



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

**DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS**  
**DIRECTORATE OF MONITORING**



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## **Third Evaluation Round**

### **Compliance Report on Spain**

#### **“Incriminations (ETS 173 and 191, GPC 2)”**

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#### **“Transparency of Party Funding”**

Adopted by GRECO  
at its 50<sup>th</sup> Plenary Meeting  
(Strasbourg, 28 March – 1 April 2011)

## I. INTRODUCTION

1. The present Compliance Report assesses the measures taken by the authorities of Spain to implement the 15 recommendations issued in the Third Round Evaluation Report on Spain (see paragraph 2), covering 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 42<sup>nd</sup> Plenary Meeting (15 May 2009) and made public on 28 May 2009, following authorisation by Spain (Greco Eval III Rep (2008) 3E [Theme I](#) / [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the Spanish authorities submitted a Situation Report on measures taken to implement the recommendations. This report was received on 22 December 2010 and served as a basis for the Compliance Report.
4. GRECO selected Estonia and Italy to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Paloma-Krõõt TUPAY, Advisor, Legislative Policy Department, Ministry of Justice, Estonia and Mrs Anna PAGOTTO, Judge, Ministry of Justice, Italy. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. 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 Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

## II. ANALYSIS

### Theme I: Incriminations

6. It was recalled that GRECO in its evaluation report addressed 9 recommendations to Spain in respect of Theme I. Compliance with these recommendations is dealt with below.
7. The authorities of Spain explain that the Penal Code was amended by virtue of Organic Law 5/2010, adopted on 22 June 2010. The amended Penal Code (PC) entered into force on 23 December 2010; it includes a number of important reforms in the anti-corruption arena providing for, *inter alia*, the criminalisation of bribery in the private sector, a simplified classification of bribery in the public sector (lawful acts, unlawful acts and situations in which the bribe is accepted on the basis of the public official's position), explicit criminalisation of capital laundering, corporate liability, increased levels of sanctions, etc. Additional details as to the particular content of the relevant legislative changes are described below.

### **Recommendation i.**

8. *GRECO recommended to proceed swiftly with the ratification of the Criminal Law Convention on Corruption (ETS 173) as well as the signature and ratification of its Additional Protocol (ETS 191).*
9. The authorities of Spain indicate that the Criminal Law Convention on Corruption (ETS 173) was ratified on 28 April 2010; it entered into force in respect of Spain on 1 August 2010.
10. The Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) was ratified on 17 January 2011; it will enter into force in respect of Spain on 1 May 2011.
11. GRECO is pleased to note that Spain has now ratified the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191).
12. GRECO concludes that recommendation i has been implemented satisfactorily.

### **Recommendation ii.**

13. *GRECO recommended to clarify beyond doubt that immaterial advantages are covered by the relevant bribery provisions in the Penal Code.*
14. The authorities of Spain explain that the new formulation of bribery offences (Articles 419 and 421 PC) explicitly refers to “gifts, favours or rewards of any nature”. Moreover, the applicable sanctions (Article 421 PC) are no longer determined on the basis of an economic assessment of the bribe, but rather on a system of day-fines.
15. GRECO welcomes the amendments introduced in this field and the provision made in the PC to explicitly cover any kind of advantage, whether material or immaterial. GRECO also notes that the incorporation of a system of day-fines in the amended PC eliminates any reference to a purely economic assessment of the bribe.
16. GRECO concludes that recommendation ii has been implemented satisfactorily.

### **Recommendation iii.**

17. *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.*
18. The authorities of Spain stress that pursuant to the latest amendments of the PC, the criminalisation of bribery of a foreign public official is set out as an autonomous offence through the new wording of Article 445 PC and there is, therefore, no need to refer to the relevant provisions on domestic bribery to determine the applicable penalty, as was previously the case. An autonomous definition of the notion of “foreign public official” has been provided, which encompasses any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign

country, including for a public agency or public enterprise; and any official or agent of a public international organisation. The formulation of the offence of bribery of foreign officials closely follows the wording of the OECD Convention and, therefore, refers solely to active bribery committed in the case of international commercial relations. However, the authorities stress that for passive bribery of foreign officials, the provisions of passive bribery of domestic officials apply. In addition, the authorities refer to Article 427 PC extending the applicability of Articles 419 to 426 PC (active and passive bribery of domestic public officials) to officials of the European Union, as well as foreign officials of EU Member States.

