

Mrs. Ursula von der Leyen
President of the European Commission

Dear Ms.:

Impulso Ciudadano, the association that I am honored to preside, was created in 2009 with the following social purposes:

- a) To promote and defend political, ideological, linguistic and cultural pluralism in Spain.
- b) To defend human rights and fundamental freedoms at the national, European Union and international levels.
- c) To defend the values contained in the Spanish Constitution of 1978.
- d) To foster bonds of cohesion and relationships among Spaniards, regardless of their place of residence.
- e) To promote the necessary measures to improve the functioning, rationalization and neutrality of public institutions and administrations, as well as to fight against all types of corruption.
- f) To fight against hate phenomena and promote policies of tolerance, equality and solidarity among citizens.

It is registered in Section 1^a of the Register of Associations of the Generalitat de Catalunya on October 19, 2009, its address is located at Calle Consell de Cent, núm. 322, Entlo. C of Barcelona, CP 08007, with the following e-mail contact: info@impulsociudadano.org, and with registration number 40512-J/1.

Since its creation, it has carried out various initiatives to ensure respect for human rights and the defense of legality. To this end, it has brought various actions before courts and administrations, met with authorities and civil servants, promoted awareness campaigns and participated in citizen mobilizations.

Purpose of this letter

We would like to share with you our concern following the publication of Organic Amnesty Law 1/2024 (from now on, OAL 1/2024) for institutional, political and social normalization in Catalonia in the *Official State Gazette (BOE)* on 11 June.

You are no doubt aware of the context in which this Law was passed, as well as the far-reaching debate it has sparked in Spanish society. We believe that the EU cannot remain outside this debate since the said Organic Law violates the EU law both for what concerns its secondary law and, most importantly, the requirements resulting from Article 2 of the European Union Treaty, which constitute the true element of identity for the EU community of law.

What makes us Europeans is our shared notion of society and of political representation as a collective body in which freedom, political pluralism, the defense of human rights and the guarantee of the rule of law supersede languages, races or origins as elements of identity.

Our association strongly supports the European project, and therefore hopes that the Union's institutions will not remain silent when fundamental aspects of the Union's values are put at risk, as is the case with the Spanish Organic Amnesty Law.

Context of the Amnesty Law

Spain is a highly decentralized state. Seventeen Autonomous Communities and two Autonomous Cities have competences in different areas. In Catalonia, these competences include education, health, consumer affairs, transport, prisons, law enforcement and public media, among others.

These powers, however, must be exercised in accordance with the provisions of the Constitution and in compliance with basic state regulations on certain matters. To exercise these powers, the regional authorities have an administration with more than 240,000 employees (<https://www.idescat.cat/indicadors/?id=aec&n=15952&lang=es>), including more than 18,000 police officers (<https://www.idescat.cat/indicadors/?id=aec&n=15877&lang=es>) for a population of about eight million inhabitants.

In 2017, the nationalist parties that control both the autonomous government and the regional Parliament attempted to overturn the Spanish Constitution in Catalonia in order to achieve its secession from Spain. All this outside and against the law and in open disobedience to the decisions adopted by the Constitutional Court and other jurisdictional bodies.

After the secession plan failed and several of its participants were found guilty of the crimes of sedition, embezzlement of public funds and disobedience in a public trial in 2019, street riots broke out, with two law enforcement officers seriously injured, the death of a private individual and extensive damage to public property. Prosecution for the investigation of more serious crimes including possession and handling of explosives by members of an alleged terrorist group is still ongoing.

In 2021, the Spanish government pardoned the prison sentences of several of those convicted in 2019, although in no case did they show repentance for the crimes committed. What is more, the nationalist parties that had played a leading role in the events of 2017 insisted that they would not give up trying again to attempt a unilateral secession of Catalonia. They questioned the judicial proceedings and demanded that the crimes committed be cleared through a total amnesty, even though the Spanish Constitution does not provide for amnesty and instead disallows blanket pardons.

After July 2023 elections, the socialist party needed the support of the Catalan nationalists in order to be able to govern and these demanded, in order to give their support to Pedro Sánchez as president of the government, that the socialist party promote an amnesty law.

