

Seminar organised by the Hellenic Council of State and ACA-Europe

Rhodes, 15-16 May 2026

New elements in the organisation and functioning of the Public Administration and Administrative Justice

Questionnaire

Responses from **SUPREME COURT OF SPAIN** (Please indicate your institution)

I. New models of organisation and functioning in the Public Administration

The aim and scope of Part I of this questionnaire is:

- (A) To examine collaboration with private individuals (who are not public servants) in the unilateral action taken by the Administration, and more specifically to study the delegation to private individuals of tasks traditionally performed by public servants during the procedure of issuing an administrative act. Participation, in general, of citizens/interested parties in administrative proceedings (e.g. preliminary hearings, participation and all forms of consultation), collaboration with private individuals in the Administration's contractual activity (works, supply and service contracts, concession contracts, public-private partnerships, etc.), privatisation of public-sector bodies and creation of legal entities governed by private law are not covered by this questionnaire.
- (B) To study the integration of private-sector organisational models into the tools and operating methods of the Public Administration.

A. Delegation of administrative tasks to private individuals

1. General provisions

Does your legal system recognise the following forms of collaboration between private individuals and the Public Administration?

Tasks assigned to private individuals during the procedure of issuing [adopting] an administrative act

Recruitment of private individuals who are not civil servants within the Administration's structure, e.g. executive managers, senior managers



2. Regarding the involvement of private individuals in administrative proceedings

i. If the involvement of private individuals in administrative proceedings (as indicated above) is provided for in your legislation, please mention specific provisions.

- Constitutional provision
- General provision of a legislative nature
- Specific legislation

Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations

ii. Does national case-law or legislation define criteria pursuant to which the delegation of administrative tasks to private individuals is authorised?

In the Spanish legal system, there are indeed statutory and case-law criteria that determine when and how administrative tasks may be delegated to private individuals. However, Spain draws careful distinctions between:

- Delegation of powers (only between Public Administrations or public bodies)
- Entrustment of management tasks (*encomienda de gestión*, only between public entities)
- Assignments to in-house entities (*encargos a medios propios*, only to entities within the public sector)
- Service contracts (with private parties, but without delegating public powers)
- Concessions or statutory authorisations to exercise public functions (exceptional cases)

The general rule is clear: administrative powers are not delegated to private individuals, except where expressly authorised by law and subject to strict limits.

iii. How are administrative tasks delegated to private individuals? Please provide specific examples.

- Directly by law
- By an administrative act
- By contract
- Other

iv. Which administrative tasks can be entrusted to private individuals [content of the tasks]?

Please provide specific examples from legislation and case-law.

- Preparation of the administrative act
- Issuance [adoption] of the administrative act
- Implementation of the administrative act



Other

v. What is the extent [range] of administrative tasks that can be entrusted to private individuals?
Please provide specific examples from legislation and case-law.

Advisory tasks (Service contracts (Law 9/2017 on Public Sector Contracts): technical reports, studies, projects, audits, and non-decisory legal assistance. Urban planning collaborating entities (regional legislation): technical advice in the verification of documents and projects).

X

Decision-making tasks

Control and verification tasks:

Establishment of the facts

Legal qualification of the facts

Other X

ITV (Vehicle Technical Inspection): private inspection stations verify factual elements (the condition of the vehicle) in accordance with Royal Decree 920/2017. Urban planning collaborating entities: technical verification of projects and documentation. Authorised control bodies (OCAs) in industrial and safety matters. The Supreme Court accepts technical verification by private entities provided that the Administration retains direction and control (Judgment of 15 October 2014).

vi. Are there any cases where the involvement of private individuals in administrative proceedings is prohibited?

No

Yes (Administrative decision and coercive or sanctioning control) X

If yes, which legal instrument provides for the corresponding prohibitions?

Constitution

Legislation X

Other

Please indicate any relevant case-law.

Royal Decree 920/2017 (ITV): private inspection stations verify factual elements, but they do not issue administrative decisions.

Regional urban-planning regulations: collaborating entities do not replace the Administration in the final decision.

3. Qualifications and selection procedure for private individuals

i. What is the procedure provided for in the legislation for the certification of private individuals?

