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Third Evaluation Round

Second Addendum to the Second Compliance Report on Spain

"Incriminations (ETS 173 and 191, GPC 2)"

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"Transparency of Party Funding"

Adopted by GRECO
at its 70th Plenary Meeting
(Strasbourg, 30 November - 4 December 2015)

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I. INTRODUCTION

1. The Second Addendum to the Second Compliance Report assesses further measures taken by the authorities of Spain, since the adoption of the First and Second Compliance Reports, in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on Spain. It is recalled that the Third Evaluation Round covers two distinct themes, namely:

   - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).

   - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).

2. The Third Round Evaluation Report was adopted at GRECO's 42nd Plenary Meeting (15 May 2009) and made public on 28 May 2009, following authorisation by Spain (Greco Eval III Rep (2008) 3E, Theme I and Theme II). The subsequent Compliance Report was adopted at GRECO's 50th Plenary meeting (1 April 2011) and made public on 12 April 2011, following authorisation by Spain (Greco RC-III (2011) 5E). The Second Compliance Report (Greco RC III (2013) 20E) was adopted at GRECO's 60th Plenary Meeting (21 June 2013) and made public on 11 July 2013, following authorisation by the Spanish authorities. In its Addendum to the Compliance Report (Greco RC-III (2015) 7E), which was made public on 3 March 2015, GRECO concluded that, with respect to Theme I – Incriminations, recommendations iii, iv, v and vi remained partly implemented. Regarding Theme II – Transparency of Party Funding, recommendations i, ii, iii, iv and vi remained partly implemented. GRECO urged the Spanish authorities to take determined and prompt action with a view to addressing the aforementioned outstanding recommendations and requested the authorities to submit additional information in their regard. The additional information was provided on 20 July 2015.

3. The purpose of this Second Addendum to the Second Compliance Report is, in accordance with Rule 31 revised, paragraph 9 of GRECO's Rules of Procedure, to appraise the implementation of recommendations iii, iv, v and vi (Theme I – Incriminations) and recommendations i, ii, iii, iv and vi (Theme II – Transparency of Party Funding) in light of the most recent information submitted by the authorities of Spain.

4. GRECO selected Estonia and Italy to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed for the Second Compliance Report were Ms Kätlin-Chris KRUUSMAA (Estonia) and Ms Maria Laura PAESANO (Italy). They were assisted by GRECO's Secretariat in drawing up the Second Compliance Report.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO in its Evaluation Report addressed nine recommendations to Spain in respect of Theme I and that recommendations i, ii, vii, viii and ix had been implemented satisfactorily; recommendations iii, iv, v and vi remained partly implemented.

6. The authorities report that amendments to the Penal Code (PC) were adopted in March 2015. They introduce relevant reforms to address the recommendations issued in this domain by different international organisations, notably, the Council of Europe (GRECO), the Organisation for Economic Co-operation and Development (OECD Working Group on Bribery), and the United Nations (Implementation Review Group of the United Nations Convention against Corruption, IRG UNCAC).

Recommendation iii.

7. *GRECO recommended to (i) clarify the notion of foreign public official; (ii) enlarge the scope of Article 445 PC concerning active bribery of foreign officials and officials of international organisations beyond situations involving international business transactions; (iii) criminalise passive bribery of foreign officials and officials of international organisations; and (iv) ensure that bribery of members of foreign public assemblies, international parliamentary assemblies (other than members of the European Parliament), as well as judges and officials of international courts (other than those serving in the International Criminal Court) is criminalised.*

8. GRECO assessed this recommendation as partly implemented pending the enactment of the draft amendments to the Penal Code (PC), which would cover active bribery of foreign officials and international organisations beyond situations involving international business transactions (recommendation iii, part ii), as well as passive bribery of those categories of officials (recommendation iii, part iii).

9. The authorities of Spain now report that the anticipated amendments to the PC were published in the Official Journal on 31 March 2015 (Organic Law 1/2015). They contain a new Article 427 PC which includes a definition of foreign public officials and officials of international organisations – comprising the different categories of persons covered by the Criminal Law Convention on Corruption (ETS 173), and extends the application of the pertinent provisions on active and passive bribery of domestic public officials to cover both foreign and international organisation officials.