19. GRECO takes note of the action taken to provide for an autonomous definition of foreign officials (including officials or agents of a public international organisation) which comprises the different categories of persons covered by the Convention. This meets the concerns raised by parts (i) and (iv) of recommendation iii. However, GRECO notes that the definition of the offence provided by Article 445 PC continues to make reference only to active bribery in the context of international transactions. As the Third Round Evaluation Report recognised (paragraph 93), although a large number of cross-border corruption cases may involve business transactions, there could well be situations where this offence would not apply (e.g. bribing a member of a foreign traffic police force in order to avoid the payment of a fine). Likewise, nothing is said in Article 445 PC about passive bribery of foreign officials. GRECO acknowledges the fact that, pursuant to Article 427 PC, both active and passive bribery (not limited to international business transactions) of some international officials (i.e. officials, agents, seconded persons working in any of the institutions/agencies of the European Union), as well as foreign officials from EU Member States would be covered. However, GRECO has difficulties in accepting that the provisions on bribery of domestic officials apply in all other cases (foreign officials from countries which are not members of the EU and agents of other international organisations) since the offence of bribery of foreign officials is construed, in the Spanish PC, as an autonomous offence; no case-law/jurisprudence has been provided by the authorities to prove otherwise. Therefore, GRECO concludes that parts (ii) and (iii) of recommendation iii have not been fully addressed.
20. GRECO concludes that recommendation iii has been partly implemented.

#### **Recommendation iv.**

21. *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.*
22. The authorities of Spain explain that, the formulation of bribery offences in the amended PC has been reworked and thereby simplified; the relevant provisions on both active and passive bribery of domestic officials apply to jurors and arbitrators who are specifically referred to in Article 423 PC (as also confirmed by jurisprudence in this domain)<sup>1</sup>.
23. There is no explicit reference in the PC to the criminalisation of bribery of foreign jurors and arbitrators. The ratification of the Additional Protocol to the Convention (ETS 191) in January 2011 has paved the way for further action in this area; in this connection, the authorities refer to the possibility of introducing further legislative changes to criminalise bribery of foreign jurors and arbitrators as an autonomous offence.

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<sup>1</sup> For example, judgment of the Supreme Court, STS of 2 April 2009.

24. GRECO takes note of the information provided by the authorities as to the coverage of active and passive bribery of domestic jurors and arbitrators in the reworked provisions of the PC, in line with jurisprudence in this field. This meets the concerns raised in the first part of recommendation iv. GRECO is pleased to note that the ratification of the Additional Protocol to the Convention (ETS 191) will bring about additional developments with respect to implementation of the second part of recommendation iv referring to the criminalisation of bribery of foreign arbitrators and jurors. GRECO looks forward to receiving further details in this respect.
25. GRECO concludes that recommendation iv has been partly implemented.

**Recommendation v.**

26. *GRECO recommended to criminalise bribery in the private sector in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173).*
27. The authorities of Spain explain that bribery in the private sector has been criminalised in Article 286bis PC. Concerning active bribery, Article 286bis (1) PC refers to “whoever, directly or through an intermediary, promises, offers or gives to directors, managers, employees and collaborators of a company or of a corporation, association or foundation or organisation an undue benefit or advantage of any kind, for his/her own benefit or that of a third party, against others, failing to fulfil his/her obligations regarding acquisitions or sale of goods or in the hiring of professional services, will be punished with the penalty of imprisonment from six months to four years, specific disqualification from practicing any industry or trade for a period of between one to six years and a fine ranging from the value to three times the value of the benefit or advantage”.
28. As far as the construction of the passive bribery offence is concerned, Article 286bis (2) PC provides that “the same penalty will be imposed on directors, managers, employees and collaborators of a company or of a corporation, association or foundation who directly or through an intermediary receives requests or accepts an undue benefit or advantage of any kind with the aim to favour, over a third party, the person that gives or from whom he expects the undue benefit or advantage in breach of his duties regarding acquisitions or sale of goods or in the hiring of professional services”.
29. GRECO welcomes the important move made by the authorities to criminalise bribery in the private sector, an area where specific provisions were lacking in the past. The aforementioned criminalisation, 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 is, however, one outstanding issue, namely, the coverage of the request, receipt or acceptance of the promise of an advantage. GRECO calls for additional legislative measures to remedy this shortcoming and thereby fully align domestic provisions with Article 8 of the Convention concerning passive bribery in the private sector, as recommended.
30. GRECO concludes that recommendation v has been partly implemented.

