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FIFTH EVALUATION ROUND

Preventing corruption and promoting integrity in central Governments (top executive functions) and law enforcement agencies

EVALUATION REPORT

SPAIN

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I. EXECUTIVE SUMMARY

1. Corruption is a highly topical issue in Spain. Citizens' confidence in public institutions is low and, over the past quinquennium, corruption persistently ranks as a most pressing concern for society, only overtaken by unemployment. Many corruption cases have emerged and been brought to court in recent years, revealing corruption risks and mismanagement, particularly, in local-level public procurement in urban planning and construction. A judicial ruling on corruption was also an alleged reason behind a parliamentary no confidence vote which, for the first time in Spanish democratic history, ousted the Government in June 2018.

2. A set of structural reforms was launched, in 2013, to promote integrity in public life under the so-called Regeneration Plan (*Plan de regeneración democrática)*. A draft Anticorruption and Whistleblower Protection Law - which foresees, *inter alia*, the establishment of an Anticorruption Authority, as well as more stringent provisions on financial transparency, post-employment, lobbying and sanctions - has been lingering in Parliament since 2014. The time is ripe to engage in a coordinated and holistic strategy against corruption.

3. As regards government officials (PTEF), Law 3/2015 on the Exercise of High Office constitutes a noteworthy effort to modernise corruption prevention policy for high ranking officials. Its provisions deal with transparency, integrity and the prevention of conflicts of interest, as well as accountability in office. Nevertheless, experience with it shows that work lies ahead in the control of its practical application, particularly, regarding its advisory, supervisory and enforcement regime. The status, powers and resources of the Office for the Conflicts of Interest must be substantially stepped up; its independence must be assured. The issue of revolving doors requires further intervention in law and in practice. Finally, it is cardinal that advisors, because of the type of management/decision-making work they perform, are also subject to the highest transparency and integrity obligations.

4. Positive steps have been made towards transparency following the adoption of Law 19/2013 on Transparency, Access to Information and Good Governance. The Transparency Portal is a notable tool which serves as a key point of access and diffusion of public data. However, more needs to be done to overcome the reluctance of certain public authorities (particularly, public companies/entities) to facilitate access to administrative information. Regulatory adjustments may prove valuable in this respect with a view to ensuring that citizens are effectively granted access to both timely and meaningful data. This is particularly true with respect to PTEF related information, including agendas (and contacts with lobbyists and other third parties who seek to influence governmental legislative and other work), economic benefits and financial disclosures. Moreover, for implementation of access to information requirements to become a reality, the powers and resources of the Council for Transparency and Good Governance must be significantly upgraded.

5. It is clear that oversight and accountability are the two areas where Spain needs to pay greater attention. In respect to the latter, the system for criminal responsibility of members of government (so-called *aforamiento*) is due for revision.

6. As regards law enforcement officials (LEO), there are two bodies with such a duty in Spain: the Police and the Civil Guard. The Spanish public's overall trust and confidence in them is one of the highest amid public bodies. There are many internal processes and good

practices in both forces that protect and reassure the communities that they serve. Having acknowledged that, further improvements are called upon in three central areas: prevention and continuous improvement, transparency and legitimacy, and finally, whistleblower protection.

7. More particularly, a specific focus on prevention activity relating to corruption-related risk areas is necessary to identify national trends of concern in order to imbed processes, learning and adoption of best-practice. Likewise, more can be done to assure the reinforcement of ethical standards and their communication on a daily basis and to provide for operational neutrality. The regulation and monitoring of both in-service ancillary activities, but also post-service employment, must be reviewed in order to avoid improper assignments in the private sector which could generate situations of conflicts of interest.

8. Furthermore, in order to instil better confidence from within LEO workforce, a more transparent approach in relation to areas such as recruitment, transfers, appraisals and posting of staff is required, to evidence personnel decisions in a more open and objective manner. The same can be said as to the allocation of bonuses, medals and other benefits. Greater transparency, objectivity and fairness assurances are recommended in relation to disciplinary proceedings, notably, by excluding any possibility of a supervisor deciding on such matters single-handedly.

9. Finally, a holistic and effective framework for the protection of whistleblowers is yet to be adopted in Spain. This sensitive issue is also crucial for law enforcement officials. In this connection, the current mechanisms to warrant protection of the physical identity of whistleblowers ought to be substantially stepped up, with a view to better ensuring that the trust and confidence of the whistleblower is further prioritised and strengthened.

