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Groupe d'États contre la corruption

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## FOURTH EVALUATION ROUND

Corruption prevention in respect of members of  
parliament, judges and prosecutors

### COMPLIANCE REPORT

### SPAIN

Adopted by GRECO at its 72<sup>nd</sup> Plenary Meeting  
(Strasbourg, 27 June-1 July 2016)

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## **I. INTRODUCTION**

1. The Compliance Report assesses the measures taken by the authorities of Spain to implement the recommendations issued in the Fourth Round Evaluation Report on Spain which was adopted at GRECO's 62<sup>nd</sup> Plenary Meeting (2-6 December 2013) and made public on 15 January 2014, following authorisation by Spain ([Greco Eval IV Rep \(2013\) 5E](#)). GRECO's Fourth Evaluation Round deals with "Corruption Prevention in respect of members of parliament, judges and prosecutors".
2. As required by GRECO's Rules of Procedure, the authorities of Spain submitted a Situation Report on measures taken to implement the recommendations. This report was received on 29 September 2015 and served, together with the information submitted subsequently, as a basis for the Compliance Report.
3. GRECO selected Iceland (with respect to parliamentary assemblies) and Italy (with respect to judicial institutions) to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Björn THORVALDSSON on behalf of Iceland and Ms Maria Laura PAESANO, on behalf of Italy. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
4. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

## **II. ANALYSIS**

5. GRECO addressed 11 recommendations to Spain in its Evaluation Report. Compliance with these recommendations is dealt with below.
6. The authorities of Spain underscore the set of structural reforms taken in recent years to promote integrity in public life. More particularly, they refer to the so-called Regeneration of Democracy Plan (*Plan de regeneración democrática*) and the multifaceted elements it comprises, including greater control of the economic activity of political parties (for details see also [Greco RC-III \(2015\) 16E](#)), a specific regulatory framework for senior positions in public administration (see also paragraph 12), a major package of criminal measures contained in the reform of the Criminal Code (e.g. criminalisation of the offence of illegal party financing, extension of the statute of limitations and more severe sanctions for corruption offences, etc.), which will be followed by substantial amendments of criminal procedure legislation.<sup>1</sup>
7. Furthermore, a Law on Transparency was adopted on 9 December 2013 (after the Fourth Round Evaluation Report) introducing rules regarding, *inter alia*, the publication of public contracts, good governance, access to information, development of website portals of public administrations, etc. As GRECO recognised in its Fourth Evaluation Report, important measures had been taken by the Congress to improve the transparency of its work, including *inter alia* by developing a comprehensive internet portal; concrete steps were made in the same direction by the Senate which, on 5 June 2014, reformed its Standing Orders to entrust the

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<sup>1</sup> <http://www.lamoncloa.gob.es/lang/en/espana/spaintoday2015/transparency/Paginas/index.aspx>.

Bureau with an active role insofar transparency activities are concerned within the institution.

8. Finally, a holistic public administration reform is underway. The OECD has praised the reform plans which it deemed to be geared towards boosting growth and productivity rather than only to cutting costs or reducing headcount<sup>2</sup>.
9. Despite these positive reforms, the latest Transparency International corruption perception index (CPI), which was issued in January 2016, points at Spain as one of the big decliners worldwide in the past four years. The delay to form a new government, following the general elections of December 2015, and the convocation of a new general election on 26 June 2016, have put on hold several anticipated reforms in the anticorruption arena.

#### *Corruption prevention in respect of members of parliament*

10. The authorities of Spain indicate that the Congress of Deputies set up a Reporting Subcommittee for the reform of its Standing Orders. Since the adoption of the GRECO Report and up until 2015, this body has met on nine occasions. Parliamentary Groups have presented their proposals regarding the different aspects included in GRECO recommendations. They all showed willingness to incorporate them into the Spanish parliamentary framework. It was, however, not possible for the legislature to reach consensus on the above. That said, according to the authorities, a path has been set for the future, bearing in mind the proposals that all political forces have incorporated into their programmes in the successive elections recently held in Spain.