> *Article 427 PC: The provisions set forth in previous articles shall also apply when facts are alleged against or affect: (a) any person holding, either by appointment or by election, a legislative, administrative or judicial job or position in a country of the European Union or in any other foreign country; (b) any person exercising a public function for a country of the European Union or for any other foreign country, including a public organisation or public company, for the European Union or for any other international public organisation; (c) any official or agent of the European Union or of an international public organisation.*

10. In addition, there is a separate autonomous offence of bribery of foreign public officials in international business transactions in Article 286ter PC.

> *Article 286ter PC: (1). Whoever, through offering, promising or giving any undue benefit or advantage, either pecuniary or of any other kind, bribes or tries to bribe, whether directly or through intermediaries, an authority or public official, for their benefit or for the benefit of a third party, or whoever agrees with their demands in that respect, so that they act or refrain from acting in relation to the performance of official duties in order to obtain or retain a contract, business or other competitive advantage in the conduct of international business, shall be sanctioned, except if already punished with a more severe penalty under another precept of this Code, with three to six years' imprisonment and fine from twelve to twenty-four months, unless the benefit obtained exceeds the resulting sum, in which case the fine will be of up to three times the value the profit obtained.*

Besides the aforementioned penalties, the liable person shall be punished with debarment from future contracts with Public Administration, from the possibility of receiving subsidies and public aids and from the right to enjoy tax and Social Security benefits and incentives, as well as from taking part in commercial transactions of public interest for a period from seven to twelve years. (2). For the purposes of this Article public official shall be considered those mentioned under Articles 24 and 427.

11. GRECO welcomes the recent changes providing for a comprehensive coverage in law of bribery of international officials and concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

12. *GRECO recommended to (i) review Article 422 (bribery of jurors and arbitrators) of the Penal Code to ensure that the criminalisation of bribery of jurors and arbitrators is in line with the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191); and (ii) criminalise bribery of foreign arbitrators and jurors.*

13. GRECO recalls that pending the effective criminalisation of foreign jurors and arbitrators in Spanish criminal law, GRECO considered recommendation iv as partly implemented.

14. The authorities of Spain refer to the provision added in the 2015 reform of the PC, following the ratification by Spain of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), which specifically extends the coverage of bribery offences to jurors, arbitrators, mediators, experts, administrators or court-appointed auditors, official receivers or any person who participates in the exercise of public duties (Article 423 PC). They further add that this provision would be applicable in its foreign dimension as well; it is irrelevant whether the arbitrator or juror is national or foreign since the public interest that bribery offences aim to protect is that of impartiality in public service.

Article 423 PC: The terms set forth in the preceding articles shall also be applicable to jurors, arbitrators, mediators, experts, administrators or court-appointed auditors, official receivers or any person who participates in the exercise of public duties.

15. GRECO considers that Article 423 PC covers the domestic dimension of the offence of bribery involving jurors and arbitrators. However, GRECO remains dubious as to the coverage of foreign arbitrators and jurors, all the more in the absence of any case-law in this respect. In this connection, Article 427 PC, which deals specifically with the international aspect of bribery, does not include a parallel reference to foreign jurors and arbitrators. The interpretation *in extenso* of the authorities could also leave out those situations where the nature of the functions of this category of professionals is not public, if, for example, they operate under an *ad hoc* agreement between two private companies or operate outside the framework of a permanent arbitration court. Moreover, the statement made now by the authorities contradicts the information submitted in previous reporting exercises, whereby the authorities intended to specifically criminalise bribery of foreign arbitrators and jurors. GRECO regrets that the authorities have missed an opportunity to regulate this aspect of ETS 191 in unequivocal manner.

16. GRECO concludes that recommendation iv remains partly implemented.

Recommendation v.