Please mention specific examples.

- Participation in examinations
- Selection based on criteria (Authorised Control Bodies (OCA)
- Other (Inspection and certification entities in environmental, industrial or safety matters)

ii. How are selected the private individuals who will be entrusted with a specific administrative task? Please give examples.

- Random selection from a list/register (Some regional systems for appointing *urban-planning collaborating entities* use random assignment when several authorised entities are eligible for the same file)
- Selection from a list/register based on criteria (Authorised Control Bodies (OCAs) and ITV stations are selected based on technical capacity, accreditation, independence, and compliance with regulatory requirements.)
- Absolute discretionary power of the Administration (In certain concession procedures, the Administration retains broad discretion to select the operator, provided that the principles of transparency and competition are respected.
- Selection by the citizen [upon a declaration] (In some regions, citizens may freely choose an urban-planning collaborating entity to verify their documentation, provided the entity is duly authorised.)
- Other (Public procurement procedures, where private entities are selected through competitive tendering to perform technical or support tasks (e.g., audits, studies, inspections).

iii. Is there a legal provision and/or other instrument governing the actions of private individuals when performing administrative tasks? Please indicate specific provisions.

- No
- If yes,
- General normative act (Law 39/2015 on the Common Administrative Procedure)
- Specific normative acts (Industry legislation ,Law 21/1992
- Codes of Conduct, good practices (Technical standards (UNE/ISO) required for accreditation of OCAs and certification bodies.)
- Other (Accreditation requirements issued by ENAC (Spanish National Accreditation Body), which function as quasi-regulatory standards.

iv. How are the impartiality and integrity of private individuals guaranteed under the law? Please indicate specific provisions.



Incompatibilities Law 40/2015 (Articles 23–24): general conflict-of-interest and incompatibility rules applicable to any entity performing functions with public relevance.

X

Impediments (Energy performance certifiers (RD 390/2021): cannot certify buildings in which they have a direct interest. X

Criminal or disciplinary liability (Criminal Code (Articles 404–406): private individuals who exercise public functions may incur liability for offences such as prevarication or bribery. X

Other (Codes of good practice: regional guidelines for urban-planning collaborating entities) X

v. What are the legal consequences in the event of an error, offence or failure on the part of the private individual?

Withdrawal of the certification (ITV stations (Royal Decree 920/2017): loss of authorisation for serious or repeated infringements.) X

Disbarment from the professional association (Possible, depending on the profession. If the private individual is a regulated professional (architect, engineer, lawyer), misconduct may lead to professional disciplinary sanctions, including disbarment.) X

Imposition of a fine or other penalty (Energy performance certifiers: penalties for issuing incorrect or fraudulent certificates (RD 390/2021). X

Personal liability of the private individual (civil, criminal, disciplinary) X

Revocation of the administrative act in the issuance of which the private individual collaborated (If the private individual's error or misconduct affects the legality of the administrative act, the Administration may: Invalidate the act (annulment or revocation), Reopen the procedure, or Repeat the verification or inspection with another authorised entity. This follows the principles of Law 39/2015 on administrative procedur X

Civil liability of the State (Under Article 32 of Law 40/2015, the State may be liable for damages caused by private individuals when they act as de facto agents of the Administration. The State may then exercise recourse actions against the private individual.) X

Other

4. Administrative checks [controls]

i. X

Yes X



No

ii. If yes, at what stage are the checks carried out?

A priori

X

A posteriori

X

At any time

X

iii. How are checks activated?

Following a complaint/administrative appeal

X

Ex officio

X

iv. How extensive are the checks?

Checks based on sampling

X

Mandatory checks for all actions

X

v. What is the nature of the checks?

Of legality

X

Of the substance, of appropriateness

X

vi. What is the type of checks?

On persons

X

On actions

X

vii. Are the conclusions of private individuals binding on the Administration?

Yes

No

X

5. Judicial review

i. Can the actions of private individuals be subject to judicial review? Please indicate specific provisions or the relevant case-law.

No

Yes

X

If yes, what is the scope of the judicial review?

