

Standing and operational space of non-governmental organisations (NGOs) in contributing to respecting and promoting fundamental rights in EU Member States

Spain 2017

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Migration

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Research methodology

The data collection has been conducted through desk research using available secondary sources (reports of organisations, media reports, parliamentary interventions, public announcements of stakeholders and relevant actors) When secondary sources were not available, NGOs and relevant actors were contacted to complete some information.

The following NGOs were contacted:

- Acoge NGO
- Triodos Bank
- Jesuit Migrant Service (*Servicio Jesuita Migrantes*, SJM in its Spanish acronym)
- Spanish Refugee Aid Commission (*Comisión Española de Ayuda al Refugiado*, CEAR in its Spanish acronym)
- Rights International Spain (*Rights International Spain*, RIS in its Spanish acronym)
- Oxfam Intermón

1 Regulatory environment for the work of non-governmental organisations

Title of legislation and reference	Topic (please make reference to categories A-F see guidelines)	Effect on civil society (positive or negative) Please include reference to source of information
1. Law 10/2010 on the Prevention and Fight against Money Laundering and Terrorist Financing (<i>Ley 10/2010, de 28 de abril, de prevención del blanqueo de capitales y financiación del terrorismo</i>) ¹	D – addressing the financing of organised crime or terrorism; taxation; charitable status.	Negative: Asylum seekers and refugees facing serious difficulties opening bank accounts. ² In this context, NGOs are sometimes forced to informally assume the role of guarantor for asylum seekers and refugees to have access to the official banking system. This role

¹ Spain, Ministry of the Presidency (*Ministerio de la Presidencia*) (2010), Law 10/2010 on the Prevention and Fight against Money Laundering and Terrorist Financing (*Ley 10/2010, de 28 de abril, de prevención del blanqueo de capitales y financiación del terrorismo*), Press release, 29 April 2010, available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2010-6737>.

² Key informants.

		<p>exceeds NGOs' responsibility deriving from reception condition obligations. Besides, asylum seekers and refugees have unequal access to the banking business, which is different even within the same bank, since everything hinges on the bank's offices. Those that grant refugees access to the banking usually work with NGOs.</p>
<p>2. Royal Decree 16/2012 on emergency measures to ensure the sustainability of the Spanish National Health System and improve the quality and safety of its benefits (<i>Real Decreto-ley 16/2012, de 20 de abril, de medidas urgentes para garantizar la sostenibilidad del Sistema Nacional de Salud y mejorar la calidad y seguridad de sus prestaciones</i>)³</p>	<p>C – freedom of association (including issues of access to funding, accounting and auditing rules, rules on the establishment and dissolution of associations or other requirements that civil society organisations must satisfy to perform their tasks)</p>	<p>Negative: The Royal Decree also establishes a basis for the existence of a parallel 'charity system' for groups excluded from the formal system of health, such as irregular migrants. In this new context, NGOs are responsible for ensuring the healthcare of these persons. However, as the NGO themselves argue, health is a basic human right and the protection of public health is an obligation of the state. NGOs cannot and should not endeavour to replace the state's work. This obligation greatly exceeds the responsibility of any non-governmental entity, whose job it is to assist and accompany people but not guarantee their rights.</p>

³ Spain, Ministry of the Presidency (*Ministerio de la Presidencia*) (2012), Royal Decree 16/2012 on emergency measures to ensure the sustainability of the Spanish National Health System and improve the quality and safety of its benefits (Real Decreto-ley 16/2012, de 20 de abril, de medidas urgentes para garantizar la sostenibilidad del Sistema Nacional de Salud y mejorar la calidad y seguridad de sus prestaciones), Press release, 24 April 2012, available at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-5403.

