

# Opinion 5 2024

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## On the Draft Royal Decree establishing the Spanish Productivity Council

ECONOMIC AND SOCIAL  
COUNCIL **SPAIN**



CONSEJO ECONÓMICO  
Y SOCIAL ESPAÑA

# On the Draft Royal Decree establishing the Spanish Productivity Council

In accordance with the powers attributed to the Economic and Social Council by Law 21/1991, of 17 June 1991, following analysis and processing by the Working Committee on Sectoral Policies and the Environment, and in accordance with the procedure laid down in the Rules of Organisation and Internal Functioning, the Plenary Session of the Economic and Social Council (ESC/CES) approved the following Opinion at its ordinary meeting of 24 April 2024:

## 1. Background

On 3 April 2024, the Economic and Social Council received a letter from the Ministry of Economy, Trade and Business, requesting, pursuant to the provisions of Article 7.1.1 of Law 21/1991, of 17 June 1991, on the Creation of the Economic and Social Council, that the aforementioned ESC/CES issue an Opinion on the Draft Royal Decree creating the Spanish Productivity Council. This request was forwarded to the Working Committee on Sectoral Policies and the Environment for the drafting of a proposal for an Opinion within fifteen days.

The text to be ruled on is accompanied by an Abridged Report on the regulatory impact analysis (MAIN) which includes: the justification for the Abridged Report, the timeliness of the proposal, its content, a legal analysis, the adequacy of the regulation to the order of distribution of competences, the description of the processing, the impact analysis and the *ex-post* evaluation.

As indicated in the impact analysis section of the Report accompanying the text to be ruled on, the activity of the Spanish Productivity Council will have a budgetary impact through the remuneration of the attendance of the members at Council meetings, the small analytical or evaluation activities carried out by external collaborators, and the preparation of standard reports in the field of productivity commissioned from academic experts.

Improving productivity (which should not be understood as the short-term relationship between GDP and employment, known as labour productivity) is one of the fundamental challenges facing Spain, as well as the rest of the advanced economies, given its importance as an engine of long-term growth. Increasing it requires a balanced set of transparent and accountable public policies and

institutions that maximise the institutional quality of the economic system.

The Council of the European Union issued the Recommendation, of 20 September 2016, on the Creation of National Productivity Councils (2016/C 349/01), which called on euro area Member States to identify or create national productivity councils that could be specifically tasked with analysing developments and policies in the field of productivity and competitiveness, with the aim of promoting the implementation of reforms at national level that have a positive impact on these aspects and, consequently, on economic growth and convergence within the euro area.

The Draft Royal Decree aims to respond to the aforementioned Recommendation, its objective being the creation of the Spanish Productivity Council, as a body dedicated to the diagnosis and analysis of the evolution of productivity and competitiveness and their distributive implications in Spain, within the framework of the euro area and the European Union, and to the analysis of public policies with an impact in these areas.

In a comparative context, this non-binding Recommendation of the Council of the European Union has been extended to most of the Member States. Twenty of the 27 EU countries have established or adapted existing bodies for this purpose, seventeen of them in the euro area. Although most have only recently started work, the results point to many factors and policies that affect the development and implementation of the Recommendation.

## 2. Content

The Draft Royal Decree which is the subject of this Opinion consists of twelve articles and three final provisions.

**Article 1** defines the purpose and scope of the Royal Decree. Accordingly, it establishes that its purpose is to create the Spanish Productivity Council, as a body dedicated to the diagnosis and analysis of the evolution of productivity and competitiveness and its distributive implications in Spain, within the framework of the Eurozone and the European Union, thus complying with the Recommendation of the Council of the European Union of 20 September 2016, on the creation of national productivity councils. It will also be responsible for the analysis of economic policies with an impact on productivity and competitiveness, when commissioned to do so.

**Article 2** determines the composition and functioning of the Spanish Productivity Council. It will be made up of:

- A person appointed by the head of the Ministry of Economy, Trade and

Business, with recognised competence in economic affairs, who will chair it.