10. Following general elections in April 2019, GRECO trusts that the recommendations included in this report serve as a roadmap for reform in those areas that need additional development.

II. INTRODUCTION AND METHODOLOGY

11. Spain is one of the founding members of GRECO, set up in 1999, and has been evaluated in the framework of GRECO's First (in June 2001), Second (in May 2005), Third (in May 2009) and Fourth (in December 2013) Evaluation Rounds. The resulting Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's website (www.coe.int/greco). This Fifth Evaluation Round was launched on 1 January 2017.[1]

12. The objective of this report is to evaluate the effectiveness of the measures adopted by the authorities of Spain to prevent corruption and promote integrity in central Governments (top executive functions) and law enforcement agencies. The report contains a critical analysis of the situation, reflecting on the efforts made by the actors concerned and the results achieved. It identifies possible shortcomings and makes recommendations for improvement. In keeping with the practice of GRECO, the recommendations are addressed, via the Head of delegation in GRECO, to the authorities of Spain, which determine the national institutions/bodies that are to be responsible for taking the requisite action. Within 18 months following the adoption of this report, Spain shall report back on the action taken in response to GRECO's recommendations.

13. To prepare this report, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Spain from 21 to 25 January 2019, and reference was made to the responses by Spain to the Evaluation Questionnaire (GrecoEval5(2018)3), as well as other information received, including from civil society. The GET was composed of Mr Damir BRNETIĆ, Chief Police Advisor, Ministry of the Interior, Police Academy, Police College (Croatia), Mr Matthew GARDNER, former Chief Superintendent and Operational Commander for the Metropolitan Police's Directorate of Professional Standards, Internal Affairs (UK), Ms Alexandra KAPISOVSKA, Legal Adviser, Prevention Corruption Department, Office of the Government (Slovak Republic), and Mr Jens-Oscar NERGÅRD, Senior Adviser, Ministry of Local Government and Modernisation (Norway). The GET was supported by Ms Laura SANZ-LEVIA from GRECO's Secretariat.

14. The GET held talks with the Ministry of Justice, the Ministry for Territorial Policy and Public Service and its Office on Conflicts of Interest, the Ministry of the Interior, the Office for Regulatory Coordination and Quality of the Ministry of the Presidency and for Parliament Relations and Equality, the Council for Transparency and Good Governance, the Ombudsman Office, the Court of Auditors, the General Council of the Judiciary and the Special Prosecutor's Office against Corruption and Organised Crime. It also interviewed representatives of the National Police and the Civil Guard, as well as their respective trade unions/professional organisations. Finally, the GET met with non-Government representatives, including members of academia, journalists, Transparency International, Access Info Europe and Hay Derecho.

[1] More information on the methodology is contained in the Evaluation Questionnaire which is available on GRECO's website.

III. CONTEXT

15. Spain has been a member of GRECO since 1999. Since then, it has been subject to four evaluation rounds focusing on different topics linked to the prevention of and fight against corruption[2]. In summary, 80% of recommendations were implemented in the first evaluation round, 50% in the second evaluation round, and 73% in the third evaluation round, with the other recommendations being partly implemented. In respect of GRECO's Fourth Evaluation Round, 18% of recommendations have been fully implemented, 73% partly implemented and 9% (one recommendation) not implemented. The compliance procedure under the fourth evaluation round is, however, still on-going.

16. Corruption is a highly topical issue in Spain, with high-profile cases having shaken key institutions of the State. A judicial ruling on corruption was also an alleged reason behind a parliamentary no confidence vote which, for the first time in Spanish democratic history, ousted the Government in June 2018. Following the global financial crisis and recession of 2008-2009, whose impact on Spain was particularly severe, the country has been struggling for most of the last decade between the much needed economic reform and an environment of political instability and fragmentation. Considerable improvement has occurred regarding economic recovery and growth[3]. However, especially the young generation still faces daunting economic challenges[4].

17. Likewise, a set of structural reforms was launched in 2013 to promote integrity in public life under the so-called Regeneration Plan (*Plan de regeneración democrática)*, including greater control of the economic activity of political parties, a specific regulatory framework for senior positions in public administration (including rules on transparency and the prevention of conflicts of interest), a holistic public administration reform for cost-efficiency and innovation purposes, and 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.). Additional anticorruption measures, of both a preventive and a repressive nature, were recently introduced in late 2018-early 2019, including further amendments to the Criminal Code (Organic Law 1/2019), integrity mechanisms in Parliament (Code of Conduct and implementation-related tools) and reforms in the judiciary (Organic Law 4/2018) [5].