<p>3. Law 19/2013 on Transparency, Access to Public Information and Good Governance (<i>Ley 19/2013, de 9 de diciembre, de transparencia, acceso a la información pública y buen gobierno</i>)⁴</p>	<p>E – transparency in the legislative process, in particular concerning lobbying (regarding the duties imposed on civil society organisations proportionate to the aim of the legislation and to the capacity of organisations).</p>	<p>Positive: The object of the law is to guarantee citizens’ access to public information.</p> <p>In accordance with the Law on Transparency, public information should be understood as the contents or documents relating to the activities of the bodies and agencies as defined in the Article 13. The Spanish Judicial Power, the Spanish Parliament, the Spanish Tax Agencies and the Spanish Ombudsman are among the bodies and agencies listed in the law. To facilitate citizens’ access to this public information, the Spanish government has launched the Transparency Portal (<i>Portal de Transparencia</i>).⁵</p> <p>Negative: In practice, data are not provided the first time and are only available after lodging a complaint.⁶</p>
<p>4. Law 27/2014 on Corporation Tax (<i>Ley 27/2014, de 27 de noviembre, del</i></p>	<p>D – addressing the financing of organised crime or terrorism;</p>	<p>Positive: This law introduces amendments to Law 49/2002 regulating the Tax Status of Non-</p>

⁴ Spain, Ministry of the Presidency (*Ministerio de la Presidencia*) (2013), Law 19/2013 on Transparency, Access to Public Information and Good Governance (*Ley 19/2013, de 9 de diciembre, de transparencia, acceso a la información pública y buen gobierno*), Press release, 10 December 2013, available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2013-12887>.

⁵ Spain, official website of Transparency Portal (*Portal de Transparencia*), available at: <http://transparencia.gob.es/>.

⁶ Interviews with representatives from Triodos Bank and Spanish Refugee Aid Commission.

<p>Impuesto sobre Sociedades)⁷</p>	<p>taxation; charitable status.</p>	<p>profit Organisations and the Fiscal Incentives for Philanthropy (<i>Ley 49/2002, de 23 de diciembre, de Régimen Fiscal de las Entidades sin Fines Lucrativos y de los Incentivos Fiscales al Mecenazgo</i>)⁸ and donations to NGOs have enjoyed more tax benefits since 2015.</p> <p>The changes to the tax status establish an increase in the deduction tax rates of 25 % to 30 % for private individuals. In addition, donation loyalty for a minimum of three years is encouraged: natural persons have a tax deduction of 75 %, in respect of the first € 150 donated and an excess tax deduction of 35 %. Legal bodies have a tax deduction of 40 %.</p>
<p>5. Organic Law 1/2015 amending Organic Law 10/1995, approving the Criminal Code (Ley Orgánica 1/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995,</p>	<p>F – defamation.</p>	<p>Negative: Defamation was reclassified as a lesser offence which carries a criminal record, a longer period of prescription and must be denounced ex officio by the authorities. In addition, in the cases of defamation regarding</p>

⁷ Spain, Ministry of the Presidency (*Ministerio de la Presidencia*) (2014), Law 27/2014 on Corporation Tax (*Ley 27/2014, de 27 de noviembre, del Impuesto sobre Sociedades*) Press release, 28 November 2014, available at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-12328.

⁸ Spain, Ministry of the Presidency (*Ministerio de la Presidencia*) (2002), Law 49/2002 regulating the Tax Status of Non Profit Organisations and the Fiscal Incentives to Philanthropy (*Ley 49/2002, de 23 de diciembre, de Régimen Fiscal de las Entidades sin Fines Lucrativos y de los Incentivos Fiscales al Mecenazgo*) Press release, 24 December 2002, available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2002-25039>.

de 23 de noviembre, del Código Penal) ⁹		public servants, the burden of proof, fault or neglect shall lie with the person charged with criminal defamation. With this new regulation, the right to legal protection is further weakened by the possibility of criminalising these independent bodies to pursue claims through an administrative and/or a judicial procedure.
6. Organic Law 4/2015 on the Protection of Public Safety (<i>Ley Orgánica 4/2015, de 30 de marzo, de protección de la seguridad ciudadana</i>) ¹⁰	A – freedom of expression; B – freedom of assembly.	Negative: the strengthening of provisions in the Criminal Code concerning roadside and internet crimes, the development of new offences which border on freedom of expression and political activism, and the establishment of new legal and policing instruments in the fight against Jihad terrorism. ¹¹ An action of unconstitutionality against Organic Law 4/2015 on the Protection of Public Safety was submitted by more than 50 parliamentarians from all the main parliamentary groups: PSOE, Izquierda Plural, UPyD, Compromís-Equo, Coalición Canaria

⁹ Spain, Ministry of the Presidency (*Ministerio de la Presidencia*) (2015), Organic Law 1/2015 amending Organic Law 10/1995, approving the Criminal Code (*Ley Orgánica 1/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995, del 23 de noviembre, del Código Penal*), Press release, 31 March 2015, available at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-3439.