The review directly targets the action of the private individual (per se) X

The review indirectly targets the action of the private individual (appeal lodged against the final act of the Administration, whether explicit or implicit, e.g. appeal lodged against the tacit acceptance of the actions of private individuals by the Administration) X



ii. What types of disputes arise when challenging the actions of private individuals?

administrative disputes

X

private disputes

X

iii. Please mention typical cases from national case-law concerning the delegation of administrative tasks to private individuals.

1. Urban-planning collaborating entities (Entidades Colaboradoras Urbanísticas)

STS (Administrative Chamber), 20 March 2012

Key

point:

Private collaborating entities may carry out *technical verification* of planning documentation, but their reports are not binding and do not replace the Administration's decision. The Administration must retain direction, control, and final responsibility.

2. Technical inspections and industrial safety (Organismos de Control Autorizados – OCAs)

STS, 15 October 2014

Key

point:

Authorised Control Bodies may perform inspections and issue technical reports, but these do not constitute administrative acts. Judicial review occurs indirectly, through the final administrative decision that relies on the private report.

3. Vehicle Technical Inspection (ITV) performed by private stations

STS, 12 December 2017

Key

point:

ITV stations, even when privately operated, perform tasks that are integrated into an administrative procedure.

Their inspection results may be judicially reviewed, either directly (when they produce immediate legal effects) or indirectly (through the final administrative act).

4. Limits on delegation of public authority to private individuals

STS, 23 May 2005

Key

point:

The Court held that public authority (*potestad pública*) cannot be delegated to private individuals. Private entities may perform auxiliary or technical tasks, but never exercise discretionary or authoritative powers.

5. Accreditation and certification bodies (ENAC and similar entities)



STS, 10 July 2007

Key

point:

Accreditation decisions by private bodies that have public relevance are subject to administrative supervision and may be reviewed by courts when they affect rights or obligations.

6. Public service concessions involving technical verifications

STS, 3 February 2010

Key

point:

Even when a private concessionaire performs technical tasks within a public service, the Administration remains responsible for legality and correctness. Private actions are reviewable as part of the administrative chain.

B. Integration of private-sector methods and organisational models into the functioning of the Administration

1. Recruitment of senior managers outside the hierarchy of the civil service

i. What are the objectives of recruiting private individuals as senior managers within the Administration?

Recruiting private individuals as senior managers aims to:

- Bring in specialised expertise
- Improve efficiency and performance
- Increase flexibility in leadership appointments
- Promote innovation and renewal
- Strengthen public–private cooperation
- Fill gaps in emerging or highly technical fields

ii. In which sectors of the Public Administration is it permissible to recruit senior managers who do not belong to the hierarchy of the civil service, and in which sectors is it prohibited?

- a) General management and strategic leadership
- b) Technical and specialised sectors
- c) Advisory and coordination roles



iii. What criteria does the Administration use to select external senior managers?

Technical expertise
Managerial competence
Integrity and suitability
Educational qualifications
Strategic alignment
Compliance with incompatibility and conflict-of-interest rules

iv. What is the nature of the duties of external senior managers?

- | | |
|-----------------|----------------------------|
| Decision-making | X <input type="checkbox"/> |
| Advisory | X <input type="checkbox"/> |
| Other | X <input type="checkbox"/> |

v. Does error on the part of a senior manager give rise to:

- | | |
|---|----------------------------|
| Civil liability of the State | X <input type="checkbox"/> |
| Personal liability of the manager (civil, criminal, disciplinary) | X <input type="checkbox"/> |

2. Organisational models

i. Does your country use New Public Management, Public Value Management, Digital Era Governance, or New Public Governance policies in the organisation of its Public Administration, for example, to digitise procedures, achieve objectives, ensure accountability, evaluate efficiency, promote the rational use and distribution of resources, control expenditure and ensure compliance with budget restrictions, codify legislation, promote career progression, train staff, etc.? Please provide specific examples.

Spain uses a hybrid governance model that incorporates elements of all major public-management paradigms.

New Public Management (NPM): Spain applies managerialism, performance evaluation, and outsourcing. Examples include the creation of autonomous agencies (AEAT, CNMC), performance-based management in health services, and the use of private entities for inspections (ITV, OCAs) and urban-planning verification. Budgetary discipline is reinforced through the Stability Law and AIREF's spending reviews.

