religious feelings.

There have also been cases of censorship, such as the withdrawal of the exhibition of photographs by the artist Santiago Sierra entitled "Political prisoners in contemporary Spain", which was presented at the Madrid IFEMA/ARCO Fair in April 2018, and the censorship of information on the State and Catalan public televisions, which has been denounced to the European Parliament.

### Key Findings

- The Constitution guarantees the fundamental freedoms of expression, assembly and association, recognizing maximum protection for them. On the other hand, Spain scores well in the international rankings on rights and freedoms. However, the current Spanish legal framework contains rules and provisions, and faces situations of legislative deadlock, which may threaten or restrict the exercise of these freedoms and rights.
- These rules and provisions are: a) the Organic Law of March 2015 for the protection of citizen security (LOPSC) (known as the "Gag Rule"), b) the blocking of the Law on the Board of Directors of the State Public Television (RTVE) approved at the end of March 2017, which extends the independence and changes the procedure for electing the members of the Board; c) article 578 of the Criminal Code, which criminalizes the glorification of terrorism and the humiliation of victims.
- There are also government policies and practices and court rulings that restrict the freedoms of expression and assembly, as denounced in their reports on Spain by organisations such as Amnesty International (AI), Human Rights Watch (HRW) and Reporters Without Borders (RWB).
- There have also been cases of censorship, notably of information censorship on the State and Catalan public televisions.

### Key recommendations

- Review such rules and provisions as may threaten or restrict the full exercise of the fundamental freedoms in question such as Organic Law 4/2015, of 30 March, on the protection of public safety,<sup>29</sup>
- Urgently approve the law on the Board of RTVE to ensure its maximum independence.

## Access to information

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<sup>29</sup> <https://www.boe.es/buscar/pdf/2015/BOE-A-2015-3442-consolidado.pdf>

Score 6 out of 9

The country's score in the Right-To-Information Rating? (<http://www.rti-rating.org/country-data/>) is 73 out of 150 points, behind Portugal and before the Czech Republic and with a better position than countries like France or Germany, since the index exclusively measures the legal framework that in many European nations is old.

The main shortcoming of Law 19/2013 on Transparency and Access to Public Information is that the right of access is not granted the status of a fundamental right and therefore its compliance and degree of implementation at national level is still very irregular. The implementation of the right of access to information at the State level is still insufficient and the Government has not put in place sufficient means to ensure compliance and effectiveness.<sup>30</sup>

The main problems for a more effective right of access are, among others, the global lack of political and civil service culture on the right of access, which has recently been implemented in Spain. The paradigm shift from "protecting public information" to "opening up public information and accountability" has not yet been fully realized.

Law 19/2013 does not establish sanctions; the control body, the Transparency Council, does not have sufficient resources; its resolutions are in many cases appealed against by the Government; and a clarifying implementing regulation has not yet been approved,<sup>31</sup>

TI Spain's activity with its Transparency Evaluation Indexes on organisations, for example: <https://transparencia.org.es/indice-de-transparencia-de-las-empresas-publicas-indep/> has achieved a wide degree of compliance in previously opaque entities, such as municipal or provincial councils; however, the draft Comprehensive state Law on the Fight against Corruption and Whistleblower Protection, presented by opposition groups and expected to be approved imminently, promotes the functions of the Transparency Council, its independence and sanctioning power, as well as the culture of public openness, which will foreseeably improve the effectiveness of the right of access and reduce its judicialization.

<sup>32</sup>

At the regional level the situation is irregular, with high compliance and effectiveness of the right of access in regions such as Valencia, Andalusia or Catalonia and a deficient response in other regions such as Madrid. In general, it is necessary to improve the supervision and control of state, regional and local public bodies, entities and enterprises, both in active publicity and in the right of access, and the homogeneity of compliance with the law throughout the national territory, including regions and local entities.