The Organic Amnesty Law 1/2024 can be traced back to an agreement between the Socialist Party and the Catalan nationalists, specifically, Mr. Puigdemont's party, in exchange for the votes that the latter would contribute to the investiture of Mr. Pedro Sanchez, leader of the Socialist Party that won the Spanish national elections with insufficient votes to form a government. Mr. Puigdemont would be the main beneficiary of this deal, which would allow him to evade his pending arrest and trial in Spain, as his pardon could not be executed without prior trial.

The above facts are notorious and evident. We believe that no one can deny them, and they deviate from what should be the context of an amnesty in cases where such a measure would be constitutionally possible.

By way of the Amnesty Law Spain will not move into reconciliation and the opening of a new stage of coexistence, all the contrary, the Law will perpetuate the ongoing challenge to legality by the secessionist faction. With no repentance or renunciation to carry out actions contrary to the Constitution and the rights of the citizens, the perpetrators of the crimes noted above are being rewarded, despite the opposition of a large part of the Spanish society, as evidenced by veto to the Amnesty Law in the Senate, the Chamber of territorial representation. It is obvious that we are not before the construction of coexistence, but rather witnessing a widening chasm within the Spanish society.

That crimes are amnestied in exchange for support for an investiture must be cause for great concern, as it clashes with essential principles such as the equality of citizens before the law, legal certainty or the submission of public authorities to the law.

We understand that the institutions of the European Union, and particularly the Commission, must proceed with caution in cases that have to do with respect for the constitutional order of a member state. It may be thought that it should be the institutions of the State itself that assess situations such as those described above, with those of the Union playing a subsidiary role. We are in favor of EU caution in such matters, but, in this case, the Spanish Organic Amnesty Law 1/2024 breaches certain obligations established by EU law, such as crimes of terrorism and embezzlement of public funds. For that reason, safeguard measures by EU institutions must be put in place given the factual evidence of non-compliance with the requirements of the rule of law can be proved.

Terrorist crimes

Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism (OJ, No. L 88 of 31 March 2017) requires the establishment as criminal offences of certain actions (listed in Art. 3.1 of the Directive) if they pursue some of the purposes listed in its Art. 3.2 (seriously intimidating the population, unduly compelling the public authorities or an international organization to perform or abstain from performing an act or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization).

OAL 1/2024 includes terrorist crimes, thus contradicting the Directive requirements which were incorporated into Spanish law by means of Organic Law 1/2019 of February 20 (BOE, 21-II-2019). As the promoters of OAL 1/2024 were aware of such flagrant contradiction ~~with EU Law~~, the following exception was included for "acts which by their purpose may be qualified as terrorism, according to Directive (EU) 2017/541 of the European Parliament and of the Council, of 15 March 2017 on combating terrorism and, in turn, have intentionally caused serious violations of human rights, in particular those regulated in Articles 2 and 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in international humanitarian law."

It follows from the exclusion clause that those instances liable to be prosecuted as criminal offenses under the provisions of Directive 2017/541 will nevertheless benefit from OAL 1/2024. Among them are, specifically, those that while qualifying as terrorist acts, as provided for in the Directive, did not seek to intentionally cause a serious human rights violation. If OAL 1/2024 had discounted all the terrorist acts contemplated in Directive 2017/541, we would then be contemplating a different scenario, but that has not been the choice of the Spanish legislator; therefore, the infringement of EU law is evident.

Crimes of Embezzlement

OAL1/2024 also covers embezzlement offenses, although it excludes those cases in which there was no aim at personal enrichment, that is, the “purpose of obtaining a personal financial benefit” (Article 1.4 of the Law). It is noteworthy that the amnesty law deviates here from the provisions of European regulations regarding the fight against corruption, where illegal misappropriation of public funds must be prosecuted when funds are used for purposes other than the intended ones (Article 4.3 of Directive 2017/1371, dated July 5). The amnesty law explicitly rejects excluding the use of public funds for purposes other than the intended ones, except when personal financial benefit is sought.

Obviously, if OAL 1/2024 did not include any other provision on the matter, it would be in stark contradiction with EU law. However, art. 2 of the law contemplates as a crime the offenses affecting the financial interests of the European Union. According to this exception, instances falling within the scope of Directive 2017/1371, of July 5 -which addresses fraud affecting the financial interests of the Union through criminal law - would be excluded from the amnesty. However, the question remains as to whether which of the two definitions of embezzlement will prevail in the face of a crime.