Public Value Management (PVM): Spain emphasises transparency, citizen participation, and service quality. Key examples include the Transparency Law (2013), open-data portals, participatory budgeting in major cities, service charters, and impact evaluations conducted by AIReF.

Digital Era Governance (DEG): This is the area where Spain has advanced the most. The 2015 Administrative Procedure Law mandates full digital processing, electronic notifications, and digital identity systems (Cl@ve, Firma Electrónica). Spain has developed interoperability platforms, automated administrative decisions, digital health records, and digital justice services.

New Public Governance (NPG): Spain relies heavily on networked governance and multi-level coordination among the State, Autonomous Communities, and municipalities. Examples include sectoral conferences, shared management of EU funds, public-private collaboration in innovation (PERTEs), and co-production of social services with NGOs and private actors.

ii. Is there a specific provision for the organisation of the Administration based on the above-mentioned models (Constitution, legal provision, etc.)?

Spain does not have any constitutional or statutory provision that explicitly adopts New Public Management, Public Value Management, Digital Era Governance, or New Public Governance as formal organising models of the Public Administration

iii. In which public services and agencies is this type of organisation used?

- | | |
|----------------------------------|----------------------------|
| The Administration stricto sensu | X <input type="checkbox"/> |
| Public enterprises | X <input type="checkbox"/> |
| Other public entities | X <input type="checkbox"/> |

iv. Are the policies for achieving the objectives designed:

- | | |
|---|----------------------------|
| At national level | X <input type="checkbox"/> |
| At regional level | X <input type="checkbox"/> |
| By subject-matter | X <input type="checkbox"/> |
| By taking into account specific public entities | X <input type="checkbox"/> |
| Other | X <input type="checkbox"/> |

v. Have specific objectives been set out for the action of the Administration? Please provide examples.

Spain sets clear, formal objectives for administrative action through:



- Digitalisation mandates
- Transparency and accountability frameworks
- Budgetary stability rules
- Performance and service-quality targets
- Human-resources modernisation
- Sector-specific strategic plans

If yes, is their accomplishment:

- Optional
- Mandatory

Does failure to meet these objectives lead to:

- Personal consequences for the senior managers
- Legal consequences for the assessed organisation
- Financial consequences for the assessed organisation

Are incentives of any kind provided for civil servants (e.g. remuneration) or public entities to ensure that these objectives are achieved?

vi. Are there any indicators for evaluating the action of the Administration in relation to the following factors:

- Compliance with the regulatory framework
- Effectiveness
- Efficiency
- Economy
- Achievement of strategic objectives
- Other

II. Alternative methods for resolving administrative disputes

1. General provisions

i. Does your legislation provide for alternative dispute resolution (ADR) in cases involving public law/administrative law?

- Arbitration
- Mediation



Other

ii. Are there categories of administrative disputes that are excluded from ADR by law or according to case-law?

** Please elaborate on your answer, citing any relevant legislation and/or case-law*

Spain excludes the following from ADR:

- Exercise of public authority (sanctions, licences, inspections)
- Administrative acts affecting rights and obligations
- Tax disputes (except internal review)
- Fundamental-rights disputes
- Public procurement prerogatives
- Matters expressly excluded by sectoral laws

ADR is only possible in non-authoritative, negotiable, or contractual aspects of administrative activity.

2. Settlement and Mediation

** Please elaborate on your answers, citing any relevant legislation and/or case-law.*

i. In administrative disputes, is it permissible for the Administration and private individuals/legal entities to sign a settlement agreement or other similar document (without prior mediation)?

Yes X
No

ia. If yes,

Is this option expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

Settlement agreements in administrative matters in Spain are:

- Expressly authorised by law (Laws 39/2015 and 40/2015, plus sectoral statutes)
- Supported by general principles recognised by the Supreme Court
- Limited by legality, public interest, and the prohibition on negotiating the exercise of public authority

Does this option only apply to the settlement of administrative disputes that are already under way, or can it also be used to prevent administrative disputes from arising in the first place?

Spain allows settlement agreements:

- To resolve disputes already under way → Yes
- To prevent disputes before they arise → Yes

Limits: These agreements cannot affect legality, public authority, sanctions, licences, tax assessments, or any non-negotiable administrative power.