18. However, citizens' confidence in public institutions has not improved, rather, on the contrary: since the economic crisis, corruption persistently ranks as one of the three most pressing concerns. Politicians are those most affected by this negative perception[6]. Many corruption cases have emerged and been brought to court in recent years, revealing

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[2] Evaluation round I: Independence, specialisation and means available to national bodies engaged in the prevention and fight against corruption / Extent and scope of immunities; Evaluation round II: Identification, seizure and confiscation of corruption proceeds / Public administration and corruption / Prevention of legal persons being used as shields for corruption / Tax and financial legislation to counter corruption / Links between corruption, organised crime and money laundering; Evaluation round III: Criminalisation of corruption / Transparency of party funding; Evaluation round IV: Prevention of corruption in respect of members of Parliament, judges and prosecutors.

[3] Government at a Glance, Spain Country Fact Sheet, OECD (2017)

[4] Spain : Article IV Consultation, Country Report No. 18/330, International Monetary Fund (2018)

[5] See also GRECO's Third Round Compliance and Fourth Round Compliance Reports for the reforms undertaken on different fronts.

[6] Surveys on Perceptions of the Main Problems in Spain (2013-2018), Centre for Sociological Research (CIS)

corruption risks and mismanagement, particularly, in local-level public procurement in urban planning and construction[7]. Even members of the royal family were investigated over corruption probes and in one case convicted.

19. In the last five years, Spain has a score of 58 (out of a total score of 100 - where 0 equates to highly corrupt and 100 means very clean) in the 2018 Transparency International´s Corruption Perception Index; it further ranks 41 out of the 180 countries included in the survey[8]. According to the 2017 Eurobarometer, 94% of respondents think that corruption is widespread in Spain (EU average: 68%), 58% say they have been personally affected by it (EU average 25%) but only 4% have experienced or witnessed a case of corruption (EU average: 5%). The giving and taking of bribes and the abuse of power for personal gain are believed to be prevalent in political parties (80%), politicians at national, regional or local level (74%), officials awarding public tenders and issuing building permits (45 and 50%, respectively), and private companies (49%). Close ties between business and politics are believed to be the primary source of corruption (44%) as is favouring friends (43%) and having political connections (28%)[9].

20. The 2017 Eurobarometer refers to the police as the most trusted institution for making a corruption-related complaint, followed by the justice system. Further, the police services are considered reliable in protecting companies from crime[10]. The necessary mechanisms are in place to investigate and punish abuse and corruption in the police services; there are isolated reports of police corruption, but there are no reports of impunity and civilian authorities maintain effective control over security forces[11]. More could be done to prevent corruption with the police, as shown in this report.

21. A recent study finds that improving institutional quality and decidedly curbing corruption could raise Spain's GDP per capita by 16% in a 15-year period. The study indicates that the country performs best in the categories of voice and accountability, rule of law and Government effectiveness, rather than in control of corruption. The study further substantiates that for material improvements in the latter, three main lines of action should follow, including a reinforced system of checks and balances; strengthened independence, quality and transparency in public administration; and greater effectiveness of elections as mechanisms of selection and control of political representatives[12].

[7] See for example, EU Anticorruption Report, Annex IX on Spain, European Commission (2014) and National Integrity System of Spain, Transparency International (2012).
[8] Transparency International Corruption Perception Index (2018)
[9] Eurobarometer (2017)
[10] Global Competitiveness Report (2017-2018), World Economic Forum
[11] Spain Report on Human Right Practices for 2017, US Department of State
[12] Study on The economic cost of the institutional quality deficit and corruption in Spain. Authors: Francisco Alcalá Agulló and Fernando Jiménez Sánchez. Ed. Fundación BBVA, 2018

IV. CORRUPTION PREVENTION IN CENTRAL GOVERNMENTS (TOP EXECUTIVE FUNCTIONS)

System of Government and top executive functions

System of Government

22. Spain is a parliamentary democracy, in the form of a constitutional monarchy. The King is the Head of State: this is largely of a symbolic character as he has virtually no personal discretion and is limited to representative and ceremonial duties; he symbolises unity and continuity. The 1978 Constitution of Spain exhaustively lists the King's powers (or duties, in more precise terms)[13] and strictly confines their exercise to countersignature by the Prime Minister and, as applicable, the responsible ministers. The nomination and appointment of the Prime Minister, and the order to prematurely dissolve Parliament and hold new elections if the Prime Minister cannot be appointed, must be countersigned by the president of the Congress of Deputies (Lower House of Parliament). The persons countersigning the King's acts are liable for them (Articles 62 to 64, Constitution). Executive powers are expressly vested in the Government, not in the King: the Government conducts domestic and foreign policy, civil and military administration and the defence of the State; it exercises executive authority in accordance with the law (Article 97, Constitution and Article 1(1), Law 50/1997 on Government).