¹⁰ Spain, Ministry of the Presidency and Territorial Administrations (*Ministerio de la Presidencia y para las Administraciones Territoriales*) (2015), Organic Law 4/2015 on the Protection of Public Safety (*Ley Orgánica 4/2015, de 30 de marzo, de protección de la seguridad ciudadana*), Press release, 31 March 2015, available at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-3442.

¹¹ Spain, "Five cases in which the 'Gag Law' questions freedom of speech in Spain" (Cinco casos por los que la 'Ley Mordaza' cuestiona la libertad de expresión en España) published in *Vice News*, 19 August 2015, available at: <https://news.vice.com/es/article/cinco-casos-ley-mordaza-cuestiona-libertad-expresion-espana>. Hyperlink was accessed on 20 February 2017.

		and Geroa Bai. The appeal was declared admissible by the Constitutional Court in June 2015, but the Constitutional Court has still not delivered an opinion. ¹²
<p>7. Resolution of Directorate General for Employment of 22 June 2015 registering and publishing the State Collective Agreement for Action and Social Intervention 2015-2017 (<i>Resolución de 22 de junio de 2015, de la Dirección General de Empleo, por la que se registra y publica el Convenio colectivo estatal de acción e intervención social 2015-2017</i>)¹³</p>	<p>C – freedom of association (including issues of access to funding, accounting and auditing rules, rules on the establishment and dissolution of associations or other requirements that civil society organisations must satisfy to perform their tasks).</p>	<p>Positive: This is the first specific collective agreement designed to be applied to entities working on international cooperation and development aid. The more innovative aspects of this State Collective Agreement are the inclusion of job classifications and pay systems.</p>
<p>8. National Law 45/2015 on Volunteering (<i>Ley 45/2015, de 14 de octubre, de Voluntariado</i>)¹⁴</p>	<p>C – freedom of association (including issues of access to funding, accounting and auditing rules, rules on the</p>	<p>Positive: Volunteering, with the aim of providing the necessary recognition and support to continue its role in voluntary work in Spain.</p>

¹² Spain, “The Constitutional Court upheld the appeal against ‘Gag Law’ brought by the opposition” (El Constitucional admite el recurso de la oposición contra la ‘ley mordaza’) published on *eldiario.es*, 12 June 2015, available at: http://www.eldiario.es/politica/Constitucional-oposicion-Ley-Seguridad-Ciudadana_0_397911009.html. Hyperlink was accessed on 20 February 2017.

¹³ Spain, Ministry of the Presidency (*Ministerio de la Presidencia*) (2015), Resolution of Directorate General for Employment of 22 June 2015 registering and publishing the State Collective Agreement for Action and Social Intervention 2015-2017 (*Resolución de 22 de junio de 2015, de la Dirección General de Empleo, por la que se registra y publica el Convenio colectivo estatal de acción e intervención social 2015-2017*), Press release, 3 July 2015, available at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-7435.

¹⁴ Spain, Ministry of the Presidency (*Ministerio de la Presidencia*) (2015), National Law on Volunteering (*Ley 45/2015, de 14 de octubre, de Voluntariado*), Press release, 15 October 2015, available at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-11072.