#### **Recommendation vi.**

31. *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.*
32. The authorities of Spain reiterate that the offence of active trading in influence is punishable as aiding or inciting passive trading in influence; the general rules on participation contained in Articles 28 and 65 (3) PC apply.
33. As regards the scope of perpetrators, the authorities state that foreign and international officials are covered by Article 445 PC.
34. With respect to the material element of trading in influence offences, both material and immaterial advantages are covered. The authorities further substantiate the latter fact by referring to jurisprudence confirming that advantages could be of any type, not necessarily monetary.
35. GRECO notes that the explanation provided by the authorities concerning the criminalisation of active trading in influence only reiterates the position of the authorities already taken into consideration in the Third Round Evaluation Report, and therefore, does not add any new element of analysis in this respect, as compared to the situation assessed at that time. GRECO notes that no case has been cited to demonstrate, that even though active trading in influence is not construed as an autonomous offence in the PC, the prosecution of an active trading in influence offence is still possible. Moreover, GRECO remains dubious as to the question of how to deal with cases where an offer is rejected by the person who has or is presumed to have some influence, i.e. when there is no principal offender. Therefore, GRECO considers that part (i) of the recommendation has not been satisfactorily addressed.
36. With respect to part (ii) of the recommendation, GRECO notes, that following the latest amendments to the PC, the definition of Article 445 PC on foreign and international officials has been reworked to provide for a broader coverage of this category of person. However, as described in paragraph 19 of the present report, Article 445 PC only refers to active bribery committed in the course of business transactions. No case/court decision has been cited to corroborate the argumentation of the authorities in this regard, notably, that trading in influence provisions are applicable to foreign and international officials.
37. With respect to part (iii) of the recommendation, GRECO accepts that, on the basis of consolidated jurisprudence, both material and immaterial advantages are considered to be covered by legislation.
38. GRECO concludes that recommendation vi has been partly implemented.

#### **Recommendation vii.**

39. *GRECO recommended to (i) increase the sanctions for the bribery offences under Articles 421 (omission of acts inherent to the public official's duties), 425(1) (performance of acts inherent to the public official's duties) and 426 PC (bribe offered in consideration of the public official's*

*position or in order for the public official to fulfil a lawful act) in order to ensure that these offences can give rise to extradition and (ii) increase the sanctions for trading in influence.*