17. *GRECO recommended to criminalise bribery in the private sector in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption.*

18. GRECO deemed recommendation v as partly implemented, since it was not convinced that the different conducts of the offence of passive bribery in the private sector (notably, the request, receipt or acceptance of the promise of an undue advantage), as listed in the Criminal Law Convention on Corruption (ETS 173), were covered by the Spanish PC.

19. The authorities of Spain indicate that the recent amendments to the PC provide for a holistic coverage of active and passive bribery in the private sector (Article 286bis), which comprises anyone who directs or works for, in any capacity, private sector entities, as it specifically refers to executive, managing directors, employees or collaborators of a private entity. Although the promise of an undue advantage is not explicitly mentioned, it is deemed to be comprehended by the broader notion of the act of receiving, soliciting or accepting a benefit or advantage. It must also be kept in mind that not only the consummated offence is punishable in the PC, but also an attempt - notwithstanding the possible scaling-down of the applicable penalty in such a case. (Articles 15, 16(1) and 62 PC)

> *Article 286bis PC: (1). The executive, managing director, employee or collaborators of a trading company or a firm that, personally or through an intermediary, receives, requests or accepts an undue benefit or advantage of any nature, on his own behalf or for a third party, as consideration for unduly favouring another person in the acquisition or sale of goods, hiring of services or in trade relations, shall be punished with a sentence of imprisonment of six months to four years, special disqualification from exercising industry or trade for a term from one to six years and a fine up to three times the value of the profit or advantage obtained. (2). The same penalties shall be imposed on any person that, personally or through an intermediary, promises, offers or grants executives, managing directors, employees or collaborators of a trading company or a firm, an undue benefit or advantage of any nature, for themselves or for third parties, as consideration for unduly favouring him or a third party against others in the acquisition or sale of goods, hiring of services or in trade relations. (3). The judges and courts of law may impose a lower degree of punishment and reduce the fine at their discretion, in view of the amount of profit or the value of the advantage, and of the importance of the duties of the guilty party. (4). The provisions set forth in this article shall be applicable, in their case, to executives, managing directors, employees or collaborators of a sports club, whatever its legal status, as well as to sportsmen, referees or linesmen, regarding those conducts aimed at deliberately and fraudulently predetermining or altering the result of a professional sport match, event or competition of special financial or sportive relevance. For these purposes, a sport competition of special financial relevance shall be that one in which most participants shall perceive any type of remuneration, compensation or economic revenue for their participation in the activity; and sport competition of special sportive relevance shall be that one classified, in the annual sport calendar approved by the relevant sport federation, as official competition of the maximum category in the modality, specialization or discipline concerned. (5). For the purposes of this article, the provisions set forth in Article 297 shall apply.*

20. Key steps have also been taken to reinforce the regime of corporate criminal liability for corruption offences which was introduced in 2010. A milestone in this respect has been the introduction of a corporate compliance statute in Article 31bis PC. The latter provision provides an exemption from corporate criminal liability where the company adopts a qualifying compliance programme prior to the occurrence of the conduct at issue; Article 31bis includes specific features that compliance programmes must contain in order to qualify.

Article 31bis PC: 5. The models of organisation and management referred to in the first requirement of paragraph 2 and in the previous one shall meet the following requirements: (1) they will identify the activities in the scope of which the offences to be prevented can be committed; (2) they will establish the protocols or procedures that could materialise the formation process of the legal person's will to make the decisions and implement them in relation to the former; (3) they will have the right models of financial resources management to prevent the perpetration of the target offences; (4) they shall impose the obligation to inform the body responsible for monitoring the performance and observance of the prevention model about possible risks and failures to comply; (5) they shall establish a disciplinary system that could appropriately punish the failure to comply with the measures set by the model; (6) they will check on a regular basis the model and its subsequent modification when relevant infringements of their provisions are obvious, or when changes occur in the organisation, in the control structure or in the activity carried out which makes them necessary.