23. GRECO agreed that a head of State would be covered by the 5th evaluation round under the "central Government (top executive functions)" topic where that individual actively participates on a regular basis in the development and/or the execution of Governmental functions, or advises the Government on such functions. These may include determining and implementing policies, enforcing laws, proposing and/or implementing legislation, adopting and implementing by-laws/normative decrees, taking decisions on Government expenditure and taking decisions on the appointment of individuals to top executive functions.

24. The GET notes that in Spain, the King does not actively participate on a regular basis in the development and/or the execution of Governmental functions. The King clearly has a representative and honorary role. The King is granted no independent executive powers by the Constitution; all his acts and decisions must be prepared and countersigned by a member of the Government, which prevents the King from exercising discretionary executive powers. Accordingly, the functions of the King of Spain do not fall within the scope of "persons entrusted with top executive functions" (PTEF) addressed by the present evaluation round.

25. Parliament (*Cortes Generales*) is made up of two elected chambers: the Congress of Deputies (*Congreso de los Diputados*), which holds the primary legislative power (lower

[13] The King sanctions and promulgates laws that have been worked out by the other branches of Government. He formally convenes and dissolves the Cortes and calls for elections and for referenda. He appoints the Prime Minister after consultation with the Cortes and names the other ministers, upon the recommendation of the prime minister. He also signs decrees made in the Council of Ministers and ratifies civil and military appointments. The King does not have the power to direct foreign affairs, but is rather vested with the symbolic role of representing Spain in international relations. The King also has the duty to indicate the state's consent to international treaties and, with the prior authorisation of Parliament, to declare war and peace. The King is the supreme commander of the armed forces, which fall under the control of the Prime Minister.

house), and the Senate (*Senado*), which is the chamber of territorial representation (upper house). The Congress and Senate serve concurrent terms that run for a maximum of four years.

26. The composition and work of the Government are regulated in Law 50/1997 on Government. The Government *stricto sensu* consists of the Prime Minister, the Deputy Prime Minister(s) – if appointed, and ministers, with or without portfolio (Article 98, Constitution, as read in conjunction with Article 1(2), Law 50/1997). The number and the scope of competences of each of the Ministries is established by the prime minister. Ministries are usually created to cover one or several similar sectors of Government from an administrative function; they are competent and responsible, within their specific field of action, to develop public policy, make regulations, countersign King's acts in matters of their competence, and any other task, as stipulated by law.

27. Once formed, the Government meets as the Council of Ministers, usually every Friday, in Madrid, but exceptionally it may meet in any other city of Spain; preparatory meetings are held on Wednesday by secretaries of State and undersecretaries (Article 8, Law 50/1997). The Council of Ministers meetings are chaired by the Prime Ministers, though, in his/her absence, the Deputy Prime Minister(s) takes the responsibility to chair. Exceptionally, and at the request of the Prime Minister, the meeting can be chaired by the King, for merely informative reasons (Article 62, Constitution). The Council of Ministers is the highest decision-making body within the Government, with political, administrative and regulatory functions, including, *inter alia,* the adoption of draft legislation and State budget for its referral to Parliament, the negotiation and signature of international treaties, the declaration of the state of alert and emergency, the issuance of public debt or credit contract, etc.

28. The underpinning principles in the functioning of Government are: (i) primacy of premiership: the Prime Minister establishes the political programme of the Government; s/he further leads, coordinates and supervises its implementation; (ii) collegiality and joint and several liability; (iii) autonomy and responsibility of each ministry within the scope of its corresponding tasks.

Status and remuneration of persons with top executive functions

29. The Prime Minister (*Presidente*) is the head of the Government. S/he is appointed by the King, following his/her investiture by the Congress of Deputies. S/he directs the action of the Government and co-ordinates the functions of the other members of the Cabinet, without prejudice to the powers and direct responsibility of the latter in the discharge of their duties. The Prime Minister is empowered to propose the dissolution of Parliament, although s/he may not do so while a censure motion against the Cabinet over which s/he presides is in progress.

