

REAL DEAL country profile

Spain



**REAL
DEAL**

RESHAPING CITIZENS'
DELIBERATION FOR THE
EUROPEAN GREEN DEAL



Overview

1

Spain is a decentralised constitutional monarchy consisting of seventeen autonomous communities (self-governing sub-state entities), two autonomous cities (Ceuta and Melilla), fifty provinces and 8131 municipalities. According to the distribution of competences established by the Spanish Constitution of 1978 and the statutes of autonomy of the autonomous communities, the application of certain elements of the European Green Deal is attributed to the state while other aspects are within the competence of the autonomies. In practical terms, the application and fulfilment of legal obligations to consult the public on environmental and sustainability matters depends on a complex system of competence distribution that englobes multilevel public administration.

The basis of the Spanish environmental policy lies in Article 45 of the Spanish Constitution (which is not a fundamental right), establishing the right to enjoy an environment suitable for personal development, as well as the duty to preserve it. There are other common dispositions of public law to ensure an effective and direct application of the legal obligations to consult citizens on environmental and sustainability matters through deliberation processes. In this sense, the law 27/2006 (18 July) "*regulating rights of access to information, public participation, and access to justice in environmental matters*" (EL), transposed the Aarhus Convention dispositions and Directives 2003/4/EC and 2003/35/EC into domestic law.

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2

Dimensions of environmental governance

The situation of environmental governance in Spain is influenced by a set of complex historical and cultural questions, which are of a very different nature and in constant evolution: social, political, and business values that, in general, do not perceive environmental quality as one of the priorities for progress and wellness; corruption; legislative “hyperproduction”; a poor culture of active involvement of citizens in surveillance of the public administration.

Different entities and institutions at the international, such as the Organisation for Economic Co-operation and Development (OECD), at the European (the European Commission) and state levels have published reports identifying the need to carry out significant improvements in the quality of environmental governance in Spain.

Since 2011, and as a response to the OECD’s recommendations on Spanish governance, Spain has developed a work programme consisting of successive plans and policies to improve transparency in governance and environmental governance through the accession of Spain to the international Open Government Partnership.

Spain has shown some progress towards achieving 17 Sustainable Development Goals in the 2023 Sustainable Development Report, ranking 16 in the world. However, Spain has been one of the countries with the most environmental violations in the EU. Furthermore, Spain has failed to take the necessary measures to comply with the environmental regulations imposed by the European Union. The case files cover a wide range of topics, from the control of polluting discharges and fraudulent extraction to the failures in protecting the natural environment.

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2.1

Transparency (access to information)

Articles 3, 4 and 5 of the Aarhus Convention have been primarily transposed by several articles (1.2, 3.1.b, 5.2, 10, 13, and 15) of the EL. Title II of the EL contains the specific regulation of the right of access to environmental information, in its double facet, as active and as passive supplier/receiver of information. Besides the constitutional principle of Article 45, there are a set of norms providing legal coverage and enforcement of rights of access to information, public participation, and access to justice in environmental matters. The set of norms from the general administrative legislation include the following: Articles of Law 30/1992, of November 26, on the Legal System of Public Authorities and the Common Administrative Procedure; Law 39/2015, of October 1, on Common Administrative Procedure of Public Administration and, Law 19/2013, of December 9, on Transparency, Access to public information and Good Governance.

However, despite the legal accommodation, the application of the right to access environmental information has been implemented mostly by online and digital means. In this sense, the EL promotes explicitly “the greatest possible extent and use of technology” to disseminate and guarantee public disclosure of environmental information (Article 1.2). Users can access websites where public authorities made available environmental information and download links and applications for mobiles devices created by the Ministry of Agriculture, Food and Environment.

The use of environmental information is also linked to the “Transparency Portal” and with Law 19/2013 of Transparency and Good Governance. Environmental data is to a good extent readily accessible to the public in all sectors (the exception is the chemical sector). The way that citizens communicate with the public administration on environmental issues follows the general and common procedure. It is initiated at the Point of General Electronic Access, once the query is registered in the system it is forwarded to specialised offices. In Spain, there is no specific channel on access to environmental information.

The provision of environmental information is free of charge, and it is comparatively easy for a citizen to find online information regarding the issuing of potential complaint procedures. Article 6 Law 19/2013 incorporates the obligations to disclose environmental information as prescribed by the Convention. The provided information does not refer to external control possibilities (Ombudsmen). Access, use and reuse of information are protected by several legal instruments (Decree 1495/2011; Law 18/2015), the Spanish government initiative on the [reuse of public sector information](#) and, the *Aporta* project.