21. GRECO welcomes the recent reform allowing for enhanced tools to prosecute corruption in the private sector, an area where specific provisions were lacking in the past. The criminalisation, of bribery in the private sector provided by Article 286bis PC, is generally in line with the Convention, in particular, with respect to the scope of perpetrators (which covers virtually all types of persons who direct or work for private sector entities) and the material elements of the offence (direct/indirect commission, third party beneficiaries, breach of duties). There remains, however, one loophole, namely, the coverage of the request, receipt or acceptance of the promise of an advantage. GRECO takes note of the explanation provided by the authorities as to their understanding that this element would be comprised in the act of receiving, soliciting of accepting a benefit or advantage, or otherwise covered by the general provision in the PC on attempted offences. GRECO has, however, repeatedly signalled this flaw throughout the compliance procedure (which started in 2011 with respect to Spain). The Convention makes no difference in the way the corrupt acts performed are construed for bribery offences whether in the public or the private sector; its Explanatory Report further calls for limiting the differences between the rules applicable to the public and private sectors. Moreover, GRECO notes that the Spanish PC explicitly refers to the mere promise of an advantage in the relevant offences of bribery in the public sector, but it does not in the offence of bribery in the private sector. There has been no single case in this area, which would substantiate the interpretation provided in the present report by the authorities and lead GRECO to depart from its previous consistent view on this particular point.

22. GRECO concludes that recommendation v remains partly implemented.

Recommendation vi.

23. *GRECO recommended to (i) criminalise active trading in influence as a principal offence; (ii) criminalise trading in influence in relation to foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies and judges and officials of international courts; and (iii) clarify beyond doubt that immaterial advantages are covered by the relevant trading in influence provisions in the Penal Code.*

24. GRECO remained dubious as to the criminalisation of active trading in influence and the coverage of the relevant trading in influence provisions with respect to foreign and international officials and, therefore, considered this recommendation as partly implemented.

25. The authorities of Spain report that active trading in influence is now construed as an autonomous offence in Articles 428 PC and 429 PC; passive trading in influence is provided for in Article 430.

> *Article 428 PC: A civil servant or authority who influences another public officer or authority, availing himself of the powers of his office or any other situation arising from his personal or hierarchical relation with the latter, or with any other officer or authority to attain a resolution that may directly or indirectly generate a financial benefit for himself or a third party, shall incur imprisonment of six months to two years, a fine of up to twice the benefit intended or obtained and special barring from public employment and office for a term of three to six years. If the intended benefit were obtained, these penalties shall be imposed in the upper half.*
> *Article 429 PC: The private individual that influences a public officer or authority taking advantage of any situation arising from his personal relation with him or with another public officer or authority to obtain a resolution that may directly or indirectly generate a financial benefit for him or for a third party, shall be punished with imprisonment of six months to two years and a fine of up to twice the benefit intended or obtained and prohibition to make contracts with the public sector, as well as the loss of the possibility to obtain public subsidies or aids and the right to enjoy tax incentives or benefits and social security benefits from six to ten years. If the intended benefit were obtained, these penalties shall be imposed in the upper half.*
> *Article 430 PC: Those who, offering to behave in the manner described in the preceding Articles, request handouts, presents or any other remuneration from third parties, or accept offers or promises, shall be punished with a sentence of imprisonment of six months to one year. Should the offence be committed by an authority or public officer, the punishment of special disqualification from public employment or office and from exercising the right to passive suffrage from one to four years shall be imposed. When, pursuant to the terms established in Article 31 bis of this Code, a legal person is responsible for the offences defined in this Chapter, the punishment of a fine of six months to two years shall be imposed. Pursuant to the rules established in Article 66 bis, the Judges and Courts of Law may also impose the penalties established in Sub-Sections b) to g) of Section 7 of Article 33.*

26. As to whether trading in influence of foreign and international officials is criminalised, Article 427 (see also paragraph 9) extends the provisions of trading in influence of domestic public officials to foreign and international officials. In any event, as previously justified in paragraph 14 regarding the criminalisation of bribery of foreign jurors and arbitrators, the authorities consider that trading in influence of foreign and international officials would be punishable in so far as these persons are considered public officials in the meaning of Article 24(2) PC on the definition of a public official as anyone performing public functions, independently of whether they are national or international.