40. The authorities of Spain reiterate that a simplification of bribery provisions has taken place through the latest amendments of the PC. In particular, passive bribery offences are now classified into three (instead of five) provisions dealing with unlawful official acts (Article 419 PC), lawful official acts (Article 420 PC) and situations in which the bribe is accepted on the basis of the public official's position (Articles 420 PC and 422 PC). The aforementioned reorganisation of bribery offences has led to a better adjustment of the applicable sanctions, including by resorting to imprisonment penalties in all cases. With respect to bribery to omit acts inherent to the public official's duties (ex-Article 421 PC), this is now dealt with in Article 419 PC concerning unlawful official acts, which provides for imprisonment ranging from 3 to 6 years, fines and professional disqualification. With respect to bribery for the performance of acts inherent to the official's duties (ex-Article 425(1) PC) and bribery in order for the public official to fulfil a lawful act (ex-Article 426 PC), these are now dealt with in Article 420 PC concerning lawful official acts, which provides for imprisonment ranging from 2 to 4 years, fines and professional disqualification. With respect to bribery in consideration of the public official's position (ex-Article 426 PC), this is now dealt with in Article 422 PC, which provides for imprisonment from 6 months to 1 year and temporary suspension from public office for a period ranging between 1 and 3 years.
41. Concerning the applicable sanctions for trading in influence, these have been increased: imprisonment now ranges from 6 months to 2 years (before, imprisonment ranged from 6 months to 1 year); if the undue advantage pursued by the corrupt deal is obtained, the sanctions to be applied will be in the upper half of the scale. In addition, fines and temporary disqualification from public office (from 3 to 6 years) apply.
42. GRECO welcomes the developments reported. GRECO noted in its Third Round Evaluation Report (paragraph 97) that breaches of ex-Articles 421, 425(1) and 426 PC were only subject to sanctions consisting of fines and professional disqualification, making extradition impossible. Resorting to imprisonment sentences appears now to be possible in all the aforementioned cases. Moreover, the amendments to the PC have increased the minimum imprisonment sentences applicable to bribery offences, i.e. three years' imprisonment for unlawful official acts (instead of two) and two years' imprisonment for lawful official acts (instead of one or none). Consequently, GRECO notes that its previous concerns, as expressed in the first part of the recommendation, have now been adequately addressed. Furthermore, Spain has not only increased the applicable penalties for the aforementioned breaches, as recommended, but has also restructured and reworded the relevant provisions concerning bribery in order to create a simpler and more coherent legal framework. It is recalled that, while departing from issuing a formal recommendation in this respect, GRECO had encouraged the authorities to move in this direction (paragraph 91, Third Round Evaluation Report).
43. With respect to the second part of the recommendation, GRECO notes that the applicable penalties for trading in influence have also been increased.
44. Therefore, GRECO concludes that recommendation vii has been implemented satisfactorily.

#### **Recommendation viii.**

45. *GRECO recommended to abolish the requirement of dual criminality with respect to offences of bribery and trading in influence committed abroad.*

46. The authorities of Spain explain that they have entered a reservation with respect to Article 17, paragraph 1.b of the Convention at the time of depositing the instrument of ratification. Accordingly, dual criminality applies for the prosecution of bribery and trading influence offences committed abroad. That said, in the context of the ongoing amendments to the Criminal Procedure Code, further consideration will be given to the issue of dual criminality and the possibility to withdraw the relevant reservation to the Convention.
47. The Third Round Evaluation Report (paragraph 87) acknowledged the possibility for the Spanish authorities to introduce reservations to the Convention at the time of ratification, and the impact that such reservations may have on several recommendations, including recommendation viii. For this reason, GRECO accepts at this stage that the PC continues to provide for dual criminality in respect of corruption offences. That said, GRECO still encourages the authorities to reconsider their position; in this connection, GRECO welcomes the indications provided by the authorities that new developments may take place in this area in the framework of the ongoing reform of the Criminal Procedure Code. The abolishment of the dual criminality requirement would undoubtedly strengthen Spain's possibilities to fight corruption committed abroad. The authorities may wish to keep GRECO informed of such developments.
48. In light of the new legal situation set out above, GRECO concludes that recommendation viii has been dealt with in a satisfactory manner.

#### **Recommendation ix.**

49. *GRECO recommended to keep the application of Article 427 PC on effective regret under review in order to ascertain the potential use and misuse of this defence in the investigation and prosecution of corruption and, if need be, to take appropriate measures.*
50. The authorities of Spain report that they have reviewed the (very limited) experience with the application of effective regret and have come to the conclusion that the existing legislative safeguards in its application sufficiently prevent any potential for misuse of this type of defence. It has been concluded that the defence of effective regret has never been misused and that there is consequently no need to modify Article 427 PC.
51. GRECO accepts that the authorities have looked into the, so far limited, application of the defence of effective regret in practice and have concluded that up to now there have been no indications of abuse. GRECO wishes to stress, however, that more importance could have been given in the analysis of Article 427 PC itself and its possible inherent risks of misuse. The Spanish authorities may therefore wish to keep this issue under review.
52. GRECO concludes that recommendation ix has been dealt with in a satisfactory manner.