#### **Recommendations i and iv.**

11. *GRECO recommended*

- *for each Chamber of Parliament, (i) that a code of conduct be developed and adopted with the participation of its members and be made easily accessible to the public (comprising guidance on e.g. prevention of conflicts of interest, gifts and other advantages, accessory activities and financial interests, disclosure requirements); (ii) that it be complemented by practical measures for its implementation, including through an institutionalised source of confidential counselling to provide parliamentarians with guidance and advice on ethical questions and possible conflicts of interest, as well as dedicated training activities (recommendation i);*
- *that appropriate measures be taken to ensure effective supervision and enforcement of the existing and yet-to-be established declaration requirements and other rules of conduct of members of Parliament (recommendation iv).*

12. The authorities of Spain report on the adoption of Law 3/2015 on Senior Positions of the State General Administration in March 2015, which establishes rules aimed at preventing conflicts of interest of this category of officials coupled with monitoring and enforcement machinery. Although members of Parliament are not included in the subject scope of the law, some of its provisions have an impact on them when the senior official is at the same time member of Parliament (e.g. prohibition on perceiving any remuneration from a compatible secondary job). In the authorities' view, Law 3/2015 sets the path from which the Spanish Parliament will take inspiration in the future; more particularly, the aforementioned law itself has a

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<sup>2</sup> [OECD Public Governance Review \(2014\): From administrative reform to continuous improvement.](#)

supplementary nature for other senior officials of the public sector who are not explicitly covered under its scope.

13. GRECO takes note of the information provided by the authorities and welcomes the legislation recently introduced to specifically address top executive positions in the public function, including by providing rules on conflicts of interest prevention and setting in place an accountability regime. GRECO nevertheless notes that parliamentarians are not *stricto sensu* under the scope of that legislation. GRECO considers that it is important that parliamentarians make a clear statement themselves about the integrity principles they intend to uphold, a code of conduct being a key tool in that respect. GRECO understands that Law 3/2015 has a supplementary nature in respect of those senior officials not specifically covered by its *personae* scope and recognises that its inspirational value is promising. However, as stressed in the Fourth Evaluation Round Report, for an ethics and conduct regime to work properly, parliamentarians must themselves develop rules and channels to instil and to uphold strong ethical values. GRECO urges the new legislature to embark, at the earliest opportunity, on a conclusive institutional discussion of integrity and ethical issues related to parliamentary conduct, ultimately resulting in the adoption of a Code of Conduct for both Houses accompanied with appropriate counselling and enforcement mechanisms, as per recommendations i and iv.
14. GRECO concludes that recommendations i and iv have not been implemented.

**Recommendation ii.**

15. *GRECO recommended the introduction of rules on how members of Parliament engage with lobbyists and other third parties who seek to influence the legislative process.*
16. The authorities of Spain confirm their plan to regulate lobbies through the reform of the Standing Orders of Parliament. More particularly, a proposal to establish a lobbyist register and a code of conduct for the profession was drafted in the former legislature (2011-2015) and unanimously agreed upon in the plenary sitting held on 28 April 2016. The authorities also report on a parallel initiative already accomplished by the National Market and Competition Commission (CNMC), which establishes a voluntary, public, free, electronic register of lobbyists, as well as a Decalogue of Good Practice to which lobbyists must commit when dealing with the CNMC.
17. GRECO takes note of the steps initiated in Spain to regulate lobbying. It is to be welcomed that the Parliament has agreed upon a draft proposal on lobbying; however, given that new elections were held in June 2016 and a new legislature is to be formed thereafter, it would be premature to positively assess the draft proposed by the former legislature with no certainty as to its effective permanence in time. GRECO urges the authorities to take tangible action given that this subject matter ranks high on the list of public concerns.
18. GRECO concludes that recommendation ii has not been implemented.

