



Groupe d'Etats contre la corruption
Group of States against corruption



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**DIRECTORATE GENERAL I – LEGAL AFFAIRS
DEPARTMENT OF CRIME PROBLEMS**

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First Evaluation Round

Compliance Report on Spain

Adopted by GRECO
at its 15th Plenary Meeting
(Strasbourg, 13-17 October 2003)

I. INTRODUCTION

1. GRECO adopted the First Round Evaluation Report on Spain at its 5th Plenary Meeting (11-15 June 2001). This Report (Greco Eval I Rep (2001) 1E) was made public by GRECO, following authorisation by the Spanish authorities on 19 June 2001.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the Spanish authorities submitted their Situation Report (RS-report) on the measures taken to follow the recommendations on 31 March 2003. The information is based on the situation at this date. Spain submitted comments and additional information on the basis of the P2 version, on the occasion of a meeting held according to rule 28 para. 6 on 16 September 2003¹.
3. At its 13th Plenary Meeting (24-28 March 2003), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Croatia and the United States of America to provide Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Ivan PLEVKO (Deputy District Attorney, Croatia) on behalf of Croatia and Joseph GANGLOFF (Senior Counsel, Office of International Affairs, U.S. Department of Justice) on behalf of the United States of America. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The RC-Report was adopted by GRECO, following examination and debate pursuant to Rule 31.7 of the Rules of Procedure, at its 15th Plenary Meeting (13-17 October 2003).
5. Under Article 15 para. 6 of the GRECO Statute and Rule 30.2 of the Rules of Procedure, the objective of the RC-Report is to assess the measures taken by the Spanish authorities and, wherever possible, their effectiveness in order to comply with the Recommendations contained in the Evaluation Report.

II. ANALYSIS

6. It was recalled that GRECO in its Evaluation Report addressed 10 recommendations to Spain. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended to draw up an overall multidisciplinary strategy, involving the different authorities concerned in the prevention, detection and prosecution of corruption offences and, in this context, to conduct research on the extent and typologies of corruption phenomena in Spain and compile detailed statistics about detected corruption cases; the Spanish authorities could also consider, in this connection, signing the Criminal and/or the Civil law Convention (s) on corruption, as a visible element of such a strategy.*
8. The Spanish authorities considered recommendations i. and vii. together and provided joint information on these recommendations. A draft bill was adopted by the Council of Ministers on 17 January 2003, aimed at introducing the "all crime" approach as regards money laundering and the confiscation of proceeds from crime, increase of penalties for embezzlement, measures to curb corruption and enhance integrity in the financial markets, improvements to the control of cash transactions and other payments etc. The Spanish authorities also indicate that attention is

¹During the discussions, the Spanish authorities emphasized that new measures have been adopted afterwards, in particular as regards legislation enacted within a short time after the period under consideration.

being paid to foreign experience (e.g. the SCPC in France, or through an international "Meeting of the Committee of Experts in the Fight against Corruption, to be organised with the Iberian American countries in December 2003). Finally, the Spanish authorities stressed the existence and role of the different units with competencies in the fight against corruption, which were mentioned in the evaluation report: Court of Auditors, the National Securities Exchange Commission, the Commission for the Prevention of Money Laundering and Monetary Offences, etc. No further developments have happened as regards these bodies.

9. It is stated that technical obstacles only, relating in particular to the statute of Gibraltar, would hinder the signature and ratification of the Criminal and Civil Law Conventions, until the negotiations currently under way on this issue reach a satisfactory conclusion.
10. GRECO took note of the information provided by Spain, notably the governmental draft bill. GRECO found that no specific action plan had been initiated. On the other hand, Spain has adopted a number of measures in different areas (new legislation on money laundering, awareness raising as mentioned under recommendation vii., implementation of anti-corruption conventions etc.) and the authorities maintain that these reflect the existence of a multidisciplinary strategy. As to the measurement and analysis of the phenomenon of corruption in Spain, GRECO would have expected more focused, responsive information. GRECO also took note of the steps taken to remove the obstacles to the signature of the conventions.
11. GRECO concluded that recommendation i. has been partly implemented and invited Spain to continue the analysis on the phenomenon and measurement of corruption in the country and to provide additional information on it.

Recommendation ii.