#### **Theme II: Transparency of Party Funding**

53. It is recalled that GRECO, in its Evaluation Report, addressed 6 recommendations to Spain in respect of Theme II.
54. The authorities of Spain report on a number of recommendations raised by the Court of Audit, the main institution responsible for the control of party funding, and addressed to the relevant Committee/Commission of Parliament for due consideration and possible remedial action



(Resolution of the Court of Audit of 22 June 2010). It is recalled that the recommendations of the Court of Audit have a non-binding nature.

**Recommendation i.**

55. *GRECO recommended to take appropriate measures to ensure that loans granted to political parties are not used to circumvent political financing regulations.*
56. The authorities of Spain reiterate that Organic Law 8/2007 on Political Parties Funding allows political parties to contract commercial loans which do not deviate from the “habits and customs of the usual commercial traffic”; loans do not fall under the applicable restrictions on donations. The conditions of contracted loans must be specified in financial reports of political parties; any irregularity detected by the Court of Audit, must be published. In the first auditing performed by the Court, following enactment of Organic Law 8/2007), no irregularities were detected in the reported loans.
57. The authorities further indicate that, in view of the situation of indebtedness of political parties vis-à-vis credit institutions, the Court of Audit has recommended that political parties set in place the necessary measures and mechanisms to better rationalise and manage their resources in order to limit their debts and financial dependence on commercial banks. It is envisaged that future reports from the Court of Audit will include information concerning the level of indebtedness of political parties.
58. GRECO recalls that, in its Third Round Evaluation Report on Spain (paragraph 74), it raised two particular issues in this area. Firstly, GRECO voiced concerns as to the situation of indebtedness of political parties and the fact that this situation could make parties more vulnerable to/dependent on credit institutions. In this connection, the authorities now report on a recommendation made by the Court of Audit to political parties to better manage their finances and reduce their debts. While this action is to be welcomed, GRECO notes that the recommendations of the Court of Audit have a non-binding nature. No update has been received as to whether the level of indebtedness of political parties has effectively been reduced in practice. The reported plans of the Court of Audit to publicise in its future reports on party financing information concerning indebtedness levels of political parties is a positive measure which should assist in bringing further light into this area of concern.
59. Secondly, GRECO pointed at the lack of specific regulations concerning the terms and conditions for granting loans for party/campaign funding purposes (such as the maximum value of loans, permissible lenders, terms of repayment, etc.); other than a general provision included in Organic Law 8/2007 stating that the political parties may agree with credit institutions on the conditions of contracted loans, which are, in any event, to respect the “habits and customs of the usual commercial traffic”. This lack of specific regulation acquires particular significance in Spain where loans are an important source of political financing, which do not fall under the thresholds on contributions from individual donors. In this connection, GRECO has repeatedly stressed, in the course of its Third Round Evaluation, that loans granted under particularly advantageous or preferential terms deviating from general market conditions, as well as written-off loans which are not reimbursed, do in fact amount to donations. GRECO notes that the authorities now refer again to Law 8/2007; nothing new has been added in this respect. More decisive measures are required in this field to effectively ensure that loans granted to political parties are not used to circumvent political financing regulations.

60. GRECO concludes that recommendation i has not been implemented.

**Recommendation ii.**

61. *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.*

62. The authorities of Spain stress that, pursuant to Organic Law 8/2007, a political party is a single economic/financial unit, whose accounts are to consolidate any sub-branch/organisation. The Court of Audit has recently emphasised, in the framework of its document “Conceptual Framework of Financial Information of Political Parties” (24 June 2010), that party accounts are to include financial data of its local branches, as well as related entities. The aforementioned document points at the need for consolidation of political accounts and encourages political parties to take action to this end.