**Recommendation iii.**

19. *GRECO recommended that current disclosure requirements applicable to the members of both Chambers of Parliament be reviewed in order to increase the categories and the level of detail to be reported.*

20. The authorities of Spain report on several initiatives through which they are aiming at sustaining integrity and enhancing transparency in Parliament. In particular, following the enactment of the Law on Transparency 19/2013, amendments were made, in 2015, to the Standing Orders of both the Congress of Deputies and the Senate in order to fully implement the applicable transparency requirements. The latter have strengthened openness of parliamentary work by setting in place channels for citizens' access to information on the activities of the respective Houses, whether of parliamentary or administrative nature. Dedicated transparency portals have been set up both on the webpage of the Congress of Deputies and in the Senate<sup>3</sup>. These online portals include information on the provisions thereof, institutional and organisational information concerning the Houses, deputies and senators, parliamentary groups and parliamentary administration; they also provide economic, budgetary and procurement information, as well as access to information in relation to citizens, whereby citizens can pose their consultations through the citizen attention unit, or complete a form to request information.
21. The authorities further indicate that, since November 2014, it is mandatory for both Houses to publish on their respective websites, on a tri-monthly basis, the total expenditure incurred as a result of the trips of parliamentarians; additionally, parliamentary groups are to issue a report on the activity of parliamentarians justifying such trips.
22. Finally, as already indicated, the authorities trust that Law 3/2015 on Senior Positions of the State General Administration will pave the way for more concrete developments regarding the implementation of recommendation iii. More concretely, the aforementioned Law establishes a strict regime of incompatibility of compensatory pensions, compensation allowances, and any other economic remuneration envisaged as a result of leaving any position, post or activity in the public sector with whatever remuneration covered by the budget of the public administrations, or dependent entities, bodies and companies, or covered by the budget of constitutional bodies, or resulting from the enforcement of tariffs, as well as any remuneration stemming from private activities (Article 7, Law 3/2015)<sup>4</sup>.
23. GRECO appreciates that some action has been taken following the adoption of the Fourth Round Evaluation Report, including by addressing one of the areas where GRECO called for greater transparency, i.e. public information on sponsored trips. GRECO is also pleased to note that the institution of Parliament is taking the lead in opening up its activity to the greater public through dedicated transparency portals and the designation of information contact points.
24. GRECO is, however, of the firm view that more needs to be achieved to fully satisfy the concerns at stake in recommendation iii, notably, by addressing several features currently missing in the financial declaration requirements, but which can prove to be important for bringing to light potential or actual conflicts of interest, i.e. market value of the real estate and vehicles, names of the companies to which the shares and stocks belong; interest rates paid for the credits obtained from financial institutions; information on gifts received; and income (even received in the form of indemnities) received from accessory activities (paragraph 56, Fourth Round Evaluation Report). Obviously, this recommendation needs to be read in conjunction with recommendation iv on the reinforcement of effective supervision and enforcement mechanisms in Parliament itself: while it will already be a cardinal step that the categories and the level of detail of the current disclosure

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<sup>3</sup> Congress of Deputies: <http://www.congreso.es/portal/page/portal/Congreso/Congreso/Transparencia>.

Senate: <http://www.senado.es/web/relacionesciudadanos/transparencia/index.html>.

<sup>4</sup> The activities conducted by the elected members of Parliament, of the Assemblies of the Autonomous Communities, local entities, senior positions and the rest of the staff pertaining to constitutional bodies and to all public administrations, including the administration of justice are deemed as activities in the public sector.

requirements be increased so that the public have an image as precise and complete as possible of an individual MP's actual interests, control cannot be left to citizens alone, it should be coupled with greater institutional safeguards.