### **Key finding.**

1. The widespread implementation of channels for the right of access in all Public Administrations in the last two years is noteworthy.
2. However, many companies and public entities still do not have direct channels.
3. The main shortcoming of Law 19/2013 on Transparency and Access to Public Information is that the right of access is not granted the status of a fundamental right.
4. Therefore, its compliance and degree of implementation at national level is still very irregular.
5. The global lack of political and civil service culture on the right of access, which has recently been implemented in Spain. The paradigm shift from "protecting public

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<sup>30</sup> [https://www.eldiario.es/politica/transparencia-instituciones-reclama-presupuesto-personal\\_0\\_0\\_745075787.html](https://www.eldiario.es/politica/transparencia-instituciones-reclama-presupuesto-personal_0_0_745075787.html)

<sup>31</sup> [https://politica.elpais.com/politica/2016/12/26/actualidad/1482775163\\_197687.html](https://politica.elpais.com/politica/2016/12/26/actualidad/1482775163_197687.html)

<sup>32</sup> [http://www.congreso.es/public\\_oficiales/L12/CONG/CONG/BOCG/B/BOCG-12-B-33-1.PDF](http://www.congreso.es/public_oficiales/L12/CONG/CONG/BOCG/B/BOCG-12-B-33-1.PDF)

- information" to "opening up public information and accountability" has not yet been fully realized.
6. The control body, the Transparency Council, does not have sufficient resources, its resolutions are in many cases appealed against by the Government and a clarifying implementing regulation has not yet been approved.

### **Key recommendation**

1. Include in the Regulations for the development of Law 19/2013 that the resolutions of the Transparency Council are binding.
2. Increase the resources of the Transparency Council to promote its evaluations and ex-ante audits of compliance with the right of access.
3. Improve the supervision and control of state, regional and local public bodies, entities and enterprises, both in active publicity and in the right of access, and the homogeneity of compliance with the law throughout the national territory, including regions and local entities.

## **Recommendations**

### **Key recommendations:**

1. Inclusion of real measures in connection with Goal 16 and targets related to integrity, transparency and corruption prevention into the Action Plan for the Alliance 2030, to set a sort of "leverage policies" to maximise the positive impact.
2. Encouragement for a speed approval of the Draft Bill Anti-Corruption Omnibus Act, the Comprehensive Anti-Corruption and Whistleblower Protection Act in Parliament.
3. Extend the scope of application of this Law to all relevant public officials.
4. Ensure that the intended Independent Public Integrity Authority has the necessary resources to monitor and supervise the entire tenure of high-rank officials (profile suitability, updated information on assets declaration and potential conflict of interests, revolving doors and imposing of sanctions when applicable).
5. Promote integrity in all branches of the Government, the Judiciary and the Parliament (Congress and Senate) by approving the proper Code of Conduct and Good Governance to improve the impact of integrity and good practices at all levels.
6. Extend the protection of the comprehensive anti corruption Draft Bill to whistleblowers on legal assistance and return of information, and extend the figure of the complainant to key external parties such as suppliers and contractors.
7. Grant the enforcement of the anti corruption Draft Bill to all Administrative and Governmental levels (State level, and also Regional and Municipal levels) by reaching out a national agreement for the standardization of public integrity compliance and monitoring.
8. Improve the effectiveness of the Court of Auditors' control over political parties financing by incorporating the obligation for parties to publish their annual external audits.
9. Accelerate the implementation of the 75 measures approved by the opposition parties to reform the financing of political parties.

10. Maintain progress in transparency and consolidate the progress made thanks to the Court of Auditors' Political Parties Platform and TI's evaluations.
11. Promulgate a comprehensive Lobby Regulation applicable to all levels of the State that includes a mandatory register for the Government, the Judiciary, Congress and senate, with public agendas reflecting meeting related to parliamentary procedures in progress.
12. Improve the competences of the Council for Transparency and Good Governance, granting the proper reinforcement to its resolutions, making them binding, avoiding the judicialization by the Government and other Entities that litigate against with public money.
13. Increase the resources of the Transparency Council by providing a structure capable of monitoring compliance of all public bodies, especially public sector companies.
14. Supervise compliance of Transparency in Public Companies at all levels of the State through agreements between the National Transparency Council and the Autonomous Councils.
15. Strong recommendation to the Ministries and its subsidiary public entities to embrace compliance programmes in proof of integrity and transparency even when they may not incur in criminal liability due to their legal public nature at the present moment.
16. Increase the time limits for the prescription of offences associated with corruption, in particular bribery, influence peddling, prevaricating and embezzlement
17. Incorporate the following issues to the developing Regulation of Law 19/2013 on Transparency, currently in the process of receiving contributions:
  - That the Resolutions of the Transparency Council have a binding character to avoid the current judicialization.
  - That the obligation to publish data and the right of access be established on the public bodies' own websites and not indirectly on the State Transparency Portal.
  - An annual evaluation of the Board should be established for key bodies: public entities and companies, regulatory bodies and political parties.
  - An effective control mechanism with dissuasive infringements and administrative sanctions is in place.
  - Active publicity should include agendas for senior management, remuneration, code of ethics and conduct and quality assessments of public services by citizens accompanied by quality improvement plans.
  - The right of access can be channelled in a multi-channel manner: face-to-face, telematic and with ID and email.
18. Regarding Anti Money Laundering good practices, Designated Non Financial Business Professions should follow the below recommendations to mitigate potential risks:
  - Promoting Compliance Culture even in small and medium businesses (SMB)
  - Know Your Customer: Customer Due Diligence
  - Records Keeping
  - Training employees on AML/TF
  - Detection of unusual or suspicious transactions
  - Report to Law Enforcement Agencies in case of suspicious transactions