In addition, there is uncertainty as to whether the exclusion from the amnesty for affecting the financial interests of the Union should be direct or indirect. The law does not specify, but it is possible that an interpretation would exclude only cases directly affecting European funds, without considering that the damage to the public accounts of the member states also indirectly affects the financial interests of the Union.

Beyond these doubts, which, in our opinion, deserve the Commission's attention, two additional circumstances should be considered. First, that the amnesty includes all administrative offenses that may affect the Union's financial interests. Second, the member states should not limit their prosecution of fraud only to cases that directly (or indirectly) affect the Union's financial interests. In the interests of the rule of law, they should also investigate all cases of corruption, even if they do not immediately affect European coffers. We address both issues below.

The EU provides not only for criminal action to protect its financial interests, but also for administrative action. An example of which in Spain would be that of the Court of Auditors. See, for example, Article 5.1 of Council Regulation (EC, Euratom) No. 2988/95 of 18 December 1995, on the protection of the financial interests of the European Communities (OJ, No. L 312 of 23 December 1995). Such administrative offenses are clearly included in the amnesty law, since only acts classified as criminal offenses are excluded from it in a blatant contradiction with the requirements of EU law.

The Court of Justice has linked the protection of EU financial interests with the fight against all forms of corruption (CJ (Grand Chamber) of 21 December 2021, C-357/19, C-547/19 and C-840/19, ECLI:EU:C:2021:1034, paragraph 192). This requirement, which relates to the obligation to ensure respect for the rule of law throughout the EU, also applies to specific instruments to which the EU has subscribed, and which also bind its Member States. This includes the 1997 Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (OJ No. C 195 of 25 June 1997); this Convention is in line with the Council of Europe Convention of 27 January 1999 on the criminal prosecution of corruption.

In sum, the fact that the amnesty law extends to actions involving the illegal use of public funds, excluding only those cases subject to criminal prosecution that affect the financial interests of the EU, seems incompatible with the advancement of anti-corruption standards over the last decades. The European Commission, therefore, should examine and, if necessary, act on the impact of the law on such actions.

Respect for the rule of law

Article 2 of the TEU states that the Union is based on the values of respect for human dignity, freedom, democracy, equality, the rule of law and human rights, including the rights of people belonging to minorities. These are values common to all member states, which must be abided by as a condition of their membership and as an obligation to remain in the Union. The Member States must ensure that these values are safeguarded, yet the institutions of the Union must not disregard them, since respect for these principles and values is an obligation deriving from EU law.

However, the OAL 1/2024 does not conform to these principles. During the legislative processing of the law, the Spanish Senate requested advice from the Venice Commission. The resulting report (“Opinion on the Rule of Law Requirements of Amnesties with particular reference to the parliamentary Bill on the organic law on amnesty for the institutional, political and social normalization of Catalonia”), adopted by the Venice Commission at its 138th Plenary Session (Venice, 15-16 March 2024) includes many recommendations on the requirements that the law should meet to conform to the Rule of Law. Unfortunately, these recommendations were not followed by the Spanish legislators, and therefore, the outcome does not align with the required respect for the rule of law as established in Article 2 of the TUE.

Specifically, the Venice Commission points out that a law such as the amnesty law, which constitutes an exception to principles such as legal certainty and equality before the law, requires a careful debate, and that it is inappropriate to expedite its processing or to avoid the mandatory reports required when it is proposed by the government. Consequently, the correct thing to do would have been to process it through the ordinary channels (not as urgent) and as a bill (and not as a proposal). Unfortunately, the law was processed as a proposal and through the urgency procedure.

Also, amnesty laws, due to their exceptional nature, must serve a legitimate and genuine purpose. National reconciliation can indeed be a legitimate goal, but it must also be real. Achieving true reconciliation would require a broad agreement that goes beyond strict adherence to majority rules, which are typically applied to non-exceptional laws. That is why the Venice Commission urges to pursue a comprehensive agreement that can show the reconciliation the law claims to seek. However, the reality is that the law was passed with the support of a slim majority (by a margin of only two votes) and, more significantly, despite being vetoed by the territorial representation chamber—the Senate. How can we consider this a law seeking reconciliation when the territorial representation chamber rejects it? Ultimately, **the law was approved without achieving (or even attempting to achieve) the broad agreement required by the Venice Commission.**