Do the law or case-law distinguish between application for annulment (judicial review limited to the legality) and appeal on the merits (full judicial review of both legality and substance)?

Spanish administrative law clearly distinguishes between legality review and full review on the merits. The ordinary model of judicial control is an application for annulment, in which courts examine the legality of the administrative act—its conformity with the law, procedural correctness, factual basis, proportionality, and absence of misuse of power. Courts may annul the act and require the Administration to adopt a new decision consistent with the judgment, but they cannot replace administrative discretion with their own judgment.

A true appeal on the merits, allowing courts to reassess the substance, opportunity, or policy choices of the Administration, does not generally exist in Spain. Courts do not substitute the Administration's discretionary decisions.

However, certain areas allow limited full-jurisdiction review, where courts may modify the outcome: administrative sanctions, liability claims, some public-procurement disputes, and social-security matters. Even in these cases, courts do not exercise administrative discretion but may adjust the legal consequences.

In short, Spain's system is based on legality review, with narrow exceptions where courts may intervene more deeply but never replace the Administration's policy discretion.

Is there a special procedure for initiating and conducting this alternative dispute resolution method, or are all matters left to the discretion of the parties involved?

Spain uses a mixed system:

- Some ADR-type mechanisms follow formal, legally regulated procedures (e.g., consensual termination under Law 39/2015, administrative conventions under Law 40/2015, sectoral agreements).

- Other mechanisms allow greater discretion, with the law setting substantive limits but not prescribing detailed procedural steps.
- Public authority and legality are never negotiable, and no ADR mechanism can override mandatory administrative powers.

After signing a settlement agreement (or other similar document), is ratification by a court required?

Yes

No

If yes, by which court?

If no, can the legality of the settlement agreement (or other similar document) be examined by the judge on an incidental basis? Under what circumstances could the settlement be considered null and void and without legal effect?

Yes. Even though a settlement agreement between the Administration and a private party does not require judicial ratification, its legality can be examined by a judge incidentally if the agreement is later challenged or if its validity becomes relevant in a judicial proceeding. Spanish administrative courts have full authority to review such agreements to ensure they comply with the principle of legality and the public interest.

Courts do not “ratify” the agreement, but they may declare it null and void if it violates mandatory legal limits.

After being signed and/or validated, as applicable, does the settlement agreement have the force of res judicata? Can the enforcement of this document be pursued?

Res judicata? → **No.** A settlement agreement is not a judicial decision and does not acquire res judicata.

Enforceable? → **Yes.** It is binding and enforceable as an administrative act or administrative contract, and courts may enforce it if a dispute arises.

Which court has jurisdiction over disputes concerning such enforcement?

The competent court is always the administrative court (jurisdicción contencioso-administrativa). No civil court has jurisdiction over the enforcement of settlement agreements involving the Administration.

ib. If the signing of a settlement agreement or other similar document between the Administration and private individuals/legal entities is not permitted in your country, this prohibition results from:

a legislative provision

a general principle of law

Where settlement agreements are not allowed, the prohibition stems from:

- Legislative provisions, and
- General principles of administrative legality

ii. Does your country provide for a mediation procedure between the Administration and private individuals/legal entities for administrative disputes?

** The term 'mediation' is used here to refer to a procedure conducted by an independent and impartial third party, and not to administrative appeal procedures addressed to the Administration or to a body that is hierarchically dependent on the Administration.*

Yes

No

ii.a. If yes,

Is it expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

Is it mandatory or optional?

If it is optional, does it require:

- The mutual agreement of the parties
- Only the intention of the Administration
- Only the intention of the private individual/legal entity

Specifically with regard to the State as a party to the dispute, is mediation initiated:

- After approval by a special committee
- By the administrative authority involved in the dispute
- Other

At what stage can a case be referred for mediation?

- Necessarily before the introduction of legal proceedings
- At any stage of the litigation proceedings

Is there a specific piece of legislation governing the mediation process?

- Yes
- No

If yes, please specify:

Which principles of trial apply to the mediation process (hearing of the parties, adversarial principle, equality of arms, publicity, representation by a lawyer?)