30. The Prime Minister's pre-eminence among its Cabinet is further asserted by the fact that s/he retains authority over its appointment and dismissal. Accordingly, ministers are named by the King upon proposal of the Prime Minister. At the time of the on-site visit[14], the Spanish Government comprised 17 ministries. None of the ministers in office were members

[14] General elections were held after the on-site visit, on 28 April 2019. At the time of adoption of the present report, the appointment of a new executive was pending.

of Parliament (MP)[15]. There were eleven female and six male ministers. In this connection, Spain introduced, in 2007, a mandatory legislative quota of 40% women on electoral lists in all elections. This move has placed the country as a worldwide frontrunner in promoting the participation of women in political life, as the aforementioned Government's composition depicts, with over two-thirds of female-led (key) ministries[16]. The GET can only welcome such an approach towards the fulfilment of parity democracy, in line with the objectives pursued by Recommendation Rec(2003)3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision-making.

31. In addition to the members of Government, there are several categories of political appointees (listed in rank order), e.g. secretaries of State (*Secretario de Estado*), undersecretaries (*Subsecretario*), general secretaries (*Secretario General*), general technical secretaries (*Secretario General Técnico*), general directors (*Director General*), chiefs of ministers' cabinets (*Jefe del Gabinete del Ministro*), presidents and directors general of public enterprises/entities/regulatory agencies (*Presidente y Directores Generales de una empresa pública, organismo público o agencia reguladora*). These are all political appointments made by Government decree, on the recommendation of the relevant minister/secretary of State. There are 707 persons falling under the aforementioned categories: 296 are members of Government, secretaries of State and other senior officials in national ministries (i.e. undersecretaries/similar offices and general directors/similar offices), 129 are ambassadors, and 282 are chiefs of public enterprises/entities/regulatory agencies (December 2018 data).

32. The aforementioned categories of political appointees perform decision-making, implementation and/or political advice related tasks on public policies. Their regulation is provided under Law 50/1997, as complemented by implementing decrees. The appointed persons can come from the civil service or from outside. If they belong to the civil service corps, they must take special leave during their term as political appointees. If they come from outside public administration their term of offices ceases at the end of the Administration which appointed them.

33. The aforementioned ranks are, because of their important responsibilities, subject to specific corruption prevention rules pursuant to Law 3/2015 on the Exercise of High Office in the General State Administration, as further developed by the recent Royal Decree 1208/2018 of 29 September 2018. The two latter acts comprise specific provisions on the conditions of appointment of PTEF, their corresponding benefits regime and the prevention of conflicts of interest, and finally, a monitoring and enforcement framework which is ensured by a specific body created to this effect: the Office for Conflicts of Interest (see also paragraph 109).

34. All appointments must be notified to the Office for Conflicts of Interest within seven days. A notable novelty introduced by Law 3/2015 refers to eligibility requirements for PTEF, in particular, good reputation (honorability), experience and expertise. The following circumstances are listed as not meeting the good reputation requirement:

[15] Although it is possible for ministers and secretaries of State to simultaneously hold a parliamentary mandate, as of December 2018, the three ministers of the current Government who were also MPs renounced the latter position following their appointment in the executive.

[16] As of December 2018, Spain is the member state of GRECO with the highest ratio of women ministers.

- conviction by final judgment to custodial sentence, until the sentence has been served out;
- conviction by final judgment on the charges of forgery, offences against freedom, against property and social and economic order, against the Constitution, Government institutions, the administration of justice, public administration, international community, crimes of treason and against peace and independence of the State and those related to national defence, and against public order (in particular, terrorism), until the criminal records are deleted;
- disqualification for bankruptcy, until the disqualification sentence has been concluded;
- debarment or suspension from holding any public position or employment;
- sanction for a very serious infringement under Law 19/2013 on Transparency, Access to Public Information and Good Governance.