25. GRECO concludes that recommendation iii has been partly implemented.

*Corruption prevention in respect of judges*

**Recommendation v.**

26. *GRECO recommended carrying out an evaluation of the legislative framework governing the General Council of the Judiciary (CGPJ) and of its effects on the real and perceived independence of this body from any undue influence, with a view to remedying any shortcomings identified.*

27. The authorities of Spain stress that the selection method of the CGPJ is a constitutional matter (Article 122, Constitution), which provides for a mixed system whereby the CGPJ is formed by the President of the Supreme Court, 12 judges and magistrates of all judicial categories, and 8 members elected by Parliament (4 elected by Congress and 4 elected by Senate), by a majority of three fifths amongst lawyers and other jurists of acknowledged competence and over 15 years' professional experience. The Law on the Judiciary 6/1985 (LOPJ), as amended by Law 4/2013, further articulates a system that the authorities reckon to be in line with international standards as it allows for pluralism and non-corporatism. The qualified majority required in Parliament leaves little room for political bargaining, as suggested in the Fourth Evaluation Round Report, since for that majority to be reached there must be a joint agreement of all political forces represented in Parliament. It is highlighted that the 2013 reform seeks the maximum possible consensus in the system of appointment of judges among their own ranks, which in turn would appease the political debate once the appointment is confirmed in Parliament. The authorities underscore that, prior to the 2013 improvements to the system, a comprehensive evaluation was made of the former model which looked into three different options and ultimately resulted in what is enshrined in the law today. All of this is with a view to reinforcing the position of the CGPJ with greater assurances for its independent, efficient and transparent operation.

28. The authorities further refer to the upgrade of the CGPJ website in 2014 where details can be obtained regarding the activities of the CGPJ and the agendas of its Plenary and Commissions, budget implementation, contracts and grants and the explanation on the CGPJ's expenditure control system in relation to the ceremonial activities and travels of its senior members, as well as the remunerations and compensations they could receive after leaving office. A Collaboration Agreement was signed with Transparency International so that the latter would evaluate every year how well the CGPJ has performed in terms of transparency, as well as working hand-in-hand in research and awareness-raising activities concerning anticorruption and good governance matters. Following the conclusion of the aforementioned Agreement, the CGPJ decided to publish on-site a summary of the property owned by its President, the members of its Permanent Committee and its Secretary General; this summary is to include details on real estate, a total balance of bank accounts, credits, loans or debts, shares and stockholdings of companies, public debt securities, investment funds, certificates of deposit and other transferable securities and motor-vehicles. With this move, the CGPJ has expressly reaffirmed its position that as governing body of all the judges and magistrates, it must be an example of transparency and good management specially before the members of the judicial career and before the citizens in general. The CGPJ has further expressed its intention to become a national and international reference in this field.

29. GRECO takes note of the information provided. GRECO's stand was clear in the Fourth Evaluation Round, it understood that the amendments to the LOPJ were recent and that it was premature to draw conclusions on how the changes would impact the system; hence, GRECO required close follow-up to this matter. That said, GRECO expressly stressed that political authorities shall not be involved, at any stage, in the selection process of the judicial shift (see paragraph 78, Fourth Round Evaluation Report). GRECO notes that while the appointment of the CGPJ is a constitutional matter, the Constitution does not specify the way in which judicial members of the CGPJ are to be selected. GRECO reiterates its view that it is crucial that the CGPJ is not only free, but also seen to be free from political influence.
30. GRECO appreciates the laudable efforts taken to infuse greater transparency in the functioning of the CGPJ and the profiles of their key members. GRECO notes that the authorities concur that this is a key area of democracy which should be subject to continuous debate. In the same line of thought, GRECO calls on the authorities to carry out the evaluation recommended as to how the new system is operating in practice and whether it has indeed had a confidence building effect for the general public and the profession itself. GRECO looks forward to receiving information based on facts and not only on the legislation it has already assessed.
31. GRECO notes that a recent survey carried out by the CGPJ among the profession presented some disquieting figures: only 24% of the judiciary responded to the questionnaire distributed by the CGPJ (1 285 out of 5 390 judges) and 75% of the respondents considered that the CGPJ does not sufficiently protect the principle of judicial independence; 50% of the respondents were not aware of the new organisational model of the CGPJ after the 2013 reform, and 54% of the respondents who were familiar with the content of such reform had a negative opinion of the operational changes<sup>5</sup>. Likewise, the 2015 EU Justice Scoreboard evidenced that the public perception of judicial independence in Spain is at the bottom on the EU<sup>6</sup>. In point of fact, Spain is fourth bottom in the EU ranking (25 out of 28), nor does it do well in the world ranking by the World Economic Forum, which places the country in 97<sup>th</sup> place out of 144<sup>7</sup>.
32. GRECO concludes that recommendation v has not been implemented.