12. *GRECO recommended to strengthen the ACPO by providing it, within the limits of general budgetary constraints, with additional resources, in particular additional staff, with a view to enabling it to deal more effectively with its tasks and support the territorial SPS offices dealing with corruption cases.*
13. The Spanish authorities provided detailed information on the newer developments relating to the State Prosecution Office (SPS) in general, and the Special Attorney's Office for the Repression of Economic Offences related with Corruption (ACPO) in particular. The IT system was developed with access to judicial database. Training in IT, specifically geared to prosecutors, was provided in all 18 Autonomous Communities. As part of the National Agreement to Reform the Justice System, of 2000, the number of prosecutors has constantly increased with 129 new positions in 2001 and 85 in 2002. 20 further new positions are envisaged for 2003. The number of those working for the ACPO is 11 with a total number of staff of 71, as at the time of the evaluation visit. However, the Spanish authorities underlined that the increase of means in the SPS also had a beneficial impact on the ACPO.
14. GRECO took note of the information provided by Spain, including the modernisation of communication and network facilities. As the Spanish authorities indicate, this modernisation is meant to facilitate access to and exchange of data and information, the interconnection and efficiency of relations between the services, etc. . It observed that the increase of staffing of the SPS, although it did not lead to a corresponding increase at the level of the ACPO, is likely to reduce the need for it to provide support to local/regional prosecution offices (a concern which was expressed in the evaluation report).

15. GRECO concluded that recommendation ii. has been dealt with in a satisfactory manner.

Recommendation iii.

16. *GRECO recommended to make more extensive use of the possibility offered by Law 10/95 of appointing special SAG delegates entrusted with the task of investigating and prosecuting corruption-related offences in major cities, attached to the ACPO, and composed of experienced and specially trained prosecutors assisted by equally qualified police officers and officials.*
17. The Spanish authorities recalled the conditions under which special SAG delegates can be used according to the law, that is to counter a significant and structural increase of the workload in a given district/region. It has also been indicated that for the time being, there has been no such structural need for additional SAG delegates, so that the SPS has seen no necessity to use the possibility offered by Law 10/95. The Spanish authorities also reminded the significant increase of the number of prosecutors and that the implementation of this recommendation is not part of the Ministry of Justice's competencies (due to the principle of self-organisation of the SPS).
18. GRECO took note of the information provided by Spain and the concern expressed in the evaluation report as regards the lack of specialisation and support services at the level of local/provincial/regional prosecution offices (which handle the vast majority of corruption cases). Efforts have been made to strengthen the specialisation/training (see paragraph 35) and to enhance the working conditions of the prosecutors and local prosecution offices (in addition to the increase of human means). GRECO was of the opinion that these measures have to some extent allowed to reach the same result as the one targeted by the recommendation.
19. Consequently, GRECO considered that recommendation iii. has been partly implemented and invited the Spanish authorities to provide additional information on the use of SAG delegates in the light of the future results of research work resulting from the recommendation i.

Recommendation iv.

20. *GRECO recommended to guarantee that the nature and the scope of the powers of the Government in relation to the SPS be established by law, exercised in a transparent way and in accordance with international treaties, national legislation and the general principles of law, that instructions of a general nature be made public in writing and that instructions to prosecute in a specific case carry adequate guarantees of transparency and equity, the prosecutor being entitled to submit to the court any legal arguments of their choice, even where they are under a duty to reflect in writing the instructions received.*
21. The Spanish authorities informed that some aspects of the SPS continue to be the subject of periodic debates and there has been a discussion on the general framework reforming the SPS. A draft organic law – amending the Organic Statute of the SPS - is currently in Parliament²: it would allow the Attorney General Council (as a representative body of public prosecutors) to render its opinion on appointments of prosecutors. It would also provide that the Attorney General must present to the Parliament his office's annual report - which includes the general instructions issued (it is assumed that the Parliament would be in a position to ask him explanations on how certain possible cases have been dealt with), and this report would be published in the official journal, thus enhancing the transparency of the prosecution's work.

² Act 14/2003, amending the Organic Statute of the Attorney General's Office was adopted on 26 May.

22. The Spanish authorities reminded that the country has adopted a mixed model, as regards the State Prosecution Service's position. The Attorney General himself is appointed and removed by the Government, after consultation with the General Council of the Judiciary, and the SPS is under the authority of the Prosecutor General (principles of unity of action and hierarchical dependence, according to Article 124 of the Constitution). However, the Government cannot give instructions of a general or specific nature; it can only draw the attention of the Attorney General on the relevant legal steps to be taken in relation to certain problems or events.
23. As regards the relations within the SPS, the Spanish authorities reminded that the Spanish system is based on the principle of mandatory prosecution, and that a distinction must be made between instructions and orders. Individual prosecutors must abide to both instructions and orders, which are both mandatory (Article 25 of the Statute of the SPS), but orders require an immediate behaviour (instructions are of a more general character) and may lead to serious or very serious disciplinary liability in case of non-compliance. The Spanish authorities stressed that consideration is currently being given to this issue in the framework of the overall reform of the SPS (instructions and orders would be submitted in a written form so that there could be a record of its basis and scope).
24. GRECO took note of the ongoing process of the SPS' reform in Spain, and in particular the draft amending the Statute of the SPS sent to Parliament. Various mechanisms protecting the independence of the public prosecution services are in place and they are being reinforced by measures favourable to greater transparency and the involvement of professional bodies dealing with the career system within the SPS. All these new measures would need to be tested before reaching firm conclusions.
25. For the time being, GRECO concluded that recommendation iv. has been partly implemented. It invited Spain to report on the implementation of the new measures.