35. It is for the nominating and the appointing body to check that eligibility requirements are met. PTEF must submit a self-declaration in this respect. The Office for Conflicts of Interest may request supporting evidence upon its discretion. The CVs of PTEF must be published on the website of the body in which they are to serve. The relevant eligibility requirements are meant to be met upon recruitment, but also apply throughout service. The comments made later on as to the type of formalistic control that the Office for Conflicts of Interest has played to date (see paragraph 115), apply also in respect of the effective verification or cross-check of the contents of self-declarations. In this connection, the GET was told that, at present, whether the information provided is accurate mainly depends on the honesty and personal responsibility of the PTEF. However, the compulsory submission of the certificate of criminal records by PTEF to the Office for Conflicts of Interest after their appointment, as established by Royal Decree 1208/2018, is a new relevant control instrument.

36. The law further requires that certain categories of PTEF (notably, the chiefs of regulatory agencies) appear and are heard before the Congress of Deputies prior to their appointment. Questions can be raised by individual deputies in that process and an opinion is issued thereafter on the suitability of the candidates to occupy the post, as well as evidencing the existence, or the lack, of conflicts of interest (Third Additional Provision, Law 3/2015).

37. The GET notes that Law 3/2015 covers most categories of political appointments, with one important exception: advisors (*asesores*, e.g. in areas such as communication policy or speechwriting, chiefs of cabinets of secretaries of State, etc.). There are around 442 (2018 State budget)/488 of these (2019 State budget). In 2018, the number of advisors was capped by law (Royal Decree 595/2018). This category of persons falls into a grey area. On this matter, while the authorities argue that they are covered by the rules and regulations which are applicable to civil servants, the GET noted much discrepancy on such an understanding among the interlocutors interviewed on-site, all the more given that these positions can be filled by professionals from outside public administration.

38. In any case, and even accepting that civil service rules are applicable, the GET sees it as logical that owing to their specific responsibilities as persons entrusted with top executive functions, a similar set of corruption prevention tailored provisions to those already in place for other political appointees should be also applicable to advisors. These persons may well, because of the type of management/decision-making work they perform, face similar challenges and ethical dilemmas in their daily routines to those explicitly listed in Law 3/2015; therefore, uniform rules must apply consistently across the board. According to GRECO's practice in earlier reports, advisors are to be regarded as PTEF for the purpose of the Fifth Evaluation Round. Consequently, **GRECO recommends reinforcing the current regime applicable to advisors, subjecting them to equivalent transparency and integrity requirements as those applied to persons with top executive functions.**

39. The range of salaries for PTEFs is as follows (the average monthly wage in Spain amounts to approximately 2 000 €/month)[17]:

Post	**Salary**
Prime Minister	82 978 €/year
Deputy Prime-Minister(s)	77 991 €/year
Minister	73 211 €/year
Secretary of State	71 167 €/year (salary & supplements)
Under-Secretary	63 096 €/year (salary & supplements)
Director General	53 949 €/year (salary & supplements)
Chief Public Enterprise/Public Entity/Regulatory Agency	102 634 €/year (salary & supplements)
Director General Public Enterprise/Public Entity/Regulatory Agency	102 634 €/year (salary & supplements)

40. The salaries of PTEF are of a public nature and can be consulted on the Transparency Portal of Government; information is also available under the corresponding section of the State budget which is also public and is published in the Official Bulletin. The GET notes, however, that while the Transparency Portal includes this type of information in relation to individual ministries, it does not do so, in a systematic manner, for all public enterprises/entities/regulatory agencies. Likewise, no information is available on the sums received by advisors; however, the authorities indicated that such details would be available upon request since they fall under access to information requirements.

41. In an effort to provide greater clarity, Law 3/2015 restricts some economic benefits which used to be paid to PTEF, particularly, representation expenses. In this connection, PTEF are subject to the regular social security scheme, official cars would only be provided for official trips and on the basis of efficiency criteria, representation and protocol expenditure must be justified, and credit cards would only be exceptionally provided when travelling abroad and subject to administrative control.

42. Some PTEF (Prime Minister, Deputy Prime Minister(s) and ministers, secretaries of State, and finally, a limited number of senior officials in the Bank of Spain, the National Securities Market Commission, the National Commission on Markets and Competition, the Nuclear Security Council and the royal household) have the right to receive compensation for up to two years after they leave office or until they find a new occupation whether in the public or the private sector (hereinafter, severance payment). The Office for Conflicts of Interest is responsible for supervising that the aforementioned condition is met for the

[17] Range of salaries as per 2018 data

compensation to be disbursed. In December 2018, 13 persons were receiving this type of compensation.

43. The Prime Minister is entitled to a monthly economic compensation limited in time[18] or a permanent position in the Council of State, office expenses, an assistant, a secretary, an official vehicle and a driver, and personal security.