**Recommendation vi.**

33. *GRECO recommended that objective criteria and evaluation requirements be laid down in law for the appointment of the higher ranks of the judiciary, i.e. Presidents of Provincial Courts, High Courts of Justice, the National Court and Supreme Court judges, in order to ensure that these appointments do not cast any doubt on the independence, impartiality and transparency of this process.*
34. The authorities of Spain reiterate that there are already rules in place to ensure that the appointments of the higher ranks of the judiciary are carried out on the basis of merit. They refer to the requirements laid out in Articles 335, 336 and 337 of the LOPJ (seniority principle), as well as Regulation 1/2010 on decisions regarding appointment of holders of high judicial offices which contains guidance on the merits and criteria of competence that the CGPJ is to follow when it exercises its discretionary appointment power regarding these high level positions. All

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<sup>5</sup> [VI Survey to the judiciary](#) (25 September 2015)

<sup>6</sup> 2015 EU Justice Scoreboard - COM(2015)116 final

<sup>7</sup> [The Global Competitiveness Report 2013-2014](#). This World Economic Forum indicator is based on survey answers to the question: "To what extent is the judiciary in your country independent from the influences of members of government, citizens, or firms?" The survey was replied to by a representative sample of firms in all countries from the main sectors of the economy (agriculture, manufacturing industry, non-manufacturing industry, and services).

decisions of the CGPJ concerning this issue must be reasoned and can be challenged by interested parties by way of judicial review (before the Administrative Chamber of the Supreme Court). The online portal of the CGPJ includes a specific area providing information on both on-going and concluded appointments. That said, this is a sensitive area that calls for continuous attention and further mechanisms are expected to enhance the objectivity of this type of appointment, including by reinforcing the training catalogue of judges so that they are provided with a predictable framework of the *cursus honorum* that will be deemed most suitable to take up the highest positions in the judiciary.

35. GRECO notes that no new legislative development has occurred in this area since the adoption of the Fourth Evaluation Round Report on Spain, as specifically called for in recommendation vi. At that time, GRECO deemed the situation, and the rules that the authorities reiterate today, as not fully satisfactory (Fourth Round Evaluation Report on Spain, paragraphs 87 to 89). GRECO was clear in recommending that the objective criteria and evaluation required be laid down in law regarding the appointment of the higher ranks of the judiciary (Presidents of Provincial Courts, High Courts of Justice, the National Court and Supreme Court judges) which fall under the discretionary power of the CGPJ. At the time of the evaluation visit, the authorities signalled that the draft amendments to the LOPJ included provisions to establish specific criteria for the aforementioned appointments; today, the authorities recognise that this is indeed an issue of concern for the CGPJ and that they are working on additional measures to enhance the objectivity of this type of appointments. As a matter of fact, in a recent survey carried out by the CGPJ among the judicial profession (see also paragraph 31), 67% of the respondents were of the opinion that the criteria of merit and competence are not observed in the appointment decisions made by the CGPJ regarding the higher ranks of the judiciary. GRECO, therefore, awaits concrete developments in this respect.
36. GRECO concludes that recommendation vi has not been implemented.