Recommendation v.

26. *GRECO recommended to guarantee that instructions not to prosecute in a specific case, be prohibited in principle or remain exceptional and subject to appropriate specific controls.*
27. The Spanish authorities, in addition to the information provided under the previous recommendation, reminded that Spain has adopted the principle of mandatory prosecution; they also reminded the existing provisions of Article 27 of the SPS Statute.³ According to the general framework of the SPS under discussion (see also previous recommendation), such orders and instructions would need to be submitted in a written form and general criteria for action would be drafted in order to unify the practice at the level of each prosecutorial service, including territorial services in each province/region. In addition, meetings would be held at these levels in order to

³ "if the Public Prosecutor receives an order or instruction that he/she considers contrary to the laws or that, for whatever reason, he/she considers illegitimate, the Prosecutor shall advise his/her Chief Prosecutor of his/her opinion in a reasoned report. If the order or instruction came from the Chief Prosecutor, and if he/she does not consider the arguments alleged to be satisfactory, he/she shall pose the question to the Board of the Prosecution Office. Once the Board renders its opinion, the Chief Prosecutor shall render his/her final decision either to ratify or reconsider the order or instruction. If the order or instruction came from a superior, the report shall be sent to him/her. If this superior does not accept the arguments alleged, he/she shall decide the dispute in the same way after consulting with the Board of the Prosecution Office. If the order is given by the State Attorney General, he/she shall decide the dispute after consulting with the Board of Court Attorney Generals. If the superior ratifies his/her own instructions, he/she shall do so in a reasoned opinion and expressly relieve the subordinate of any liability that could derive from its fulfillment, or alternatively, entrust the issue to another Public Prosecutor."

facilitate the exchange of experience and practices among prosecutors from different services and districts.

28. GRECO took note of the reminder provided, and of the faculty for a prosecutor to disagree with a superior's order or instruction, which may lead to the application of the collective control mechanisms under Article 27 of the Statute. Although there can be no absolute guarantee against a possible illegitimate order/instruction, measures aimed at reducing further such risks by increasing opportunities for detection and accountability are in a process of adoption, and it is assumed that general criteria for action and general meetings at the level of the different prosecutorial services could even provide, to a certain extent, for additional safeguards.
29. GRECO was of the opinion that recommendation v. has been dealt with in a satisfactory manner. The Spanish authorities might wish to submit to GRECO the general criteria to be adopted in the future.

Recommendation vi.

30. *GRECO recommended to take particular care to ensure that the financial dependency of SPS does not diminish its independence.*
31. The Spanish authorities indicated that the budget of the SPS is part of the general State Budget, as adopted annually in Parliament, and that the institution's independence is guaranteed by the Constitution and Organic Statute. The SPS has taken advantage of recent allocations for the administration of justice, and infrastructure and new technologies schemes and programmes for streamlining justice as a whole. The IT system was harmonised in all prosecutor's offices and training was provided.
32. GRECO took note of the information provided which shows that the SPS has taken advantage of an increase of means, and was of the opinion that there are no reasons - under such circumstances - to put the financial independence of the SPS further at question.
33. Therefore, GRECO concluded that recommendation vi. has been implemented satisfactorily.

Recommendation vii.

34. *GRECO reiterated, in this context, the recommendation made above (cf. i.) on the drawing up of an overall and multidisciplinary strategy for the prevention of corruption which would steer awareness among Spanish officials about the dangers of corruption and stress the need to remain vigilant, in particular in vulnerable sectors, and report existing signs of corrupt practices to the authorities in charge of detecting, investigating and prosecuting corruption offences.*
35. Part of the information provided by the Spanish authorities is already summarized under Recommendation i. They also reported on various training activities for judges, prosecutors, police officers, treasury inspectors, civil servants – including at the level of the National Civil Service Institute – dealing with ethics, corruption, disciplinary aspects, conflicts of interests etc.
36. GRECO took note of the information provided on awareness raising measures and valued this as positive achievements. However, the issue of specific reporting practices in sectors at risk could be paid further attention, in particular in the light of the findings of research and analyses to be produced according to recommendation i.

37. GRECO concluded that recommendation vii. has been partly implemented. It invited Spain to submit additional information as regards practices for the reporting of corruption and the issue of early detection, in particular in sectors at risk.