27. GRECO welcomes the reported adjustments recently made to better align the offence of trading in influence in national law with the requirements set by the Criminal Law Convention on Corruption (ETS 173). GRECO, however, remains dubious as to the applicability of Article 427 PC (bribery of foreign and international officials) to the offence of trading in influence. It is to be noted that the wording of Article 427 PC specifically refers to preceding provisions and would, therefore, leave out of its scope the offence of trading in influence which is regulated later in the PC (Articles 428 to 430 PC). The Criminal Law Convention on Corruption, in its Article 12, is clear in this respect as it specifically refers to the criminalisation of trading in influence of foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies, and judges and officials of international courts. GRECO regrets that the recent reform of penal legislation fails to unequivocally address the international dimension of the offence of trading in influence.

28. GRECO concludes that recommendation vi remains partly implemented.

Theme II: Transparency of Party Funding

29. It is recalled that GRECO in its Evaluation Report addressed six recommendations to Spain in respect of Theme II and that recommendation v had been dealt with in a satisfactory manner. Recommendations i, ii, iii, iv and vi remain partly implemented.

30. On 31 March 2015, Organic Law 3/2015, of 30 March, on the Control of the Financial and Economic Activity of Political Parties, which modified Organic Law 8/2007, of 4 July, on Political Parties Funding, Organic Law 6/2002, of 27 June, on Political Parties and Organic Law 2/1982, of 12 May, on the Court of Audit (LOCAEFPP) entered into force. It introduces important changes as elaborated below.

Recommendation i.

31. *GRECO recommended to take appropriate measures to ensure that loans granted to political parties are not used to circumvent political financing regulations.*

32. GRECO welcomed the efforts made by the authorities regarding the regulation of loans, including by assimilating them to donations subject to thresholds. It took note of further amendments undergoing preparation. Pending their effective enactment, GRECO assessed this recommendation as partly implemented.

33. The authorities of Spain now report that Organic Law 3/2015 completely bans debt cancellation, whether total or partial, by credit institutions (Article 1, paragraph 3). A new obligation is imposed on political parties to publish on their respective websites, within one month of the submission of their accounts to the Court of Audit, details on their finances, including their balance sheet and their profit and loss account (Article 1, paragraph 10). The latter comprises information concerning the amount of outstanding loans, the corresponding awarding entity, the amount granted, the interest rate and the period of repayment.

34. GRECO welcomes the novelties introduced by Organic Law 3/2015 on the Control of the Financial and Economic Activity of Political Parties, as explained above, to further increase transparency of contracted loans. With respect to the ban on debt cancellation, GRECO recalls that the situation of political parties being in debt, and the potential that such a situation could have on the vulnerability of political parties vis-à-vis credit institutions, has been an important source of concern in Spain. For this reason, GRECO is particularly pleased with the compromise reached by all parties to address this sensitive matter.

35. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

36. *GRECO recommended to take measures to increase the transparency of income and expenditure of (i) political parties at local level; (ii) entities, related directly or indirectly, to political parties or otherwise under their control.*

37. GRECO assessed this recommendation as partly implemented. Whilst recognising the positive steps taken to subject political foundations and associations to tighter accounting and reporting obligations of both their income and expenditure, GRECO took the view that more could still be done to consolidate the accounts of political party branches, notably at local level, as well as the accounts of related entities. GRECO also expressed its misgivings as to the possibilities provided by law, by virtue of the applicable exceptions, to funnel "interested" money to political foundations or associations.

38. The authorities of Spain report that Organic Law 3/2015 requires the consolidation of the accounts of political parties and their branches at regional and local level. As to related entities, the new Law (1) provides for a comprehensive definition of the activities which would link a given foundation/association to a political party; (2) bans the receipt of donations from bodies, entities or public enterprises; (3) binds the acceptance of corporate donations to an agreement adopted by the board of the political foundation/entity and requires the formalisation, in a public document, of donations with a monetary value exceeding 120,000 EUR; (4) further subjects the accounts of connected entities to the control performed by the Court of Audit and to the same penalty system of that provided for political parties; (5) requires political foundations and related entities to enrol in the Register of Political Parties; and (6) lay out reporting requirements. In this connection, while the Law does not require the consolidation of the accounts of political parties and related entities, it does establish a clear obligation for the latter to report annually to the Ministry of Finance and Public Administrations all the donations and contributions received, as well as to notify the Court of Audit of all corporate donations received within three months of their acceptance.