Spain does not have a specific statute regulating mediation in administrative disputes, but when mediation is used voluntarily in the few sectors where it is possible, certain basic guarantees must be respected. The parties must both be heard, and each must have the opportunity to present and respond to arguments, reflecting an informal version of the adversarial principle. Mediation also requires equality of arms, meaning the Administration cannot use its institutional superiority to impose outcomes. Representation by a lawyer is permitted but not mandatory. Unlike judicial proceedings, mediation is confidential and not public, and it does not follow formal trial rules or evidentiary procedures.

In any case, it should be noted, that the Organic Law 1/2025, of 2 January, on measures to improve the efficiency of the Public Justice Service, introduces a significant boost to the use of mediation within the judicial system. The law broadens and clarifies the scope of mediation, establishing

instruments designed to encourage parties to resort to it before initiating judicial proceedings. These instruments include mechanisms for information, guidance and referral to appropriate dispute-resolution methods, reinforcing the idea that mediation should be considered a preliminary or complementary route to litigation. However, the law does not extend these effects to the administrative sphere, which remains governed by its own specific regulations and continues to have a more limited development of mediation. Overall, the reform reflects a trend that is increasingly consolidated in Spain: the growing use of alternative dispute-resolution methods before taking conflicts to court, with the aim of reducing litigation and improving the efficiency of the public justice system.

How is the impartiality of the mediator ensured?

Because Spain does not have a general statutory framework for mediation in administrative disputes, there is no specific legal regime that formally regulates how the impartiality of the mediator is ensured in this field. However, whenever mediation is used voluntarily in the limited sectors where it is possible, impartiality is guaranteed through general principles of mediation law (drawn from Law 5/2012 on civil/commercial mediation) and public-law requirements of neutrality and objectivity.

In practice, impartiality is ensured through several mechanisms. First, the mediator must be independent of the Administration and of the private party, with no hierarchical, contractual, or personal ties that could influence the process. Second, the mediator must disclose any potential conflict of interest before accepting the role, and either party may object to the mediator if neutrality is in doubt. Third, the mediator must conduct the process with equal treatment of the parties, ensuring that neither side—especially the Administration—uses its institutional position to dominate the negotiation. Finally, the parties retain full freedom to terminate the mediation if they believe the mediator is not acting impartially.

Thus, even without a dedicated administrative-mediation statute, impartiality is protected through a combination of independence, conflict-of-interest disclosure, equal treatment, and the voluntary nature of the process.

Is there any interim relief (stay of execution, etc.) during the mediation process? If yes, who is competent to hear the case?



Spain does **not** provide automatic interim relief during mediation. If interim measures are needed, they must be requested from the administrative courts, which remain the only competent authority to grant a stay of execution or similar relief.

At the end of the mediation process,

If an agreement is concluded:

- A document is drawn up X
- Other possibility (please specify)

If an agreement is not concluded:

- Is a time limit set for bringing the matter before the competent court?
- Are the litigation proceedings already under way (if applicable) continued?

No agreement reached → no special time limit. Ordinary judicial deadlines continue to apply.
If litigation is already under way → proceedings continue, unless the court expressly suspends them at the parties' request.

In the event that a document is drawn up following mediation, do the rules concerning the settlement procedure (see above) apply, or are there differences? If yes, please specify.

A mediation agreement with the Administration in Spain:

- Must comply with the substantive limits applicable to administrative settlements (legality, competence, public interest).
- Does not follow the formal procedural rules of the settlement procedure, because administrative mediation is not regulated.
- Therefore, differences exist, mainly in the absence of a formalised procedure, mandatory reports, or statutory approval mechanisms.

ii.b. If no mediation process is provided for, is this exclusion provided for in:

- a legislative provision
- a general principle of law

3. Arbitration

** Please elaborate on your answers, citing any relevant legislation and/or case-law.*

i. In administrative disputes, is arbitration between the Administration and private individuals/legal entities permitted in your country?

Yes

No

ia. If yes,

Is this option expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

Both

Does it concern both application for annulment (judicial review limited to the legality) and appeal on the merits (full judicial review of both legality and substance)? Are there any exceptions provided for by law or established by case-law?