- A person appointed by the head of the Ministry of Labour and Social Economy, with recognised competence in economic affairs, who will act as Vice-President.

- The head of the Directorate General for Macroeconomic Analysis within the Secretariat of State for the Economy and Business Support, who shall act as secretary, with the right to speak but not to vote.

- The person holding the presidency of the Economic and Social Council.

- A person appointed by the head of the Ministry of Science, Innovation and Universities, with recognised competence in matters of innovation.

- A person appointed by the head of the Ministry of Finance, with recognised competence in economic matters.

- One person appointed at the proposal of the Governor of the Bank of Spain, from among the members of the Directorate General Economics and Statistics.

- A person appointed by the head of the Ministry for Digital Transformation and Civil Service, with recognised competence in computing and artificial intelligence.

- Three independent members, proposed by the Presidency of the Council from among experts of recognised academic prestige in the economic field, and who individually receive the favourable vote of at least four members of the Council.

- Two independent members, proposed by the Vice-Chairman of the Board from among persons of recognised academic prestige in the economic field, and who receive, individually, the favourable vote of at least four members of the Council.

- Two persons proposed by the most representative business organisations at State level and two proposed by the most representative trade union organisations at State level, who will have the right to speak but not to vote.

In addition, several incompatibilities are established in the composition of the Council, which may not include: senior officials of the State Government or of the Autonomous Communities; members of state or autonomous community political representative bodies; members of the management bodies of political parties, trade union organisations or employers' organisations.

The Council may approve its own internal rules of procedure, which shall develop the rules of organisation and operation of the Council itself and of the working groups that are formed in accordance with Article 7.

**Article 3** determines the renewal and termination of the governing bodies, establishing, firstly, that the term of office of the chairmanship, vice-chairmanship and memberships shall be five years, with no possibility of renewal

for the same position.

Subsequently, it is established that the chairmanship, vice-chairmanship and memberships shall cease for the following reasons: expiry of their term of office; resignation, which shall take effect upon mere notification to the Council; and permanent incapacity to perform their duties, serious breach of their obligations, incompatibility or prosecution for intentional crime.

**Article 4** establishes the functions of the Presidency of the Council. The latter is responsible for the main functions aimed at ensuring the fulfilment of the Productivity Council's mission and the correct operation of the institution, promoting and supervising its actions and representing it. Likewise, and under the principle of transparency and impartiality, it is foreseen that the president will be accountable to Parliament (*Cortes Generales*) for the results of the work carried out by the Productivity Council.

**Article 5** establishes the functions of the Council's secretariat, which include attending meetings with the right to speak but not to vote, calling meetings of the Council by order of the presidency, as well as issuing summons to its members, and ensuring the formal and material legality of the actions of the collegiate body.

**Article 6** determines the convening and meetings of the Council, which shall be held at least once every six months and whenever convened by the chairman on his own initiative or at the request of at least two of its members. The meetings shall be convened at least fifteen days in advance.

**Article 7** provides that the Council may agree to set up temporary or permanent working groups as it deems necessary, when the specific nature of the matters to be dealt with makes this advisable. These working groups shall report to the Council on their activities as often as the Council may establish.

**Article 8** lists the functions of the National Productivity Council, which will, among other things: have the capacity to publish its reports, analyses and opinions as often as it deems appropriate; issue public opinions on economic policy; request reports from independent experts; and draw up its work plan on its own, which it will submit annually (before 30 January) to the Minister of Economy, Trade and Business.

**Article 9** grants the Council access to relevant information for the performance of its functions and determines the duty of collaboration, in good faith, of public bodies and authorities with the Council for the exercise of its functions.

**Article 10** establishes that the Council shall draw up an annual report to compile the analyses and work carried out on the evolution of productivity in Spain. The Annual Report may also include the individual opinions of the members of the Council. The Presidency shall submit the report for information to the head of the

Ministry of Economy, Trade and Business before 15 December and it shall be made public before the end of the year.

The Presidency of the Council shall submit the Annual Report to the Committee on Economy, Trade and Digital Transformation of the Spanish Congress of Deputies within the first three months of the year following its publication.

