

BRIEFING NOTE

1) Procedural elements criticised by the opinion of the Venice Commission on the Amnesty Law

— Draft bill submitted as a legislative proposal, instead of a draft project from the Government in order to avoid:

- a) opening a public consultation;
- b) elaborating and presenting an impact assessment where the Government should have justified the need of this bill; and
- c) consultative bodies, such as the Council of State to draft and issue a report on the bill and its compatibility with the applicable legal framework.

— Processed under fast-track procedure, in which the deadlines for drafting the law are halved compared to those provided for in the ordinary legislative procedure.

— Instead of being negotiated and adopted with a large qualified majority (as recommended by the Venice Commission), the bill:

- a) has been approved by the Congress with only 178 votes against 172;
- b) will be rejected by the Senate with a large majority.

Conclusion: the law has created a huge political division and polarized the Spanish civil society, which is the opposite of what an Amnesty Law should aim to achieve.

2) Substantial concerns about the Amnesty Law in the framework of EU Law

2.1. Rule of Law: bill targeted to benefit specific individuals and exclusively based on the political interest

— Unquestioned fact: the Amnesty Law has been drafted and will be adopted only because it was a demand from the leaders of Junts and ERC in exchange for their votes to appoint Pedro Sánchez as a Prime Minister.

- Both Junts and ERC's leaders -mainly Carles Puigdemont and Oriol Junqueras- are, respectively, charged and convicted with extremely serious criminal offences that the Amnesty Law will completely erase (criminal and financial liability is eliminated according to the bill).

- Prime Minister Sánchez, most of his ministers and senior officials of his party publicly rejected the possibility of an Amnesty Law of this kind until the General Election hold on July 2023, declaring that such a bill would be against the Spanish Constitution.
 - Only after that General Election, and following the realisation that the votes of Junts and ERC were indispensable for Mr. Sánchez to stay in power, the Amnesty Law become a reality.
 - To make it worst, the temporal and objective scope of the bill has been targeted and personalized to cover literally all criminal and administrative proceedings against these individuals, as well as judgements already rendered by the courts of justice.
 - Under article 4 of the Amnesty Law, courts and judges are compelled to:
 - ✓ immediately apply the bill, preventing them from suspending its effects or adopting any interim measures if a question of unconstitutionality is raised.
 - ✓ suspend judicial proceedings if a preliminary question before the European Court of Justice is raised, which constitutes a severe violation of Article 23 of the Statute of the Court of Justice of the European Union.
- This is **not an Amnesty that aims to restore social peace**, as required by the international standards set by the Venice Commission: on the contrary, it has deeply divided society and sets a corrupt political transaction: **impunity for serious criminal offences against the political support to remain in power.**
- If this transaction is permitted by the European Institution, it will set a new standard for every EU Member State. We would be stating that, under EU Law and Article 2 of the Treaty, it is permissible for those in power:
- to erase their own crimes or the crimes of their political allies,
 - to do so with a tailor-made approach that severely violates the principle of **equality of all citizens before the Law**,
 - to do so by depriving judges of their prerogative to investigate, render judgments, and execute them, thereby harming the **independence of the Judiciary**.

2.2. Amnesty of terrorism offences

- Following the last amendments negotiated between Sánchez and Puigdemont, the amnesty is expected to cover all kind of terrorism offences except those that: (i) are harmonized at EU level under Directive 541/2014; **and** (ii) have intentionally caused serious violations of Human Rights, particularly those mentioned in articles 2 and 3 of the European Convention on Human Rights.
- Raise awareness to the following elements about these amendments:
 - desperate attempt to keep the European Union away from this issue.
 - beyond the specific criminal offenses, the entire bill, as well as its motivations and effects, represent a clear violation of one of the EU's constitutional principles: respect for the Rule of Law and judicial independence.
 - Not even clear that this wording excludes terrorist offenses as defined by the European Directive. Why?
 - a) violent assault and blockade of a strategic transportation infrastructure such as Barcelona Airport (Tsunami Case) may fall within the scope of terrorist offenses harmonized by the Directive.

It will depend on the interpretation provided by the ECJ within the framework of the prejudicial questions posed to it.
 - b) unclear wording regarding the exclusion of offenses specifically listed in the Directive, as it refers to offences committed with the aims listed in the Directive, not necessarily the specific offences harmonized under EU Law.
 - c) acts of terrorism defined in the European Directive are not automatically excluded from the amnesty: only those acts that, *“pursuing the purposes provided for in the Directive, entail serious violations of human rights and, in particular, the right to life and freedom from torture protected by Articles 2 and 3 of the European Convention on Human Rights”*.
 - The Court of Justice of the EU should be presented with the opportunity to rule on the compatibility of these provisions with the Directive and with the treaties.

2.3. Amnesty for embezzlement of public funds

- The bill's Article 2 exclusion for "offenses affecting the EU's financial interests" serves as a nominal safeguard, offering no real assurance against the amnesty's impact on areas governed by EU law.
- It violates the Rule of Law principle, particularly affecting judicial independence and the separation of powers by:
 - It established an exception to the general criminal regime, indicating undue interference in the judiciary and nullifying criminal responsibility for certain public officials.
 - By doing so, it also challenges the principle of mutual trust between Member States
- The amnesty weakens the protection for EU's financial interests, which require national criminal and administrative laws that effectively deter corruption, including fraud and embezzlement.

2.4. Amnesty for high treason crimes

- The bill includes treason and crimes against the integrity and peace of the State.
- It opens the door for the complete amnesty of any crimes resulting from foreign interference or attempts by foreign entities to destabilize a Member State.

Example: actions allegedly taken by the Russian Federation in Spain in connection with the secessionist movement in 2017, as suggested by ongoing judicial investigations.

An amnesty on this kind of crimes would seriously contravene the principles and demands expressed by the European Parliament on its recent Resolution 2024/2548 on Russiagate - allegations of Russian interference in the democratic processes of the European Union.