63. GRECO takes note of the information provided. It welcomes the recommendation made by the Court of Audit to political parties to provide for consolidated reports, including local branches and related entities. The action taken by the Court of Audit seems to point at outstanding challenges in this field; that said, no particular example has been provided as to whether political parties are effectively providing consolidated accounts in practice. The Third Round Evaluation Report (paragraph 75) reflected on malpractice occurring in this respect; notably, regarding the accounts of local branches, where risks of corruption are particularly high given the important volume of economic operations performed at local level, e.g. procurement and licensing procedures, urban planning. Moreover, foundations and associations linked to political parties are not required to report on their expenditure; GRECO remains concerned as to the risk of related entities indirectly shouldering expenditure by the political parties. Overall, the measures taken with respect to implementation of recommendation ii appear to be rather limited; there is no evidence that the transparency of the income and expenditure of local branches and related entities has effectively been increased.

64. GRECO concludes that recommendation ii has not been implemented.

**Recommendation iii.**

65. *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 Law 8/2007 on Political Parties Funding, thus allowing a meaningful comparison both over time and between parties.*

66. The authorities of Spain explain that Organic Law 8/2007 establishes an obligation for the Court of Audit to develop a specific accounting plan for political parties. On 24 June 2010, the Court of Audit adopted a “Conceptual Framework of Financial Information of Political Parties”, which provides guidance for the subsequent establishment of an accounting plan. A draft accounting plan is currently being prepared in close coordination with the Accountancy and Auditing Institute; a cooperation agreement between the latter institution and the Court of Audit was signed in January 2011 with a view to issuing an accounting plan for political parties in 8 months’ time (i.e. by the second semester of 2011). The aforementioned plan is meant to constitute the common framework for recording and reporting (annual/electoral) parties’ accounts and returns; it will

reportedly include detailed rules (e.g. on accounting definitions, recording and assessment of financial details, chart of accounts) aimed at ensuring homogeneity in the financial information provided by political parties, which should ultimately facilitate comparisons over time and amongst parties themselves. It will have a mandatory nature for all political parties.

67. GRECO takes note of the information reported. A draft account plan for political parties is being prepared; if and when adopted, it may facilitate the uniform reporting of operational and electoral finances, in line with the first part of the recommendation. In addition to the fact that financial reports of political parties varied greatly in their contents, the Third Round Evaluation Report (paragraph 76) also highlighted that such reports were not being released in a timely manner. Nothing has been reported as to current publication practice of the Court of Audit in this respect (and any possible improvement to the situation assessed in the Third Round Evaluation Report). GRECO underlines that both comparability of financial reports and their timeliness are decisive factors in assuring transparency of political funds.
68. GRECO concludes that recommendation iii is partly implemented.

**Recommendation iv.**

69. *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.*
70. The authorities of Spain reflect on the legal obligation for political parties to set-up a system of internal control, as established by Organic Law 8/2007. Moreover, the Law provides that the outcome of such control is to be documented through a report of the internal auditor, which is to be attached to the relevant financial reports. The Court of Audit indicates that the aforementioned attachment on internal audit is generally lacking in the financial reports submitted by political parties. For this reason, the Court of Audit has recommended political parties, in its Resolution of 22 June 2010, to effectively establish internal audit systems.
71. GRECO takes note of the information provided. It notes that very limited action has been taken to enhance the system of internal audit of political parties. Although the Court of Audit has contacted political parties to encourage them to set in place internal control mechanisms, no indication has been provided as to whether any particular action has been taken by political parties in this regard.
72. GRECO concludes that recommendation iv has not been implemented.

**Recommendation v.**

73. *GRECO recommended to increase the financial and personnel resources dedicated to the Court of Audit so that it is better equipped to perform effectively its monitoring and enforcement tasks concerning political financing, including by ensuring a more substantial supervision of political parties' financial reports.*
74. The authorities of Spain explain that, in a context of serious economic and financial crisis in the country, the Court of Audit resources have remained largely stable. In fact, an increase of one person has been secured since the adoption of the Third Round Evaluation Report on Spain: there are currently 19 senior civil servants responsible for monitoring/supervising parties' finances.