	<p>establishment and dissolution of associations or other requirements that civil society organisations must satisfy to perform their tasks)</p>	<p>In this context, the Law on Volunteering aims to promote an open, participatory and intergenerational volunteerism confined to other areas, such as business, universities and public administration, as well as that of the third sector. The law also provides a few action areas: social, international development, environmental, cultural, sports, leisure and free time, community and civil protection.</p> <p>Negative: There is no reference to funding in the law.</p>
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2 EU Member State government funding for non-governmental organisations – trends and developments 2011-2016

2.1 Overall amount of government funding

Regarding trends or developments in government funding for NGOs working on fundamental rights, it is important to mention the current situation concerning Official Development Aid (ODA), as well as the subsidies which NGOs receive from the state from the 0.7 % provision in Personal Income Tax (*Impuesto sobre la Renta de las Personas Físicas, IRPF* in its Spanish acronym).

ODA is the public policy that has had its budget cut the most compared to other sectors since the start of the economic crisis in Spain. According to the annual Oxfam report, **Reality of Aid** (*La realidad de la ayuda*), government funding dedicated to ODA has decreased by 53 % in the last four years.¹⁵

¹⁵ OXFAM Intermon, Reality of Aid (*La realidad de la ayuda*), Transparency and surveillance portal of the Spanish cooperation, available at: <http://www.realidadayuda.org/>.

From the income tax revenues that the state obtains from Personal Income Tax, 0.7 % is assigned to NGOs as funding for social programmes. This budgetary line provides the basis for the granting of public subsidies by the Spanish Minister of Health, Social Affairs and Equality (*Ministerio de Sanidad, Servicios Sociales e Igualdad*) to entities undertaking general-interest programmes.

Specifically, the funds raised for “activities of general interest considered to be of social interest” are regulated by Article 2 of **Royal Decree 7/2013, governing urgent tax and financial measures and promoting research, development and technological innovation** (*Real Decreto-ley 7/2013, de 28 de junio, de medidas urgentes de naturaleza tributaria, presupuestaria y de fomento de la investigación, el desarrollo y la innovación*).¹⁶ According to this article, the main pillars of the programmes financed under this budget line are as follows: care of persons with comprehensive socio-health care needs, care of persons with educational needs or job placement, promotion of citizen safety and crime prevention, protection of the environment, and development cooperation.

In 2017, the amount committed for activities of general interest considered to be of social interest is € 99,827.08. In addition, according to the state's general budget for 2017, the amount committed for social action is € 4,228.10. Costs for the economic and financial support of some NGOs are provided for under this budget line. In this context, the figures regarding funding of some relevant NGOs are as follows: Spanish Red Cross (*Cruz Roja Española*) €1,353.68; Spanish Caritas (*Caritas Español*) € 822.64; Foundation for the Gypsy Secretariat (*Fundación Secretariado Gitano*) € 211.43; Action Against Hunger (*Fundación Acción contra el Hambre*) € 70; NGO platform on Social Action (*Plataforma de ONG de Acción Social*) € 652.86; and Platform on Spanish Volunteerism (*Plataforma Voluntariado de España*) €442.26, among other NGOs. This information can be found on the Spanish Ministry of Finance and Public Function's website, in the section on Cost, in Volume XIII, entitled Ministry of Health, Social Services and Equality (*Ministerio de sanidad, servicios sociales e igualdad*).

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For its part, the model of state aid to the third sector has been called into question on several occasions because of the way the competences and social services are distributed between the state and the autonomous communities. The regulatory basis for awarding subventions to the third

¹⁶ Spain, Ministry of the Presidency (*Ministerio de la Presidencia*) (2013), Royal Decree 7/2013, governing urgent tax and financial measures and promoting research, development and technological innovation (*Real Decreto-ley 7/2013, de 28 de junio, de medidas urgentes de naturaleza tributaria, presupuestaria y de fomento de la investigación, el desarrollo y la innovación*), Press release, 29 June 2013, available at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2013-7062.