39. GRECO welcomes the new measures reported. In particular, as regards the transparency of political parties at local level, GRECO welcomes the obligation on political parties to consolidate the accounts of their branches; this was a long-standing claim of the Court of Audit itself as repeatedly included in its monitoring reports.

40. As regards, political foundations and related entities, GRECO appreciates the efforts taken to increase the transparency and control of their accounts. That said, GRECO remains cautious as to the way in which the provisions of the new Law dealing with foundations and related entities may open up possible ways to go around the applicable requirements on political donations. For example, while political parties are banned from receiving corporate donations, the latter are permitted if channelled through related entities. Likewise, the ceiling on donations from the same natural person in a fiscal year is not applicable when those donations are given to a political foundation or related entity. Moreover, the monetary or property hand-outs given by an individual or a legal person in order to finance an activity or specific project of the foundation or entity are not considered as donations, as long as such activity or project is carried out as a result of a personal common interest derived from the activities of the corporate or statutory object of both entities, and insofar as the former be formalised in a public document, reported to the Court of Audit within the period of three months from its acceptance and become public, preferably via the website of the foundation or related entity.

41. GRECO is aware that the aforementioned exceptions have been coupled with provisions to enable transparency, accountability and control, but it remains unconvinced that the system as set forth in the new Law will succeed in assuring such goals. For example, while the Law imposes an obligation on foundations/related entities to publish details on certain donations online, it would appear that around 40% of those bodies do not have a website[1]. Furthermore, GRECO notes that

[1] Los diez mayores errores sobre transparencia, supervisión y buen gobierno 2014-2015. Fundación compromiso y transparencia. http://ifuturo.org/documentacion/Los10mayoreserroressobretransparencia.pdf.

the Court of Audit has repeatedly advocated for the consolidation of party accounts, including not only the accounts of all party branches at national and subnational level, but also of the accounts of party related entities. This recommendation by the main oversight body of political finances in Spain has not been echoed in the new Law. As practice in implementing the recent legislative changes evolves, GRECO advises the authorities to keep under close review the applicable rules concerning related entities so that they are not used as channels to circumvent the rules on party funding.

42. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

43. *GRECO recommended to establish a common format for parties' accounts and returns (at both head office and local level) with a view to ensuring that the information made available to the public is consistent and comparable to the greatest extent possible, and that it is disclosed in a timely manner within the deadlines prescribed in Organic Law 8/2007 on Political Parties Funding, thus allowing a meaningful comparison both over time and between parties.*

44. GRECO assessed this recommendation as partly implemented, pending enactment of the anticipated amendments to the law, which would reportedly maximise the amount and timeliness of the information regarding political financing which can be acquired by the public.

45. The authorities of Spain explain that Organic Law 3/2015 incorporates a clear deadline for parties to publish their accounts online following their submission to the Court of Audit (rather than waiting for the Court of Audit to issue its monitoring reports on political financing, which was the case before in the law). A party that has not published its annual accounts as per the deadline set by law will have its public subsidies withheld. Moreover, the new Law requires broader information disclosure requirements for political parties which must now publish online in greater detail (e.g. on terms of loans, on identity of major donors, etc.). In addition, Law 19/2013 on Transparency, Access to Public Information and Good Governance subjects political parties to publication requirements regarding their internal organisation, as well as economic, budgetary and statistical information (contracts, agreements, public subsidies and aids, etc.).