The Venice Commission also emphasized that the legitimacy of amnesty laws is based on the assumption of responsibility by the perpetrators of the crimes being amnestied and the introduction of restorative justice mechanisms. In the case of the Spanish amnesty law, there is no such assumption of responsibility by the offenders. Instead of introducing restorative justice mechanisms, the amnesties seek the prosecution of those who defended

the constitutional order in 2017. **Thus, the law fails** to comply with the recommendations of the Venice Commission on this point as well, **perpetuating social division, a situation that contradicts the rule of law.**

The law's procedural path, approved without broad majorities, and the persistence of social division it aimed to overcome are generic criticisms affecting the entire amnesty law, according to the Venice Commission. Additionally, the Commission reminds us that self-amnesties are incompatible with the rule of law. In our case, the amnesty law resulted from an agreement between the Spanish government party and the party led by Mr. Puigdemont—one of the beneficiaries of the amnesty. (His lawyer even acknowledged participating in drafting the law.) The law therefore emerged from a deal where amnesty was granted in exchange for votes supporting the current Prime Minister's investiture. The involvement of the amnesties in the drafting of the law and **the origin of the law as a trade-off between impunity and a few votes for the Prime Minister's investiture** also violate the rule of law, as **self-amnesties are against the law.**

In addition, the Venice Commission points out that the text under review showed signs that the amnesty was intended to protect specific individuals, specifically regarding the temporal scope of the measure of pardon. The final text of the law did not correct this flaw pointed out by the Venice Commission, which implies that it effectively constitutes an *ad personam* law. Consequently, the law is incompatible with the rule of law.

In short, none of the flaws pointed out by the Venice Commission were addressed during the legislative process, leading to the conclusion that the law violates the requirements of the rule of law and, consequently, Article 2 of the Treaty on European Union.

Investigation of Russian interference

The OAL 1/2024 also includes those acts classified as crimes of treason or against the peace or independence of the State and relating to National Defense. The inclusion of these crimes is intended to protect the promoters of the Catalan secession from the contacts they had with the Russian government. Contacts that have been reported by the European Parliament and that fit in with Russia's attempts to destabilize the EU. A constitutional crisis in Spain would weaken the whole EU, thus jeopardizing the security of the Union. Preventing not only the punishment, but even the investigation of such interferences (which is what results from the amnesty) clashes head-on with essential interests of the Union.

Conclusion

The amnesty law has deeply **divided the Spanish society**. It protects public authorities who acted outside the law, caused damage to people and property, and endangered the validity of the Constitution throughout Spain. By enabling certain individuals (Catalan nationalists) to commit crimes with impunity, the law undermines equality among citizens, legal certainty and the rule of law. Moreover, **the law conflicts with EU legislation**, both secondary legislation (such as the Directive on the criminal prosecution of terrorism or that which protects the EU's financial interests through criminal law and beyond) and the principles and values enshrined in Article 2 of the Treaty on European Union. In addition, it protects actions intended to destabilize the entire EU via Catalonia and Spain.

Can the EU **institutions remain indifferent to the consequences** ensued from this law? We believe **the answer is no**. The rule of law and democratic principles are not only common values among the member states and the institutions of the Union, **but also the identity of the EU and its citizens**. If the rule of law falters in any member state, it falters throughout the Union, threatening confidence in the EU and its institutions.

This is not the first time that EU institutions have acted in response to **violations of the rule of law by member states**. In this case, it is even more necessary because the violation is perpetrated by political forces that claim to be pro-European. If we were to believe that the institutions' motivation lies solely in the degree of political commitment to integration, irrespective of the values that make that integration meaningful, we would lose arguments in defense of democracy, pluralism, the rule of law and European integration, concepts that are intrinsically intertwined.

Therefore, we ask you to consider the contents of this letter and **take all necessary measures to ensure that the Organic Amnesty Law 1/2024 is declared contrary to EU law** and the values on which the Union is based. This is a debate that concerns not only Spaniards, but all Europeans. I am convinced that together we will be able to advance in the construction of an ever closer and fairer union among all the peoples of Europe, an objective in which Spain and the Spanish shall play a decisive role.

Respectfully,

José Domingo Domingo
President of [Impulso Ciudadano](https://impulsociudadano.org)