¹⁷ Spain, Official Website of the Ministry of Finance and Public Function (*Ministerio de Hacienda y Función Pública*), available at: <http://www.sepg.pap.minhfp.gob.es/Presup/PGE2017Proyecto/MaestroTomos/PGE-ROM/MnSerieRojaGastos.htm>.

sector are set out in **Royal Decree 535/2013 establishing the regulatory basis for the awarding of the subsidies to the third sector entities and state-level collaboration with the State Secretariat for Social Services and Equality** (*Real Decreto 535/2013, de 12 de julio, por el que se establecen las bases reguladoras para la concesión de subvenciones a entidades del Tercer Sector de ámbito estatal colaboradoras con la Secretaría de Estado de Servicios Sociales e Igualdad*).¹⁸

However, a number of judgments of the Supreme Court have ruled as much in favour of the autonomous communities as of the state on the issue of the distribution of competences and social services subscribing to the articles of the Spanish Constitution (*Constitución Española*) where these matters are described (Articles 148 and 148).¹⁹ Indeed, the last of these judgments (**Supreme Court Judgment 610/2016 of 15 March 2016**)²⁰ is guaranteed by the current Personal Income Tax and, finally, in May 2016, the government adopted a new call for subsidies to NGOs to be made from the provision of the 0.7 % set aside in the Personal Income Tax for an amount of € 231.29 million, which is € 10 million higher than a year ago.²¹

Nevertheless, the issue is anything but peaceful, since the Constitutional Court judgment 9/2017 of 19 January 2017²² upheld in part the negative conflict of competence brought by the Catalan Government (*Generalitat* in Catalan) against the Resolution of 18 May 2016 establishing the rules governing the grants for this year, declaring that some of its articles infringe the *Generalitat's* competences in social services matters.

This judgment has produced a change of scenery for the social sector in Spain. The issue does not lack a certain intrigue as the leader of the Catalan group in the Spanish Parliament, lodged an action with the Public Prosecutor against the Spanish Government and other public powers on

¹⁸ Spain, Ministry of the Presidency (*Ministerio de la Presidencia*) (2013), State Secretariat for Social Services and Equality (*Real Decreto 535/2013, de 12 de julio, por el que se establecen las bases reguladoras para la concesión de subvenciones a entidades del Tercer Sector de ámbito estatal colaboradoras con la Secretaría de Estado de Servicios Sociales e Igualdad*), Press release, 13 July 2013, available at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2013-7712.

¹⁹ Spain, Ministry of the Presidency (*Ministerio de la Presidencia*) (1978), Spanish Constitution (*Constitución Española*), Press release, 29 December 1978, available at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-1978-31229.

²⁰ Spain, Supreme Court Judgment 610/2016 of 15 March 2016 Fourth Section of the Administrative Litigation Chamber. available at: http://www.eapn.es/ARCHIVO/documentos/noticias/1458218694_sentencia_irpf_17_marzo_2016.pdf.

²¹ Expansión.com (2016), "The Government adopted subsidies for various NGOs for an amount of €231.29 million" (*El Gobierno aprueba subvenciones a varias ONG por 231 millones*), 13 May 2016, available at: <http://www.expansion.com/economia/2016/05/13/5735ad6b468aebbe358b45b6.html>.

²² Spain, Constitutional Court 9/2017 of 19 January 2017 published in the Official State Gazette on 23 February 2017, available at: <http://hj.tribunalconstitucional.es/es/Resolucion/Show/25229>.

31 January 2017, accusing them of malfeasance. However, the case was dropped.

The Government of Spain is currently working with the NGO platform on Social Action (*Plataforma de ONG de Acción Social*, TSAS in its Spanish acronym) on creating a new legal framework for these subsidies.²³

This situation generates a high degree of uncertainty for the third sector financing model. Moreover, these subsidies are some of the few that are paid at the beginning of the year and the NGOs use these funds until other application dates for funding are announced by the autonomous communities or the state.²⁴

2.2 Distribution of government funding

Regarding public funding for third sector entities working on social intervention, NGOs consulted claim that the funding and programming system is excessively rigid and concentrated on two main lines: volunteerism and employment. In addition, employment programmes have a narrow perspective in order to facilitate job-placement counselling but there are fewer itineraries and fewer dual programmes, among others. All this significantly hinders the position of strength and continuity of NGO structures and their capacity to make more demands.