44. The GET heard that the present system of remuneration of PTEFs is not logical and not always transparent, particularly, with reference to advisors and political appointees in public enterprises/entities/regulatory agencies. As a result, the highest PTEF in rank (i.e. ministers) can earn significantly less than their subordinates. Likewise, the pay of many PTEF in regulatory agencies may double that of the Prime Minister, for instance.

45. The GET believes that such an imbalance may raise non-negligible risks of malfunctions and the potential to try to compensate the comparatively low remuneration through perks and the promise of future jobs in the private sector. What seems to be an "overpayment" of subordinates with top executive functions is, indirectly, an indication that those positions are of considerable importance – which thus further emphasise the need to for uniform transparency and integrity rules concerning all PTEF, as proposed earlier (recommendation i, paragraph 38). Further, this is a topic which would deserve attention as the authorities carry out the impact analysis recommended later in this report (recommendation ii, paragraph 50).

46. Moreover, the GET notes that, despite the transparency requirements applicable to public salaries (as per Law 19/2013, the decisions/recommendations of the Council for Transparency and Good Governance, as well as established court jurisprudence) still, in practice, public complaints arrive at the Council for Transparency and Good Governance in this domain. The annual reports of the Council of Transparency and Good Governance (2015-2017) repeatedly stress that more must be done to improve easy and timely access to information on public salaries. This is an important issue that evidences the gap between what the law says and the reality; it hints at implementation challenges ahead (see later under paragraphs 67 to 69).

Anticorruption and integrity policy, regulatory and institutional framework

47. Spain does not have a general anticorruption strategy, although it has undertaken several valuable initiatives in recent years to promote integrity in public life under the so-called Regeneration Plan (*Plan de regeneración democrática)*. Prevention plans and anticorruption agencies have been established by some regions, and the GET was pointed towards some good practice in this respect, as for example in the case of the Basque Country and Valencia.

48. A draft Anticorruption and Whistleblower Protection Law has been under preparation, since 2014, which proposes, *inter alia*, the establishment of an Anticorruption Authority (which would take over the responsibilities of the Office for Conflicts of Interest), as well as more stringent provisions on financial transparency, post-employment, lobbying

[18] For a term equal to the time s/he has held the position, without being able to receive more than twenty-four monthly payments, each of them for an amount equal to 1/12 of the 80% of the total remuneration assigned to the position in the current budget during the indicated period.

and the level of sanctions for corruption offences. Although there appears to be political consensus on the relevancy of all different anticorruption tools and mechanisms included in the draft, particularly, regarding the much needed whistleblower protection framework, the draft has been lingering in Parliament for three years and its resumption by the recently elected legislature awaits.

49. The GET regrets that a more holistic anticorruption policy has not yet sprouted at central level. The initiatives taken up to the present, although noteworthy, are more of a piecemeal approach hastened by public outcry; they were not based on any prior risk assessment and they do not form part of a targeted strategy. Likewise, there is no evaluation or impact assessment of the anticorruption measures established to date and virtually all interlocutors met agreed that the weakest aspect of the anticorruption legislation and institutions refers to their ineffectiveness. The GET understands that the adoption of the draft Anticorruption and Whistleblower Protection Law would already be an important step in the right direction. That said, the GET also sees merit in the development of a devoted anticorruption policy, based on a prior integrated related risk analysis and including concrete indicators of achievement and effective means for implementation. The GET trusts that the recommendations included in this report will further contribute to such an effort.

50. With particular reference to the anticorruption and integrity policy for PTEF, Law 3/2015 undeniably constitutes a step forward, as broadly acknowledged by virtually all interlocutors met on-site. In the GET's view, Law 3/2015 constitutes a good effort to systematise the applicable rules for PTEFs and includes new strong features. However, it sometimes fails to go all the way in addressing the different corruption-related aspects/risks that PTEF may face in their daily work and once they leave office. In this connection, it is noted that a proper risk assessment of corruption risks among PTEFs is lacking. Moreover, implementation is, without doubt, the weakest aspect of the law. A clear diagnosis of strengths and weaknesses is necessary for the current system to evolve and corruption risks to be better anticipated and mitigated. This entails the carrying out of an evaluation/impact assessment of how legislative requirements are complied with in practice. **GRECO recommends (i) devising an integrity strategy for analysing and mitigating risk areas of conflicting interests and corruption in respect of persons with top executive functions and (ii) connecting the results of such a strategy to a plan of action for implementation.** Such a plan of action would be a natural part of a broader national anticorruption strategy which could usefully be considered by the Spanish authorities.