An overview of the online environmental information provided by public authorities shows good use of electronic channels of communication. Practically, all websites provide access to a long list of relevant legislation, technical documents, EU guidelines, etc. However, communication seems to be one-directional; there is hardly any opportunity to interact online with public entities.

The EL is also the domestic regulatory framework to implement the provisions for the collection and dissemination of environmental information. The EL prescribes the requirement of public authorities to ensure that the collected information is up to date, accurate, and comparable with other data. The law also creates the obligation of public authorities to draw up, publish, and make available to applicants of environment information the list of public and private fees applicable to such requests and the events in which payments are not required (Articles 5.2 and 15 EL).

The Ministry publishes and disseminates environmental information and data through different activities and initiatives. However, there is no data on the total visits to the websites that provide environmental information, total downloads on mobile devices or requests for public information.

2.2

Participation

Public participation in decision-making on environmental matters and activities established in Article 6 of the Aarhus Convention and by the Directive 2003/35/EC is implemented through the EL and through specific procedures according to different specialised and sectorial pieces of legislation (Article 3.2.e of EL).

The EL does not regulate any concrete procedure and it simply states the general duty to promote the real and effective participation of citizens. The EL also introduces informative principles of public action, such as making relevant information publicly accessible, informing about the right and the way to participate, recognising the right to make observations and comments at an early stage when all options are open, and to justify how the decision is adopted and how the participation procedure has been carried out.

Spanish law provides that public authorities will promote real and effective participation.



Each autonomous institution establishes concrete participatory and deliberation procedures ensuring compliance with the guarantees recognised by the Aarhus Convention. It is up to each public administration to determine which members of the public have the status of a person “concerned” and can, therefore, participate in a concrete environmental procedure. At the state level, participation in decisions on the sectorial activities listed in Annex I of the Convention, for example, energy sector, production and processing of metals, mineral and chemical industries, waste management. It is enforced by specific legislation, such as Law 16/2002 on integrated pollution prevention and control as amended by Law 5/2013 of June 11 and Law 21/2013 of December 9.

Spanish law provides that public authorities will promote real and effective participation (in the early stages) of those interested in the procedures for granting, substantially modifying, and reviewing the integrated environmental permit and installation. Consequently, it is legally prescribed that the substantive body will inform the public about the competent authority to which observations, questions, and allegations must be addressed and the timeframe for doing so. All channels of information (e-mail, postal address, fax, telephone, personal presence, or website) are generally available to the public at every public authority for participation and the presentation of allegations.

Law 21/2013 of December 9 on Environmental Assessment is a legal instrument that aims to ensure that development is sustainable and inclusive, and it transposes into the domestic legal system Directives 2001/42/CE, of June 27, on evaluation of the repercussions of certain plans and programmes on the environment, and Directive 2011/92/EU, of December 13, of evaluation of the repercussions of certain public and private projects on the environment. This norm brings together in a single text the legal regime for the evaluation of plans, programmes, and projects, and establishes a set of common provisions to approximate and facilitate the application of both EU regulations. Some regional governments have modified their regional legislation to adapt law 21/2013 and others have directly implemented the state legislation.

Regarding Integrated Environmental Permits, Law 21/2013 establishes that reasonable timeframes must be provided for every stage of the process, allowing the public to have sufficient time to be well informed and the public concerned to prepare and effectively participate in the decision-making process.

As it happens with environmental plans and programmes, sufficient public participation requires that time frames are established by each relevant law. The Spanish legislation includes the possibility that projects, which are subject to environmental impact assess-



ments, undergo the standard procedure when requested. It also guarantees early participation by opening the consulting process to the public authorities involved and to the natural persons or public and private legal entities linked to the protection of the environment. Additionally, relevant and specific legislation have adapted their procedures to the provisions of the national law.

Besides the main ordinary legislation, the Ministry for Environmental Transition publishes relevant information on environmental matters, projects, plans and programmes to ensure compliance with its obligation to guarantee the right of the public to participate.

State and Autonomous authorities encourage early participation through the Internet and by sending information to the associations, organisations, and agents involved in the procedures. At the national level participation of the public is enhanced through the Assessing Council of the Environment (Consejo Asesor de Medio Ambiente, CAMA) which aims at bringing together and enabling the participation of stakeholders from social and economic sectors whose participation is relevant to decision-making in the field of environmental measures.