**Article 11** deals with the organic assignment of the Council to the Ministry of Economy, Trade and Business, its resources, personal and material operating expenses and the payment of indemnities or compensation.

**Article 12** provides that the Council may commission specialised collaborators and independent external experts to carry out quality economic and statistical diagnoses, evaluations and analyses, the monitoring of economic and financial indicators, and the preparation of specific economic reports in the field of productivity, which may be used to draw up the Annual Report.

Finally, three final provisions are included. The **first final provision** determines the powers (article 149.1. 13 of the Constitution) by virtue of which this Regulation is issued. The **second final provision** empowers the head of the Ministry of Economy, Trade and Business to develop and implement this Royal Decree. And lastly, the **third final provision** establishes the entry into force of this regulation on the day following its publication in the Official State Gazette (BOE).

### 3. Remarks

#### 1. Preliminary remarks

##### **On the timeliness of the initiative**

With regard to the timeliness of the Draft Royal Decree subject to this Opinion, the ESC understands that it responds, as stated above in the background, to the Recommendation of the Council of the European Union of 20 September 2016 on the Creation of National Productivity Councils (2016/C 349/01). Despite not being binding on the Member States, the Government now opts for the creation of a Spanish Productivity Council, to serve as a specific body dedicated to the diagnosis and analysis of the evolution of productivity and competitiveness and their distributive implications in Spain, within the framework of the euro area and the European Union, and the analysis of public policies with an impact on these fields.

##### **On the explanatory memorandum**

With regard to the explanatory memorandum, the ESC warns that it should be

revised. Although it does not formally have any legal value, it does guide understanding of the regulation and has a clear didactic value regarding its purpose. Thus, if productivity depends on multiple factors and conditions different economic and distributive results, it would be biased to refer to only one of them, as is the case in the current wording of the explanatory memorandum.

In fact, it should be noted here that, although the MAIN section claims that the regulation has no effect on the economy in general, nor on competition or gender issues, the improvement in overall factor productivity to which the new Council's recommendations should contribute would have positive effects on a wide range of areas in the economy and in society.

### **On the consultative work of the ESC**

In accordance with its authorisation by the Council of Ministers on 27 February 2024 for urgent administrative processing, the draft regulation has merely been submitted to the hearing and public information procedure, indicating the different reports to be obtained, including the Opinion of the ESC.

This Council must once again draw attention to the fact that the Draft, at the same time as it is being sent to the ESC for its mandatory Opinion, is also being reviewed by other public bodies or entities, as well as by different departments, thereby disregarding its nature as consultative body to the Government on socio-economic and labour matters.

In this regard, it should be recalled that, in view of this nature, the ESC should be consulted once other advisory bodies of a specific nature, if any, and any other public body or ministerial department have already issued their opinion, and in any case it should be done on a closed text prior to the consultation with the Council of State.

## **2. General remarks**

### **On the independence of the body**

The Draft Royal Decree establishes that the Productivity Council will engage in the diagnosis and analysis of the evolution of productivity and competitiveness and their distributional implications in Spain and, when commissioned to do so, will be responsible for the analysis of economic policies with an impact on productivity and competitiveness.

According to the explanatory memorandum, the 2016 recommendation speaks of functional autonomy of the Productivity Council and its governing bodies from the authorities responsible for the design and implementation of policies in the field of productivity and competitiveness. To this end, it will be necessary to

establish, on the one hand, the means and resources necessary for the proper performance of the Council's functions and, on the other hand, procedures for appointing members based on their experience and competence, their ability to communicate information to the public and adequate access to information in order to fulfil their mandate.

In this regard, the ESC, acknowledging the importance of preserving this independence, considers that, given the objectives pursued by the regulation, it would be more appropriate for the Productivity Council to be an independent body, without the need to be attached to the Ministry of Economy, which is justified in terms of taking advantage of logistical and technical support to minimise the impact on costs. This affiliation may end up compromising the independent development of its functions, as well as incurring the risk of providing a vision very similar to that of the Ministry of Economy, as opposed to broadening that perspective.