46. Organic Law 3/2015 also incorporates new provisions to help the Court of Audit meet its requirement to publish monitoring reports on party funding in a timely manner, notably, by placing an unequivocal obligation on third parties to cooperate (e.g. regarding the obligation of financial entities to facilitate information on party accounts) and the levy of fines in case of non-compliance. The authorities indicate that the Court of Audit has managed to catch up significantly with the delay it had in overseeing party finances; the latest report it issued in 2015 corresponds to the 2013 fiscal exercise of political parties.

47. GRECO notes the changes reported to ameliorate disclosure of party accounts, as well as to facilitate the oversight task of the Court of Audit regarding political financing. GRECO has always held that transparency of party accounts is crucial in helping identify questionable financial ties and possible corruption in the party funding system both in reality and in the perception that citizens may have of the situation. GRECO can only encourage both political parties and the Court of Audit to ensure that the transparency obligation is complied with in practice in an easily accessible and timely manner.

48. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

49. *GRECO recommended to take measures to enhance the system of internal audit of political parties in order to ensure the independence of this type of control.*

50. GRECO took note of the plans reported by the authorities to put in place tighter internal control mechanisms for political party authorities to advance in this area. Pending materialisation of such plans, GRECO assessed recommendation iv as partly implemented.

51. The authorities of Spain highlight that Organic Law 3/2015 sets in place a clear obligation for political parties to develop systems of internal control; failure to do so constitutes a serious infringement of the law resulting in fines from 10 000 to 50 000€. Political parties can additionally be subject to criminal liability and must put in place legal compliance systems (i.e. develop a corruption prevention and accountability policy, as per the obligation laid out in the Penal Code regarding legal entities, see also paragraph 20).

52. Detailed requirements are set forth in the new Law regarding the appointment of persons responsible for the economic/financial management of the party, which do not only refer to the requisite professional experience and honourable qualities of the person in question, but also precise situations which would call into question eligibility for the post, e.g. persons undergoing criminal proceedings for an offence involving professional disqualification or loss of the right to passive suffrage when the ruling for the opening of oral proceedings has been rendered, incompatibility instances, etc. (Article 14bis, Organic Law 3/2015).

53. GRECO very much welcomes the developments reported to tighten internal control mechanisms for political parties, including through the appointment of financial officers with professional and deontological exigencies, the development of legal compliance systems to promote integrity and accountability, the submission of party accounts to independent auditors, the introduction of a stricter accountability system for political parties, etc. The series of scandals in connection with the irregular financing of political activity that have shaken Spanish society in recent years called for thorough and immediate action and GRECO is pleased to see the reflection process which has led to the recent legislative changes. It will be vital from now onwards that the regulatory requirements do not remain dead letter. GRECO considers the implementation of this recommendation and its effectiveness in practice as paramount to the credibility of the system and to self-responsibility of political actors.

54. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation vi.

55. *GRECO recommended to clearly define infringements of political finance rules and to introduce effective, proportionate and dissuasive sanctions for these infringements, in particular, by extending the range of penalties available and by enlarging the scope of the sanctioning provisions to cover all persons/entities (including individual donors) upon which Organic Law 8/2007 imposes obligations.*

56. GRECO acknowledged the steps already taken to strengthen the sanctioning regime for party funding violations (in particular, in respect of campaign funding rules), as well as the draft legislative provisions in the pipeline to reinforce the accountability regime in this sensitive domain. Pending adoption of draft legislation, it assessed recommendation vi as partly implemented and

drew the attention of the authorities to the short limitation period for irregular financing offences which could put at risk the effectiveness of the system.

57. The authorities of Spain refer to significant developments concerning the sanctioning regime laid out in Organic Law 3/2015 which now contains escalating sanctions directly linked to the illegal act performed by political parties, their responsible officers or donors. The limitation period of the relevant offences has been extended to five, three and two years depending on the seriousness of the misbehaviour. The applicable sanctions are enforceable by the Court of Audit.

58. Moreover, the Law introduces a novel mechanism (which does not have a sanctioning nature, but can, nevertheless, be very effective in practice) whereby it is possible to declare a political party extinct when it has not submitted its annual accounts for three consecutive financial years or four alternate (Article 12bis, Organic Law 3/2015).