Communication efforts of environmental authorities in Spain often have the general public as their target audience.

At the regional level, each Autonomous Community has its own CAMA on a regional basis to which some other committees are added to enable further public participation. Communication efforts of environmental authorities in Spain often have the general public as their target audience, and the documentation on environmentally relevant legislation and environmental programmes is often user-friendly.

The EL establishes the minimum public participation requirements in environmental matters. At the national level, participation of the public is enhanced through the CAMA which aims at bringing together and enabling the participation of stakeholders from social and economic sectors whose participation is relevant to decision-making in the field of environmental measures. Spanish public authorities do not often fund the development of citizen science initiatives. However, the authorities use their information channels to promote these initiatives and to call for their use (e.g. citizen science portals and applications on marine topics are promoted by the Spanish Environment Ministry).



Spanish public authorities do not often fund the development of citizen science initiatives.

2.3

Access to Justice

The Spanish legislation provides a very wide range of legitimacy to initiate an administrative procedure in environmental matters by recognising the legal capacity of members of the public who consider that an action or omission attributable to a public authority has impaired their rights to information and public participation (Article 20 of EL). However, these rules of legal standing do not apply to environmental matters on access to information, participation and access to justice. The legal standing rules applicable to those matters are to be found in the 27/2006 Act.

This law aims to regulate the rights to access environmental information, to participate in the decision-making procedure and to call for administrative and judicial review of the acts and omissions attributable to any of the public authorities breaching environmental legislation. The *actio popularis* accords the right to appeal to all non-profit legal entities meeting some basic requirements (Articles 22 and 23 of EL).

At the State level, the “*Guía rápida del Convenio Aarhus*” (Quick Guide to the Aarhus Convention) is to some extent a user-friendly communication on the access of the public to justice in environmental matters. A short guide provided by the UN on access to justice in environmental matters is available on the website of the Ministry. In Spain there are no specific environmental law courts, the competence and jurisdiction are distributed following the general Organic Law on the Judiciary and other procedural norms among the main jurisdictional orders. Judges and Magistrates have been trained with specific courses on environmental law. While this can be considered good practice, the implementation of this training could be further increased, as it is currently only reaching a relatively small number of judges.



2.4

Compliance Assurance, Accountability

Non-compliance with environmental law results in either administrative or criminal sanctions. However, regulators encourage the taking of preventive action. Where this fails, administrative (rather than criminal) sanctions tend to be imposed for breaches, although punitive criminal measures are used when required. Enforcement is always compulsory. However, not all cases are enforced. In practice, many breaches of environmental regulations remain unprosecuted, due to, among other factors, a lack of resources and the difficulty in discovering the breaches.

The Spanish Penal Code of 1995 was modified to transpose the Environmental Crime Directive (2008/99/EC), adding three new types of environmental crime. The Penal Code now includes two chapters (regulating crimes against natural resources and the environment, fauna and flora and domestic animals), which aim to punish the most serious breaches of environmental laws with imprisonment and fines.

During 2020, a total of 244 court cases have been instituted on environmental matters, 152 in the administrative jurisdictional order, 90 in the criminal courts and 2 in other civil orders. The responsibility for public prosecution of environmental crimes is at the national level.

2.5

Effectiveness and efficiency

The Spanish legislation links effective participation with the obligation of electronic means to access as the way of accessing public information and for the consultation of interested persons. It is worth questioning whether this electronic format guarantees that access to information and consultation is easy and effective.

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3

Institutional context

The institutional context to apply the European Green Deal in Spain is also conditioned by the attribution of competences established by the Spanish Constitution and the statutes of autonomy. In practical terms in Spain, there are multiple institutions responsible for assuring the guarantees established. At the state level, the competent authority is the Ministry for the Ecological Transition and the Demographic Challenge (previously included within the Ministry of Agriculture and Fisheries, Food and Environment). The ministry works in collaboration with other state agencies and commissions, the competent authorities of the autonomous communities, and local authorities in the task of guaranteeing the applicability of the Aarhus Convention.

The EL created an ex - Novo institution, the *Consejo Asesor del Medio Ambiente* (Environmental Advisory Council), assigned for administrative purposes to the Ministry of the Environment. This is a collegiate body whose purpose is the participation and monitoring of general environmental policies toward sustainable development.