Recommendation viii.

38. *GRECO recommended to consider the possibility of adopting a National Code of conduct for public officials, in line with the Model Code as recommended by the Committee of Ministers of the Council of Europe in Recommendation R (2000) 10, which could be a useful tool to raise awareness among Spanish officials and increase the number of reports on possible corrupt practices as well as the general level of co-operation with those investigating and prosecuting corruption offences.*
39. The Spanish authorities and current debates on the necessary reform of the civil service acknowledge the importance of codes of conducts for public officials. Codes of conducts are also said to be increasingly popular in the public and private sector. The Ministry and the Secretary of State for the Public Administrations (in October and November 2002) have confirmed the need for a broad pact to reform the public administrations and the Government has proposed the creation of a sub-commission within the Congress of Deputies to work on this pact and draft a set of basic regulations for the civil service. The Government submitted it to the Council of State, which – according to the Spanish authorities - considered that this reform would not be compatible with the Spanish legal tradition (in particular, it would raise the problem of the legal enforceability of such a code). Finally, the Spanish authorities provided a comprehensive list of statutory texts containing provisions similar to principles found in codes of conducts.
40. GRECO took note that, in accordance with the recommendation, consideration had been paid to the adoption of a Code of Conduct for Public Officials. It also observed that the issue of ethics relating to the performance of official duties is dealt with in a number of legal texts of a different nature.
41. It concluded that recommendation viii. has been implemented satisfactorily.

Recommendation ix.

42. *GRECO recommended to extend the scope of Articles 263 bis and 282 bis of the Law on criminal procedure to enable the use of controlled deliveries and undercover agents in the investigation of corruption related offences committed by organised criminal groups.*
43. The Spanish authorities take the view that the second paragraph of article 263 bis covers also controlled deliveries of money that are carried out within the scope of article 301, that is within the framework of offences related to money laundering. Given that the concept of controlled delivery (as is also the case with the undercover agent) is particularly useful to combat organised crime, the reference to article 301 would thus permit the use of this investigative technique in the most important cases related to corruption, which frequently are derived from or give rise to money laundering operations. It is also indicated that the Council of Ministers recently approved an amendment to the Criminal Code which would substitute the reference, in Article 301, to goods that are derived from “a “serious offence” with goods that are derived from “an offence.” Like Article 263 bis, Art 282 bis also refers to Article 301, regulating the laundering of money, and which by virtue of the aforementioned reform, will define as a punishable offence the acquisition, conversion or transmission of goods derived from any offence. And again, the set of offences related to corruption are included among these offences.

44. GRECO took note of the information provided and observed that the list of offences linked with organised crime for which the investigative measures in question can be used was not amended to explicitly include corruption. GRECO did not disagree with the theoretical construction submitted by the Spanish authorities and observed that, as a result of the amendment to the Criminal Code above, the requirement of the recommendation has been met.
45. Therefore, GRECO concluded that recommendation ix. has been dealt with in a satisfactory manner.

Recommendation x.

46. *GRECO recommended to confer upon the ACPO similar powers to those conferred upon the ADPO to summon public and private individuals and authorities to disclose the information in their possession which would reveal the economic situation of the suspect.*
47. The Spanish authorities underlined that, even though at the time of its setting up, the ADPO was expressly granted wide powers, in practice the ACPO has been exercising similar powers, although they have not been formally conferred. In particular, practice has shown that its multidisciplinary/interagency composition, with the presence of units of the tax Inspectorate and judicial police within the ACPO allows for direct and swift access to all relevant information. This situation was confirmed by the Head of this agency on the occasion of a statement made before the Finance Committee of the Senate on 31 October 2000.
48. GRECO took note of the information provided, indicating that the ACPO's access to information is broader than in the texts, has continued to evolve and is considered satisfactory by the ACPO itself.
49. GRECO concluded that recommendation x. has been dealt with in a satisfactory manner.

III. CONCLUSIONS

50. GRECO reached the overall conclusion that Spain has implemented satisfactorily or is in the process of implementing all the recommendations contained in the First Round Evaluation Report.
51. In view of the above, GRECO concluded that recommendations ii., v., vi., viii., ix. and x. have been implemented satisfactorily or have been dealt with in a satisfactory manner. Recommendations i., iii., iv., and vii. have been partly implemented.
52. GRECO invited the authorities of Spain to submit to it additional information as well as, where appropriate, the legal provisions relating to the implementation of recommendations i., iii., iv. and vii.
53. Besides, the Spanish authorities might wish to submit to GRECO additional information relating to the implementation of recommendation v.
54. GRECO invited the Head of the Spanish delegation to submit the information required by paragraph 52 above by 31 March 2005.