59. The application of the sanctions provided for in Organic Law 3/2015 does not exclude criminal liability in the terms established by the Penal Code (PC). Furthermore, the PC now includes an offence of illegal financing of political parties with imprisonment sentences of up to four years and incremental fines equivalent to three to five times the amount of money that was illegally donated (Article 304bis and 304ter PC).

60. GRECO welcomes the new developments reported which aim at significantly enhancing the accountability regime for political actors. GRECO's experience to date in political financing has evidenced that prevention needs to be coupled with vigorous law enforcement; the two are complements and not alternatives. Legal regulations on disclosure and reporting of political finances and provisions for monitoring and control are of little value or credibility if they are widely disregarded and if offences go undetected or unsanctioned. The soundness of the system could certainly be compromised if infringements of the rules are not coupled in law, but also in practice, with effective sanctions. GRECO is hopeful that the authorities will react promptly and vigorously, with due respect to the principles of impartiality and proportionality, in the event of non-compliance with the regulatory framework.

61. GRECO concludes that recommendation vi has been implemented satisfactorily.

III. CONCLUSIONS

62. **With the adoption of this Second Addendum to the Second Compliance Report on Spain, GRECO concludes that out of the fifteen recommendations issued to Spain, eleven in total have been implemented satisfactorily or dealt with in a satisfactory manner. The four remaining recommendations have been partly implemented.**

63. With respect to Theme I – Incriminations, recommendations i, ii, iii, vii, viii and ix have been implemented satisfactorily; recommendations iv, v and vi remain partly implemented. Regarding Theme II – Transparency of Party Funding, recommendations i, iii, iv, v and vi have been implemented satisfactorily or dealt with in a satisfactory manner; recommendation ii remains partly implemented.

64. The year 2015 has witnessed significant reform in the two areas covered by the present report. More particularly, regarding incriminations, the adoption of Organic Law 1/2015, introducing amendments to the Penal Code, creates important novelties regarding bribery in the private sector and corporate liability, active trading in influence, harsher penalties for corruption offences, the international coverage of the bribery offence, etc. GRECO is pleased with the commitment undertaken by Spain to remedy the technical deficiencies in its penal legislation when it ratified the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191), as recommended by GRECO. There remain a couple of technical flaws, which the authorities will need to address to be fully in line with the aforementioned instruments, notably with respect to trading in influence of foreign and international officials, bribery of foreign jurors and arbitrators and the particular coverage of passive bribery in the private sector (i.e. the coverage of the request, receipt or acceptance of the promise of an advantage).

65. In so far as the transparency of political funding is concerned, there have been several interesting developments in the Spanish regulatory framework since the Third Round Evaluation Report was adopted. It has been a painstaking process in an area that has been particularly prone to malpractice. The framework law evaluated by GRECO in 2009 has since then been amended twice, in 2012 and 2015, with the aim of strengthening the transparency, oversight and enforcement requirements of political financing. The latest reform introduced by Organic Law 3/2015 comprises several tools in this respect: a ban on corporate donations and loans, the requirement for political parties to provide for consolidated accounts which comprise those of their regional and local branches, publicity requirements for political parties, mechanisms for internal control and accountability in case of non-compliance with the law, more severe sanctions, a criminal offence of illegal party financing, etc. In GRECO's view, the current legislative regime has some valid features to better regulate money in politics, it is now essential that the newly adopted provisions are enforced in practice. It is obvious that only effective implementation can give credibility to the legislative reform undertaken in recent years: this will require a proactive role by the Court of Audit, financial discipline and transparency in the operations of political parties, and appropriate sanctions whenever infringements occur. Moreover, it must be ensured that political foundations and associations are not used as a parallel avenue for fraudulent funding of routine and campaign activities of political parties in spite of the applicable restrictions and thresholds set by law for the latter.

66. The adoption of this Second Addendum to the Second Compliance Report terminates the Third Round compliance procedure in respect of Spain.

67. GRECO invites the authorities of Spain to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.