Since its creation, the Council has undergone various modifications intended either to adapt its legal regime to the organisational modifications that have been made within the General State Administration or to provide for its greater agility in its function. These modifications aimed to ensure compliance with the constitutional democratic objectives, to guarantee the prescriptions marked by the Rio Conference on the Environment and Sustainable Development and the postulates of the Aarhus Convention concerning citizens' access to environmental information and the legitimacy of their participation in decision-making processes of an environmental nature.

The main functions of the Advisory Council are: a) to issue a report on draft laws and laws with environmental impact, in particular, on the issues that these regulations may include in regard to the basic regulations; b) to advise on the plans and programmes (at the state level) that the Presidency of the Council proposes based on their impact on the environment; c) to issue reports and make proposals on environmental matters, on their own initiative or at the request of the ministerial departments, autonomous communities and local entities (on their own competences) that request it; d) to propose measures that encourage the creation of employment linked to



activities related to the protection of the environment, as well as citizen participation in the solution of environmental problems; e) to propose environmental education measures to inform, guide and make society aware of ecological and environmental values; f) to propose the measures it deems appropriate for better compliance with international agreements on the environment and sustainable development, assessing the effectiveness of the regulations and programmes in force and proposing, where appropriate, the suitable modifications; g) to promote coordination between public and private initiative in environmental matters; h) to promote collaboration with similar bodies created by the Autonomous Communities.

Concerning the composition of the Council, the Presidency is held by the Ministry of Environment, then it includes a member representing the most relevant environmental NGOs of the country, a representative of the most important union, two people on behalf of the most representative business organisations, appointed by them in proportion to their representativeness, two people representing the consumer and user organisations, appointed at the initiative of the Council of Consumers and Users, three people representing the most representative agricultural professional organisations at the state level and, a person representing the National Federation of Fishermen's Guilds.

At the sub-state level, the 17 autonomous communities have developed their environmental advisory councils with different nomenclatures but with very similar functions and goals. However, according to the last written memory, only Catalonia has a CAMA that works satisfactorily due to its frequent meetings, tasks, resources, and jobs that can be accessed.

Local entities have competences on environmental matters and therefore many municipalities have developed local norms and institutions to implement their competencies. In the development and enforcement of these competencies, municipalities have also implemented procedures of public deliberation and participation in environmental matters.

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4

Role of Civil Society

In the Spanish case, extensive environmental legislation has incorporated provisions referring to the active involvement of the public. It has also created the Environmental Advisory Commissions or Thematic Councils at the state, sub-state, and local levels, in which representatives of non-governmental organisations for the defence of the environment participate, as well as representatives of the administration, business, trade unions and university experts.

The report *Una Agenda 2030 transformadora para las personas y el planeta: Propuestas para la acción política* (A transformative 2030 Agenda for people and the planet: Proposals for political action) was prepared by the most relevant civil society organisations in Spain. It complements the one carried out by the Spanish Government for the Voluntary National Review with the 2030 Agenda before the United Nations on July 18, 2018.

This report uses above all a state and European perspective and places the focus on the responsibilities of the Government as the main signatory and compromiser of the 2030 Agenda agreement. The report has the value of having been signed by organisations and networks in Spain that work in 9 different social sectors - ranging from the environment, human rights, social action, feminism, childhood, the alternative economy or disability, to trade union action or development cooperation and global justice. It is from the richness and legitimacy of the dialogue as well as the plurality of views that more coherent proposals are developed. It allows to better address the interconnectedness of the country's reality and the challenges of sustainable development.

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Legal Norms

- Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común.
- Ley 16/2002, de 1 de Julio, de Prevención y Control Integrados de la Contaminación.
- Ley 27/2006, de 18 de julio, por la que se regulan los derechos de acceso a la información, de participación pública y de acceso a la justicia en materia de medio ambiente (incorpora las Directivas 2003/4/CE y 2003/35/CE).



- Act 19/2013, of 9 December, on Transparency, Access to Public Information, and Good Governance
- Ley 21/2013, de 9 de diciembre, de evaluación ambiental.
- Ley 5/2013, de 11 de junio, por la que se modifican la Ley 16/2002, de 1 de julio, de prevención y control integrados de la contaminación y la Ley 22/2011, de 28 de julio, de residuos y suelos contaminados.
- Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas.
- Ley 7/2021, de 20 de mayo, de cambio climático y transición energética.
- Orden TED/1086/2021, de 29 de septiembre, por la que se establece la composición, organización y funcionamiento de la Asamblea Ciudadana para el Clima.
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