75. GRECO takes note of the information provided. While it understands the current difficult economic situation in Spain, it notes that the resources of the Court of Audit were deemed to be insufficient to perform its new responsibilities (monitoring/supervisory/enforcement role) under Organic Law 8/2007 (paragraphs 78 and 79, Third Round Evaluation Report). The reported increase, of only one more person, falls short of the aim pursued by the recommendation, notably, to be able to ensure a more substantial (and timely) supervision of political parties' financial reports. The authorities will have the opportunity to report on future improvements in the framework of the Second Compliance Report, which will deal with the action subsequently taken by the Spanish authorities in response to the current report.
76. GRECO concludes that recommendation v has been partly implemented.

#### **Recommendation vi.**

77. *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.*
78. The authorities of Spain state that the Court of Audit presented, on 24 June 2010, several proposals to the Constitutional Commission of Parliament in order to better regulate penalties for infringements of party funding rules. Moreover, amendments to Organic Law 5/1985 on the General Election Regime were adopted in February 2011 providing, *inter alia*, for an upgraded sanctioning regime for violations of campaign rules.
79. GRECO takes note of the information provided. It welcomes the amendments to Organic Law 5/1985 on the General Election Regime to provide for additional sanctions for, *inter alia*, breaches of campaign funding regulations. GRECO is pleased to note that the Court of Audit has raised the concerns expressed in recommendation vi to the relevant Commission in Parliament, so that amendments are made in Organic Law 8/2007 to enlarge the scope of its sanctioning provisions. The steps taken so far in respect of this recommendation are going in the right direction, but more determined action, followed by concrete results, is still needed to extend the range of penalties and enlarge the scope of the sanctioning provisions to cover all persons/entities (including individual donors) upon which Organic Law 8/2007 imposes obligations.
80. GRECO concludes that recommendation vi has been partly implemented.

### **III. CONCLUSIONS**

81. **In view of the above, GRECO concludes that Spain has implemented satisfactorily or dealt with in a satisfactory manner five of the fifteen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendations i, ii and vii have been implemented satisfactorily; recommendations viii and ix have been dealt with in a satisfactory manner. Recommendations iii, iv, v and vi have been partly implemented. With respect to Theme II – Transparency of Party Funding, recommendations iii, v and vi have been partly implemented; recommendations i, ii and iv have not been implemented.
82. Spain has introduced significant improvements concerning the criminalisation of corruption offences, as regulated by the latest amendments to the Penal Code which were introduced by

Organic Law 5/2010. Moreover, Spain ratified the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191) in 2010 and 2011 respectively. Accession to these two pivotal instruments in the fight against corruption has paved the way to proceed with further adjustments in domestic legislation, including with respect to bribery of foreign officials, bribery of foreign jurors and arbitrators and jurisdiction issues. Although the current criminalisation of corruption offences in Spain largely meets the requirements of the Convention, some additional legislative adjustments will still be needed with respect to the offences of trading in influence and bribery in the private sector.

83. The progress reported with respect to transparency of party funding, is much more modest. While GRECO welcomes the attention paid by the Court of Audit to the issues raised in the Third Evaluation Report on Spain, it takes the view that more decisive action is to be taken in Spain in this area, including (but not limited to) legislative changes, to effectively increase transparency of party and campaign accounts, and thereby decrease possibilities for corruption in a sector which is identified as particularly prone to malpractice. Such changes must touch upon those areas where GRECO has identified clear challenges including the regulation of loans, the consolidation of party accounts (which must comprise details on the income and expenditure of local branches and connected entities), the strengthening of internal control of political parties, the development of a more comprehensive system of sanctions and the upgrading of the resources of the Court of Audit so that it is better equipped to perform its key supervisory and enforcement responsibilities.
84. In the light of what has been stated in paragraphs 81 to 83, GRECO notes that Spain has made tangible efforts to comply with the recommendations issued in respect of Theme I – Incriminations; the authorities must be commended for their action in this field. Rather limited steps have been taken to meet the concerns raised in respect of Theme II – Transparency of Party Funding; much more clearly needs to be done in this area. GRECO invites the Head of the delegation of Spain to submit additional information regarding the implementation of recommendations iii, iv, v and vi (Theme I – Incriminations) and recommendations i to vi (Theme II – Transparency of Party Funding) by 31 October 2012 at the latest.
85. 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.