19. Spain is, at the time of the research, still dealing with relevant cases of corruption occurred in recent years. Most of the corruption events turned into money laundering felonies are detected following the money by the Financial Intelligence Units in a forensic process that may take years. For undetermined reasons, social perception does not yet equally contemplate the receiver and the payer or the advisor, though the Law does, and Judges act against all parties involved with presumably impartiality. Press covers are normally devoted to the persons who receive illicit money, rather than to the facilitators, and that creates a sort of implicit double standard.
20. To improve a holistic integrity culture in public and private sector, public scrutiny and the rule of law should be equally placed over all parties involved in a potential felony, even when entities involved are prestigious Spanish companies or highly regarded individuals.
21. In order to improve the access to public information on beneficial ownership, Spanish Government should encourage companies to update Company Registry every six months when a significant variation on beneficial owner takes place. Registration certificate will be free of any charge. Proportional sanctions will be imposed if companies are not compliant.
22. At the time of the research, partial enhancements are still required in the Spanish Assets Recovery Office ORGA, some regarding legislative developments and some other referred to the need of more resources to be assigned.. In order to improve its capacity and to comply with the commitments assumed in International Agreements, Spain should promptly devote to the Agency the required resources and take the necessary steps to its fully legal development.
23. On fight against organised crime, even when precaution in public statements needs to be taken into account, in order to improve communication when a crisis related to fight against crime occurs, Spanish Government should provide a more transparent and detailed information on the extent of the incidents in the Strait of Gibraltar Area and what exactly are the measures to put in place in order to tackle the situation shortly.
24. In addition, Spain should actively pursue a specific statu quo as European Union South and South-West State Border in order to improve its resources and operative capacity when facing global challenges such as cross-borders migrations or drug trafficking,
25. On private sector anti corruption good practices, and in order to improve its commitment with other international partners and for the betterment of its reputation on anti foreign bribery practices, Spain should be much more active in pursuing all forms of foreign bribery. A better culture on whistleblowing channels may contribute to achieve the goal.
26. In addition, Spanish National Commission for the Markets and Competition should preserve its independency to fight against prohibited practices to effectively grant transparency and good practices in private sectors. A legal redefinition process to split Markets defence and Competition preservation seems to be unavoidable in order to assimilate to those homologous institutions in the European Union.
27. Regarding fiscal transparency enhancements, and to improve its global ranking position, Spain should better explain and timely disclose its Budget Execution by ensuring a Legislative Committee that examines and publishes mid-year review, in-year review, year-end report and a Citizens Budget, in open data format.
28. There is also room for improvements on fiscal transparency by increasing the information provided in the Executive's Budget Proposal that should include data on the macroeconomic forecast. In addition, a mid-year and a year-end report should be included along with key Budget Documents.
29. Review such rules and provisions as may threaten or restrict the full exercise of the fundamental freedoms in question such as Organic Law 4/2015, of 30 March, on the

protection of public safety, <https://www.boe.es/buscar/pdf/2015/BOE-A-2015-3442-consolidado.pdf>

30. Urgently approve the law on the Board of RTVE to ensure its maximum independence.

## Regional coordination

- Please consider what initiatives, support or work at the regional level could help your national advocacy efforts (1 paragraph).

The autonomic Regions, in their spheres of competence, must ensure that they develop laws and regulations in their territories that guarantee the framework of integrity of senior management, good governance, prevention of corruption, control of the lobby, protection of whistleblowers and, in general, the comprehensive fight against corruption.

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