### **On the independence of the members**

The option for the composition of the body taken in the Draft consists of the appointment of high-level technicians from the public administration in the field of economics who, in turn, will have to approve the experts who are to become part of the five foreseen members. This could formally guarantee an independent view of political parties and organisations representing legitimate economic and social interests, but the fact is that above certain levels within the public administration there are posts that are freely appointed, so that the status of high-level civil servant undoubtedly guarantees technical capacity, but raises doubts as to its independence.

The composition of the Council envisages that there will be five independent members, three proposed by the Presidency (Ministry of Economy) and two proposed by the Vice-Presidency (Ministry of Labour), but in all cases for experts of recognised academic prestige in the field of economics, ruling out other areas of knowledge closely related to productivity.

Furthermore, the presence of experts from public institutions with economic and social analysis functions is limited to their possible participation as guests at the sessions, with the right to speak but not to vote. The ESC considers the presence of experts of recognised prestige in the field of productivity to be particularly relevant, and therefore believes that their participation should be more balanced in relation to the other members, that it should be open to additional areas of knowledge, and that their independence should be guaranteed.

### **On opening up to other sectoral areas**



The same openness in terms of the presence of experts should, in the opinion of the ESC, be extended to the composition of the Council in terms of experts and technicians from the Administration of a more sectoral nature. In particular, mention should be made of the fields of industry and tourism; energy; mobility, transport and logistics; infrastructures; environment, sustainability and ecological transition, among others.

Furthermore, as far as human capital is concerned, the ESC notes the need to consider the participation of experts in the field of education, based on the conviction of the holistic nature of the educational, training, scientific, research and technical system.

More specifically, the ESC proposes amending Article 2, on the composition and functioning of the Council, to include in point 2 those individuals designated by the heads of the following ministries: Industry and Tourism; Ecological Transition and Demographic Challenge; Education, Vocational Training and Sports.

### **On the membership of the social partners**

The Draft limits the participation of the social partners to two memberships with voice but without vote for, respectively, two members of trade union organisations and two members of the most representative employers' organisations at national level. Firstly, the ESC considers that they should be included as full members of the Productivity Council, with a voice and a vote. Their role in defending and promoting their own economic and social interests, as recognised in the Constitution, justifies this presence, not least because of the already reiterated multifactorial nature of productivity as the outcome of the economic system.

Furthermore, the explanatory memorandum refers to issues such as labour market rigidities, policies in the field of competitiveness, the institutional quality of the economic system, or the upgrading of the skills of workers and the unemployed. Some of these are the subject of social dialogue, others fall within the scope of the Spanish industrial relations system (such as worker training) and others have a direct impact on collective bargaining, which more than justifies the fact that those who have to implement the policies resulting from the recommendations of the Productivity Council should have a vote and not just a voice in it.

In line with the above, the social partners should be free to nominate the people they consider appropriate to sit on the Council, and point (d) of Article 2(4) should therefore be deleted.

The ESC points out that preserving political independence and independence

from party interests does not mean acting independently of those who are the legitimate representatives of the social partners, who are at the heart of the organisation and functioning of the economic and social system and thereby of the outcomes of production and productivity.

### **On the participation of the person holding the presidency of the ESC**

The Draft establishes that the person holding the presidency of the Economic and Social Council will form part of the Productivity Council, whose participation will obviously be in a representative capacity, according to its Law of Creation (Law 21/1991, of 17 June).

On the other hand, the same law stipulates that the president's term of office will be four years, renewable for periods of the same duration, with no time limit. However, the Draft Royal Decree limits the term of office of the president, vice-president and members of the Productivity Council to five years, with no possibility of renewal. The ESC considers it necessary to clarify whether this limitation also applies to the figure of the President of the ESC and, if so, how possible contradictions would be resolved.

## **4. Conclusions**

This Council refers the conclusions of this Opinion to those that follow from the observations made herein.