As noted above, in accordance with the state's general budget for 2017, the amount committed for activities of general interest considered to be of social interest is € 99,827.08, while the amount available for social action is € 4,228.10. This information can be found on the Spanish Ministry of Finance and Public Function's website, in the section on Cost, in Volume XIII, entitled Ministry of Health, Social Services and Equality (*Ministerio de sanidad, servicios sociales e igualdad*).²⁵

In addition, at the national level, the main line of financing for supporting staff and office structures is **Law 49/2002 regulating the Tax Status of Non-profit Organisations and the Fiscal Incentives for Philanthropy** (*Ley 49/2002, de 23 de diciembre, de Régimen Fiscal de las Entidades sin Fines Lucrativos y de los Incentivos Fiscales al Mecenazgo*),²⁶ which

²³ Spain, "Francesc Homs denounces Rajoy before the Public Prosecutor for the failings of the Constitutional Court judgments" (*Francesc Homs denuncia a Rajoy ante la Fiscalía por incumplimiento de sentencias del Tribunal Constitucional*) published by El Huffington Post, 30 January 2017, available at: http://www.huffingtonpost.es/2017/01/30/homs-rajoy-fiscalia_n_14500564.html.

²⁴ Information from Jesuit Migrant Service.

²⁵ Spain, Official website of the Ministry of Finance and Public Function (*Ministerio de Hacienda y Función Pública*), available at: <http://www.sepg.pap.minhafp.gob.es/Presup/PGE2017Proyecto/MaestroTomos/PGE-ROM/MnSerieRojaGastos.htm>.

²⁶ Spain, Ministry of the Presidency (*Ministerio de la Presidencia*) (2002), Law 49/2002 regulating the Tax Status of Non-profit Organisations and the Fiscal Incentives for Philanthropy (*Ley 49/2002, de 23 de diciembre, de Régimen Fiscal de las Entidades sin Fines*

prescribes requirements in order to receive government funding. These requirements are set out in Article 3 of the law, but are so strict that few social organisations can benefit from funding.

2.3 Restrictions (or other changes) on NGO funding from other sources

Migration, childhood and drug addiction were reduced significantly. In this context, two exceptions in keeping with this current trend are the following: the fight against child poverty and the reception of asylum seekers. On the one hand, there has been the creation of the **Fund to Fight Against Child Poverty** with an allocation of € 17 million to be shared between the 17 autonomous communities; and on the other hand, the opening-up of **programmes for receiving refugees** by practically all the NGOs providing social services.²⁷

3 Access to the decision-making process for non-governmental organisations working on fundamental rights

Title of legislation/policy	Reference	Short summary (max 500 characters)
<p>2013-2016 Strategic Plan for the Third Sector of Social Action (<i>II Plan Estratégico del Tercer Sector de Acción Social</i>)</p>	<p>http://www.plataformaong.org/planestrategico/fichaBibliotecaPE.php?id=199</p>	<p>The aims of the strategy plan are the following: ensuring persons and vulnerable groups have access to rights and increasing the political and social advocacy of the Third Sector of Social Action through strengthening their role as social actor.</p> <p>In this sense, it is interesting to note that the NGO platform on Social Action (<i>Plataforma de ONG de Acción Social</i>, TSAS in its Spanish</p>

Lucrativos y de los Incentivos Fiscales al Mecenazgo), Press release, 24 December 2002, available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2002-25039>.

²⁷ Information from Jesuit Migrant Service.

		acronym) – the author of this strategy – maintains direct contact with the government and participates in the law-making process relating to this sector’s regulation. Moreover, NGO groups (Caritas, Cruz Roja España, CERMI-ONCE, PVE and EAPN) find their capacity for action is weakened and they are not involved in social policy issues. ²⁸
Review processes for States by the UN committees	http://www.rightsinternationalspain.org/uploads/publicacion/4afcb78cd4512ad80a4f78b518307b10b86416b6.pdf	The lack of any NGO consultation during the review processes before UN committees that took place in Spain. ²⁹

Regarding the access to the decision-making process for NGOs, it must be noted that the NGOs consulted agreed in calling for an appropriate procedure to promote NGO participation in policy- and decision-making. The current consultation processes are notified by email, with no feedback and with a very short time limit.³⁰ The numerous reforms advocated by the government (such as the Organic Law on the Judiciary or the Law on Legal Aid) have been carried out without consultation of civil society in accordance with the international standards.³¹

However, it is important to point out that national standards exist on civil society consultation and participation, which are set out in the **Spanish Constitution** (*Constitucion Española*)³²(Article 23), **Law 39/2015 regulating Public Administration and the Common Administrative Procedure** (*Ley 39/2015, de 1 de octubre, del*

²⁸ Information from Jesuit Migrant Service.