The exclusion of mediation applies to both applications for annulment and appeals on the merits.
No legislative exceptions exist.
No case-law exceptions exist.
Only negotiated agreements (not mediation) are permitted in limited areas where the Administration is not exercising public authority.

Is it mandatory or optional?

Optional

ib. If arbitration is not permitted, is this prohibition due to

A legislative provision

A general principle of law

ic. If arbitration is optional, does it require:

- The mutual agreement of the parties
- The sole intention of the Administration
- The sole intention of the private individual/legal entity

On the part of the State, is arbitration initiated:

- After approval by a special committee
- By the administrative authority involved in the dispute
- Other

ii. For disputes arising from contracts between private individuals/legal entities and the State, do the common provisions relating to commercial arbitration (domestic or international) apply, or is there a special regime?

If there is a special regime, please briefly mention the elements that differentiate it from the commercial arbitration regime.

For contractual disputes between private parties and the State:

- A special regime applies.
- The general Arbitration Act (Law 60/2003) applies only insofar as it is compatible with public-law constraints.
- Key differences include: limited arbitrability, administrative authorisation, public-law principles, stricter judicial review, and specific rules for public procurement.

iii. Is arbitration provided for in contracts falling within the scope of Directives 2014/24/EU and 2014/25/EU?

If yes, have any issues been raised regarding the application of the rules governing the performance of these contracts? How have the courts addressed such issues in the relevant case-law?

Arbitration is allowed in public contracts covered by Directives 2014/24/EU and 2014/25/EU, but only for patrimonial, contractual disputes.

Problems arise when arbitration clauses attempt to cover non-arbitrable matters or lack proper administrative authorisation.

Courts have consistently enforced strict limits, annulling clauses or awards that conflict with public-law principles or procurement rules.

iv. How are the independence and impartiality of the arbitrator ensured?

The independence and impartiality of arbitrators in disputes involving the State are ensured through:

- The general guarantees of the Arbitration Act (disclosure, challenge, removal, judicial review), and
- Additional public-law safeguards (no ties to the Administration, transparency, enhanced judicial scrutiny).

Together, these mechanisms ensure that arbitration involving the Administration meets both private-law standards of neutrality and the constitutional requirements of objectivity and legality.

v. Is there any interim relief when an administrative dispute has been submitted to arbitration? If yes, which body is competent to hear the case?

Interim relief is available in administrative disputes submitted to arbitration.
Only the administrative courts may grant it.
Arbitrators cannot suspend administrative acts or adopt measures affecting public powers.
Judicial control remains essential to protect legality and the public interest.

vi. In arbitration concerning administrative disputes:

| | yes / no |
|--|---|
| Is there an obligation to make publicly available the basic information and documents relating to the proceedings? | <input type="checkbox"/> <input type="checkbox"/> X |
| Is the participation of third parties permitted? | <input type="checkbox"/> <input type="checkbox"/> X |
| Is legal representation mandatory? | <input type="checkbox"/> <input type="checkbox"/> X |
| If yes, is legal aid available? | <input type="checkbox"/> <input type="checkbox"/> X |
| Is the hearing public? | <input type="checkbox"/> <input type="checkbox"/> X |
| Is the arbitral tribunal obliged to give reasons for its award? | X <input type="checkbox"/> <input type="checkbox"/> |
| Is the arbitral award made publicly available? | <input type="checkbox"/> <input type="checkbox"/> X |

vii. During the proceedings, the applicable system is:

the adversarial system X



the inquisitorial system

viii. What powers does the arbitral tribunal have?

Reviews the legality of administrative acts of a non-pecuniary nature

Reviews the legality of an administrative act of a pecuniary nature (fine, etc.)

Annuls/amends an administrative act of a non-pecuniary nature

Annuls/amends an administrative act of a pecuniary nature

Addresses only recommendations to the Administration

Restricts itself to awarding compensation for damages

Does the arbitral award have effect:

Erga omnes (with regard to all)

Inter partes (between the parties)

Is it considered 'case-law' for other cases?

If the answer to the last question is yes, please explain.

Can the validity of the arbitral award be challenged in court?

Yes

No

If yes, is the validity of the arbitral award reviewed directly or incidentally?