#### **Recommendation vii.**

37. *GRECO recommended that (i) a code of conduct for judges be adopted and made easily accessible to the public; and (ii) that it be complemented by dedicated advisory services on conflicts of interest and other integrity-related matters.*
38. The authorities of Spain indicate that, on 25 February 2016, the plenary meeting of the CGPJ agreed to endorse the Ibero-American Code of Judicial Ethics, adopted in the Ibero-American Judicial Summit in 2006, as lastly amended in 2014. Moreover, the CGPJ is promoting the development of an ethical code for the judicial career, drafted by a working group set up with the approval of its Permanent Committee in April 2014, of which the latest meeting dates from 13 May 2016. This working group is made up of two members of the Council, a judge of the Constitutional Court, the Presidents of the Provincial Courts of Palma and Barcelona, a University Professor of Sociology, a University Professor of Ethics and a counsel of the CGPJ. The objective of this initiative is to provide Spanish judges, for the first time, with a text similar to that which already exists in other countries as a guidance to the members of the career when having to decide on their professional behaviour, taking into consideration the demands of society from this collective and as a means to widen and strengthen public confidence in the administration of justice. The CGPJ is of the view that this self-regulating task in the field of ethics and professional duties necessitates participation and active collaboration throughout the entire career. Consequently, Spanish judges have been invited to undertake joint reflection on the principles and values that should guide their action, opening up individual and collective channels of communication with all of them. During the



first year of operation of the working group, multiple activities have been carried out to advance in the adoption of the ethical code, e.g. involve representatives from judicial and senior judges associations; develop a repository on judicial ethics matters, as enshrined by other national and international texts; prepare a comparative study on the basis of international experience in this domain, etc.

39. Concerning the establishment of dedicated advisory services on conflict of interests and other integrity-related matters, the authorities make reference to the applicable incompatibility rules (Articles 389 to 397 LOPJ) and the role that the Department of Judicial Personnel of the CGPJ plays in providing assistance and expert advice to all judges on the matter.
40. GRECO welcomes judges having embarked on a reflection process as to the deontological challenges they may come across in the development of their important functions. This is an encouraging development for the profession itself, but also for the general public since it represents a sign of commitment to greater openness of the judiciary. GRECO has consistently underscored the important value that ethical codes have as both a source of guidance and reference for the users, as well as a tool for enhanced accountability and scrutiny vis-à-vis the general public. GRECO trusts that the development of a participatory process, as anticipated by the authorities, where judges themselves gather to discuss shared standards for professional behaviour from a pragmatic approach, as experienced in their daily routines, will also help identify whether additional avenues are necessary to provide dedicated advice on conflicts of interest and other integrity-related matters. This is all work in progress and GRECO looks forward to receiving further information on the actual outcome of the on-going consultation process.
41. GRECO concludes that recommendation vii has been partly implemented.

**Recommendation viii.**

42. *GRECO recommended extending the limitation period for disciplinary procedures.*
43. The authorities of Spain refer to the legal provisions which were in play at the time of the evaluation visit, i.e. Law 4/2013 introducing important novelties to the disciplinary system of judges at the time. The authorities moreover indicate that the six-month limitation period established in Article 425 of Law 6/1985 on the Judiciary is in line with the provisions included in the upcoming reform in criminal matters (Draft Bill on amendments to the Law of Criminal Procedure for expedite criminal proceedings and strengthened procedural guarantees), where the term of six months is also generally established as the maximum length for the investigation of non-complex criminal cases.
44. GRECO notes that no action has followed its recommendation. GRECO can only reiterate its findings contained in the Fourth Evaluation Round Report on Spain, which clearly evidenced how the six-month limitation period for disciplinary procedures was proven to be short in practice. More particularly, it was noted at the time that the short time span had given rise to a number of decisions of the Supreme Court overturning the sanction of the CGPJ on the grounds that the relevant disciplinary proceedings had not respected the statute of limitations. It was further remarked that the applicable deadline for proceedings against judicial secretaries and civil servants working in the judicial administration is 12 months. No new element has been provided by the authorities, other than reiterating the legislative and institutional framework already in place, and described in detail in the aforementioned GRECO's report, which would substantiate that recommendation viii has been tackled in any meaningful way.