²⁹ Information from Rights International Spain.

³⁰ Information from Jesuit Migrant Service.

³¹ Information from Rights International Spain.

³² Spain, Ministry of the Presidency (*Ministerio de la Presidencia*) (1978), Spanish Constitution (*Constitucion Española*), Press release, 29 December 1978, available at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-1978-31229.

Procedimiento Administrativo Común de las Administraciones Públicas)³³ and Order PRE/1590/2016, 3 October, publishing the Agreement of the Council of Ministers on 30 September 2016, on the instructions to enable civic participation in rule-making processes through the website of the ministerial departments (*Orden PRE/1590/2016, de 3 de octubre, por la que se publica el Acuerdo del Consejo de Ministros de 30 de septiembre de 2016, por el que se dictan instrucciones para habilitar la participación pública en el proceso de elaboración normativa a través de los portales web de los departamentos ministeriales*).³⁴ The website for citizen participation in rule-making processes has been implemented,³⁵ but no mass information media (such as the press, radio, television and internet) has been found concerning this mechanism to ensure civic participation. However, there is a lot of information available online on civic participation in the autonomous communities and councils, which can be found by entering the term “*participacion ciudadana*” in a web search.

In addition, not enough mass information media regarding Spain’s participation in the Open Government Partnership been found from entering the words “Open Government Partnership” in a web search. The initial information found (on the first page of Google) is located on the official web site of the Open Government Partnership. In this respect it is noted that the organisations consulted (middle and senior managers) are not aware of this particular initiative.

4 Further information

Although not directly linked to the possibility of having access to the decision-making process for NGOs, it is important to stress the difficulties that NGOs encounter when trying to carry out research and advocacy work. With regard to the difficulties encountered to access certain areas of the

³³ Spain, Ministry of the Presidency (*Ministerio de la Presidencia*) (2015), Law 39/2015 regulating Public Administration and the Common Administrative Procedure (*Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas*), Press release, 2 October 2015, available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2015-10565&p=20151002&tn=2>.

³⁴ Spain, Ministry of the Presidency (*Ministerio de la Presidencia*) (2016), 1590/2016/PRE Order, 3 October, publishing the Agreement of the Council of Ministers on 30 September 2016, on the instructions to enable civic participation in rule-making processes through the website of the ministerial departments (*Orden PRE/1590/2016, de 3 de octubre, por la que se publica el Acuerdo del Consejo de Ministros de 30 de septiembre de 2016, por el que se dictan instrucciones para habilitar la participación pública en el proceso de elaboración normativa a través de los portales web de los departamentos ministeriales*), Press release, 5 October 2016, available at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2016-9121.

³⁵ Spain, website for citizen participation in rule-making processes, available at: http://transparencia.gob.es/transparencia/transparencia_Home/index/GobiernoParticipacion/ParticipacionCiudadana/ParticipacionProyectosNormativos.html.

administration, the NGO RIS gave the example of the PRO JUS project.³⁶ And on the other hand, the Jesuit Migrant Service also noted the limitations with regard to advocacy within the framework of its latest report on the southern border.³⁷

³⁶ Information from Rights International Spain. See, Spain, RIS (2016) Procedural Rights of Children Suspects or accused in the European Union (*Derechos procesales de los menores sospechosos o acusados en la Unión Europea. Informe español*), Press release 2016, available at:

<http://www.rightsinternationalspain.org/uploads/publicacion/e020506ec6f312da100eccf77f7483998f624cf0.pdf>.

³⁷ Information from Jesuit Migrant Service. See, Jesuit Migrant Service (2016), No protection at the border (*Sin protección en la frontera*), Press release 2016, available at:

<http://www.sjme.org/sjme/item/813-no-protection-at-the-bordersjm>.