Madrid, 24 April 2024

Endorsed by

*The President*

Mr Antón Costas Comesaña

*The Secretary-General*

Ms María Soledad Serrano Ponz

**Individual vote formulated by the councillors of the third group Juan Antonio Pedreño Frutos (CEPES), Leire Mugerza Gárate (CEPES), Jerónima Bonafé Ramis (CEPES), Ruperto Iglesias García (CEPES), Félix Martín Galicia (HISPACCOOP), Basilio Otero Rodríguez (National Federation of Fishermen's Guilds), Matilde Mas Ivars (Experts), Eduardo Navarro Villarreal (COAG), Domiciano Pastor Martínez (UPA), Fernando Móner Romero (CECU), Gustavo Samayoa Estrada (FUCI), Miguel Martínez Cuadrado (OCU)**

Boosting the productive system is one of the great challenges that Spain must take on along with the rest of the countries in the European context. This boost requires a balanced set of policies and public institutions, which are responsible for its development. The Productivity Council must contribute to the design of these policies in order to maximise their positive effects on the economy.

The Draft Royal Decree creating the Spanish Productivity Council, following the Council Recommendation of 20 September 2016, lays the foundations for the creation of this Council, as an instrument for assessing the impact of public policies to boost productivity, with the aim of ensuring its effectiveness in meeting its objectives, as well as its flexibility in adapting to new economic environments.

The creation of the Productivity Council is an important milestone in the continuous improvement of Spain's institutional quality, reinforcing the procedure for adopting economic policies aimed at achieving general welfare and deepening the culture of public policy evaluation.

The explanatory memorandum of the Draft Royal Decree links productivity growth with the development of a balanced set of policies that boost productivity through innovation, the upgrading of the skills of workers and the unemployed, the reduction of market rigidities and the efficient use of resources, the promotion of entrepreneurship and environmental sustainability.

To cover these requirements of material scope, the composition of the Advisory Council is configured, in addition to the presidency and vice-presidency, with fifteen memberships assigned to senior officials from different ministerial bodies, to economist experts of recognised academic prestige and to the social partners. In this last category, the draft limits the participation of the social agents to two seats for, respectively, two members of trade union organisations and two members of the most representative business organisations at the national level.

In the opinion of the undersigned councillors, this composition of the Spanish Productivity Council is insufficient in relation both to the purpose for which the Council was created and to the achievement of its stated objectives. In addition to

the general observation contained in this Opinion on the advisability of extending the Council's membership to more sectoral and knowledge areas, the undersigned councillors maintain that the composition of the Council should also be extended to other social agents with competence and capacity to influence the development of public policies and productivity strategies in Spain, such as the social economy, through its most representative organisation.

The social economy brings business values and practices that promote efficiency, innovation, job creation, the promotion of entrepreneurship, social inclusion and community development, the equitable distribution of wealth and the promotion of environmental sustainability, all thanks to the commitment of partners and workers. This has a positive impact on productivity both at the individual level and at the broader economic level, so integrating these principles into productivity strategies helps to build a more resilient, inclusive and sustainable economy.

Social economy as a social agent began to acquire greater importance with the enactment of Law 5/2011 on the Social Economy, with broad institutional recognition as a business model. As specifically prescribed by Law 5/2011 on the Social Economy, in its fourth additional provision, the Government must integrate the differential elements and characteristics of social economy enterprises into business productivity and competitiveness strategies.

Similarly, the Spanish Social Economy Strategy 2023-2027 establishes, as a specific action to be developed by the Government, the promotion of mechanisms for the institutional participation of the social economy together with other social agents, in order to guarantee participation in the construction of public policies.

Therefore, the undersigned councillors believe that the model of participation proposed in the Spanish Productivity Council in the Draft Royal Decree should be reconsidered, extending its scope to the social economy, through its most representative organisation. The relevance of the social economy today and its specific weight in GDP and employment show that the social economy currently has a broad and generally recognised socio-economic and employment importance. This, together with the legal recognition of the social economy as an activity of general interest, and its presence in all economic sectors, accredits it to be considered as a necessary institutional collaborator or socio-economic interlocutor as a business organisation in the Spanish Productivity Council, in the same terms that are recognised for the rest of the social agents.

Madrid, 24 April 2024