45. GRECO concludes that recommendation viii has not been implemented.

*Corruption prevention in respect of prosecutors*

**Recommendation ix.**

46. *GRECO recommended (i) reconsidering the method of selection and the term of tenure of the Prosecutor General; (ii) establishing clear requirements and procedures in law to increase transparency of communication between the Prosecutor General and the Government; (iii) exploring further ways to provide for greater autonomy in the management of the means of the prosecution services.*
47. The authorities of Spain state that although, pursuant to the Constitution (Article 124), the Prosecutor General is appointed and removed by the King, on proposal of the Council of Ministers, this does not mean at all that the public prosecution service is subject to the criteria and mandates of the Government. In fact, the Prosecutor General's Office discharges its duties through its own bodies in accordance with the principles of unity of action and hierarchical dependency, subject in all cases to the principles of the rule of law and of impartiality. The authorities are further of the view that the prosecution service is endowed with full functional autonomy. Amendments were introduced to the Organic Statute of the Prosecution Office in 2003, 2007, and then 2009, to progressively further safeguards enhancing the independence of the Prosecutor General; these efforts were also acknowledged by GRECO in some of its former reports on Spain. The authorities add that, broadly speaking, three elements featuring the autonomy of the Office of the Public Prosecutor, in accordance with Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe, can be highlighted:
- (i) On the one hand, the appointment of the Prosecutor General – carried out according to the procedure laid out in the Constitution as explained above – must fall on a professional of recognised prestige and broad experience on the subject. By requiring so, it is the criteria of professionalisation and specialisation that prevail; the appointment is then left to technical rather than political considerations.
- (ii) On the other hand, the own operating dynamics for the appointment to the Prosecutor General's Office do not necessarily coincide with the term of office of Government or Parliament.
- (iii) Finally, the Office of the Public Prosecutor operates with full autonomy by means of its own bodies (and not through those of the State administration), in accordance with the principles of unity of action and hierarchical dependency, subject in all cases to the principles of the rule of law and of impartiality. From the standpoint of management, the Office of the Public Prosecutor therefore operates in a fully autonomous way. The Government cannot determine which budgetary resources are a priority or to which particular use resources should be allocated. The Office of the Public Prosecutor is outside political control although its budgets are organically ascribed to those of the Ministry of Justice.
48. The authorities further report on a draft instruction, which is now under consideration, dealing with the regulation of internal administrative matters within the Office of the Public Prosecutor (e.g. secondments to fill up vacancies or in case of absence) aimed at providing greater autonomy, within the limits of the Organic Statute of the Prosecution Service (*Estatuto Orgánico del Ministerio Fiscal*). The Ministry of Justice does not participate in the management of these administrative issues in accordance with the principle of autonomy of the prosecution service.

49. GRECO takes note of the explanations provided by the authorities evidencing that they rule out, for the time being, any change in the method of selection and the term of tenure of the Prosecutor General. Since the first part of recommendation ix, only called for consideration of the matter, GRECO has to accept this standpoint.
50. Regarding the second component of recommendation ix, no new development has been reported regarding the establishment of clear requirements and procedures in law to increase the transparency of communication between the Prosecutor General and the Government. It is recalled that the law provides for the possibility for the Government to ask the Prosecutor General to report back on specific cases being prosecuted and GRECO deemed it key that this type of action be clearly regulated in law with adequate guarantees of transparency (paragraph 129, Fourth Round Evaluation Report).
51. As to the third component of recommendation ix, a draft instruction is underway to provide for greater autonomy in the management of the means of the prosecution services. This development goes in the direction recommended by GRECO, which pointed at the importance of the prosecution service being certain about its means and responsible for its spending, including regarding training allocations (paragraph 130, Fourth Round Evaluation Report).
52. GRECO concludes that recommendation ix has been partly implemented.

#### **Recommendation x.**

53. *GRECO recommended that (i) a code of conduct for prosecutors be adopted and made easily accessible to the public; and (ii) that it be complemented by dedicated guidance on conflicts of interest and other integrity-related matters.*
54. The authorities of Spain report on the Prosecutor General's Office ongoing work regarding the development of an ethical code which will serve as an objective regulatory framework establishing, on the one hand, guidelines or principles of action of the Office of the Public Prosecutor and, on the other hand, referring to conflicts of interest and other integrity and ethics-related matters within the prosecution service, with the corresponding procedure for action. For this purpose, a Committee has been set up within the Prosecutor General's Office which has been tasked with the preparation of a code of ethics for the profession; a draft has been through a first stage of debate between experts, professional associations and other relevant institutions.
55. GRECO welcomes this advance by prosecutors in the direction recommended by GRECO. However, this work appears to still be at very incipient stages, with work underway regarding the drafting of an ethical code for the prosecution service, but no other remarkable developments concerning available advisory channels on integrity-related matters. More decisive action needs to be taken in this area.
56. GRECO concludes that recommendation x has been partly implemented.