Direct review

Is it possible to waive the right to judicial review?

No

Which courts have jurisdiction?

Administrative

What is the scope of the judge's review according to case-law?

Spanish courts review arbitral awards through a direct annulment action, not by re-examining the merits. The review is formally limited but becomes stricter when the Administration is a party. Courts verify:

- Arbitrability: the dispute must concern rights the Administration can legally submit to arbitration; awards touching administrative acts or public powers are annulled.
- Competence of the administrative authority: the public body must have been legally empowered to agree to arbitration.
- Independence and impartiality of the arbitrator: any conflict of interest or irregular appointment leads to annulment.
- Due process: the award must respect equality of arms, contradiction, and provide adequate reasoning.
- Public order (material and procedural): the award cannot violate mandatory administrative law, the principle of legality, or the public interest.

Courts do not reassess facts or evidence, but they may annul awards that rest on a manifestly unlawful interpretation of administrative law, resulting in a form of enhanced legality control when public authorities are involved.

However, the Civil and Criminal Chamber of the High Court of Justice of Madrid has referred a preliminary question (ATSJ M 21/2025 - ECLI:ES:TSJM:2025:21A) to the Court of Justice of the European Union in order to obtain an interpretation of Articles 47(1) and 51(1) of the Charter of Fundamental Rights of the European Union, as well as Article 19(1) of the Treaty on European Union. The aim is to determine the scope of the review that the competent national court must carry out in proceedings where the validity of an arbitral award is challenged on the grounds of an infringement of public-policy rules derived from European Union law.

The decision includes a dissenting opinion by the President of the High Court, who disagrees with the majority view of the Chamber. He argues that, in this specific case, instead of referring a preliminary question, the court should have complied with the ruling of the Constitutional Court. In the matter at hand, the Constitutional Court had ordered the Chamber to issue a new judgment in the dispute between Maxi Mobility Spain SLU (Cabify) and Auro New Transport Concept SL, since, in the view of Spain's highest constitutional body, there had been no violation of public policy in the arbitral award issued by the Arbitration Court of the Official Chamber of Commerce, Industry and Services of Madrid.

In arbitration, is the concept of public policy different, according to case-law, in cases where the State (or a legal person governed by public law) is a party to the arbitration? If yes, what are the differences compared with the concept of public policy in arbitral proceedings between private individuals?

Yes. Spanish case-law applies a broader, stricter, and more legality-oriented concept of public policy when the State or a public-law entity is a party. Compared with private arbitration, public policy in administrative-law arbitration includes:

- Stricter limits on arbitrability
- Mandatory respect for administrative legality
- Enhanced judicial review
- Protection of public interest and public funds
- Preservation of administrative prerogatives
- Constitutional principles of good administration and legality

In arbitration, in addition to the rules of European competition and consumer protection law (see C-126/97, *Eco Swiss China Time Ltd v Benetton International NV* and C-168/05 *Mostaza Claro v Centro Móvil Milenium SL*, respectively), has case-law recognised other rules of EU law as rules of international public policy? If yes, please mention the relevant cases.

Based on the retrieved case-law, the CJEU has recognised competition law, consumer protection, the right to effective judicial protection, and internal-market freedoms (especially in sports governance) as EU international public-policy rules that national courts must be able to enforce when reviewing arbitral awards.

Which body has jurisdiction to hear disputes arising during the enforcement of an arbitral award? Has case-law dealt with special cases where enforcement has been contested on the grounds of the administrative nature of the dispute?

In Spain, civil courts have exclusive jurisdiction over the enforcement of arbitral awards and all disputes that arise during the enforcement phase. This rule applies even when the Administration or a public-law entity is a party. The administrative courts have no role in enforcement.

Spanish case-law has addressed situations where public administrations tried to contest enforcement by arguing that the underlying dispute was “administrative” in nature. Courts have consistently rejected these objections. They hold that once an arbitral award exists, enforcement is always a **civil** matter, and the Administration cannot rely on its public-law prerogatives to block or divert enforcement.

If the Administration believes the award is invalid, it must file an **annulment action**, not raise objections during enforcement. Enforcement courts cannot review the legality of the award; they only ensure its execution