#### **Recommendation xi.**

57. *GRECO recommended developing a specific regulatory framework for disciplinary matters in the prosecution service, which is vested with appropriate guarantees of fairness and effectiveness and subject to independent and impartial review.*
58. The authorities of Spain state that a Draft Regulation for the Prosecution Service has been recently drawn up by the Prosecutor General's Office, mainly affecting the disciplinary regime, which is under consideration at the moment. This draft tackles

not only the system of infringements and sanctions, but also the procedure to be followed whenever a prosecutor incurs in a disciplinary offence.

59. GRECO takes note of the steps being taken by the authorities to reinforce the disciplinary system of the prosecution service. Pending adoption of the anticipated rules, GRECO concludes that recommendation xi has been partly implemented.

### **III. CONCLUSIONS**

60. **In view of the foregoing, GRECO concludes that none of the eleven recommendations contained in the Fourth Round Evaluation Report has been implemented satisfactorily or dealt with in a satisfactory manner by Spain.** Five recommendations have been partly implemented; six recommendations have not been implemented.
61. More specifically, recommendations iii, vii, ix, x and xi have been partly implemented; recommendations i, ii, iv, v, vi and viii have not been implemented.
62. On a general note, the results of the municipal elections, held in May 2015, sent a strong message of change in that the traditional two-party system was broken and shaken up following the recurrent corruption scandals on their files. A legislative/policy package to better fight corruption was agreed in May 2015, so-called Regeneration of Democracy Plan (*Plan de regeneración democrática*), which further expands on reform measures to, *inter alia*, increase transparency in the work of public institutions, amend party funding regulations and promote integrity in political life, bolster the controls performed by the Court of Audit, provide for a specific offence of illicit enrichment, toughen sanctions for corruption offences and step up criminal procedures in order to render investigations more efficient and expeditious. The Law on Transparency, a long awaited request by GRECO since 2004 but which only saw the light of day in 2013, has paved the way for some concrete results to open up the functioning and decision-making of State bodies to the public at large. Dedicated websites containing details on agendas, policy papers, administrative decisions, etc. have been launched in the last couple of years in all three branches of government.
63. With respect to members of parliament, GRECO's Fourth Evaluation Round Report served as a tool to stimulate political debate on how to recast public trust in politics by adding to integrity tools in Parliament. It is however disappointing that the action following this debate has been rather limited, yielding very few concrete results. GRECO is hopeful that the new legislature will continue the work which has been launched regarding the issuing of a code of conduct in both Houses of Parliament, the thorough review of the financial disclosure regime and the establishment of an enforcement mechanism when misconduct occurs. Additionally, regulation on lobbying is long overdue.
64. Concerning judges, it is regrettable that no further reflection has been made, as specifically recommended by GRECO, on how to strengthen the independence of the General Council of the Judiciary, both in appearance and in reality. Both prosecutors and judges are currently working on their own codes of conduct to deliver an unequivocal message as to their ethical standards. Steps continue towards enabling greater autonomy in the functioning of the prosecution service. Autonomy and accountability must go hand in hand and the discipline system for prosecutors is currently being reinforced; statutory amendments await adoption in this respect.
65. In view of the above, GRECO concludes that the current very low level of compliance with the recommendations is "globally unsatisfactory" in the meaning of

Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the Head of delegation of Spain to provide a report on the progress in implementing the outstanding recommendations (i.e. all recommendations) as soon as possible; however – at the latest – by 31 July 2017.

66. Finally, 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.