Ethical principles and rules of conduct

51. The 2005 Code of Good Governance of the Members of the Government and the Senior Officers of the General State Administration was superseded by the principles established in Law 3/2015 referring to (i) selflessness, (ii) integrity, (iii) objectivity, (iv) transparency and accountability, (v) efficiency and cost-effectiveness. These are all aspirational principles which can also be taken into account for interpretation and sanctioning purposes. In addition, the relevant provisions of Law 19/2013 on Transparency, Access to Information and Good Governance apply in this particular area, notably, as regards the principles of good governance (transparency, dedication to public service, impartiality, due diligence, confidentiality, prevention of conflicts of interest, etc.).

52. The GET was told that the 2005 Code (no longer in force) was considered to be comprehensive and detailed, but it was passed almost unnoticed, had no teeth and ended up being shelved. Thus, for the Spanish authorities, the enshrinement of the principles and provisions contained in the former 2005 Code into Law 3/2015 and Law 19/2013 constitutes a step forward to move from aspirational to effectively enforceable standards of conduct. The Office on Conflicts of Interest is responsible for assuring enforcement and guidance on the rules established by the aforementioned key pieces of legislation. Administrative guidelines and instructions may be issued, as necessary, concerning ethical matters.

53. In addition, some public institutions have adopted their own codes of conduct, e.g. the Bank of Spain, the National Securities Market Commission, etc. Moreover, several regions have developed their own codes for PTEF at their respective level of Government. The model of the Basque Country was quoted by non-Governmental representatives as particularly innovative in this domain: not only has a Code of Conduct been adopted, but it has also been coupled with a Commission of Public Ethics (*Comisión de Ética Pública*) which oversees its implementation. The latter body has a mixed composition bringing together (two) members from the Basque Government and (two) renowned professionals on ethics and integrity – who may come from the public or the private sector. In the GET's view, this is good practice which could serve as inspiration, as applicable, to the central level.

54. The fact that the central level currently lacks a stand-alone code (separate and more user-friendly than the ethical provisions comprised in Law 3/2015 and Law 19/2013) is, in the GET's view, a missed opportunity. While the GET understands that the provisions of the 2005 Code have been incorporated into Law 3/2015 and Law 19/2013, the GET has doubts that their insertion in law facilitates what should be a core feature of an ethics code, i.e. its living nature. Likewise, the GET considers that, once that separate code is adopted, more targeted measures need to be developed for its promotion and internalisation. **GRECO recommends that (i) a code of conduct for persons with top executive functions be adopted and made easily accessible to the public, and (ii) that it be complemented by practical measures for its implementation, including written guidance, confidential counselling and dedicated training.**

Awareness

55. The Office for Conflicts of Interest is to keep PTEF abreast of their integrity related obligations as they join, during and once they leave public office, and can organise awareness-raising and training events to this effect. In particular, when PTEF take up their positions, they receive a document describing their responsibilities and what is expected of them. Some seminars, courses and conferences on conflicts of interest for PTEF have been held in the National Institute for Public Administration, but they have not been held on a systematic basis and there is no obligation for PTEF to attend those. Further, the GET refers to the transparency obligations for PTEF arising from Law 3/2015, as well as Law 19/2013, and the reluctance that still exist in this area (see also paragraph 67), which consequently call for the provision of targeted training, as recommended above (recommendation iii, paragraph 54). The recommended training should specifically target ethics and transparency related matters with which PTEF may be confronted while in office (e.g. the reception of gifts and other advantages, contacts with third parties, self-recusal possibilities with respect to specific conflict of interest situations, misuse of insider information, position and contacts); training should have a hands-on approach with a corruption prevention

perspective and should be offered, not only at the start of the term, but also as regularly as necessary.

56. The Office is also entrusted with *ad hoc* counselling tasks when officials so require. The GET was told that most communications take place on the phone or via email, and generally, upon leaving public office; they mainly refer to incompatibilities and post-employment provisions. There is no systematic registration of questions concerning conflicts of interest/ethical behaviour, which in turn renders it difficult to issue some sort of guidance document or FAQ which would help address recurrent ethical dilemmas shared by PTEF. A FAQ on asset disclosure is under preparation and the Office is currently working on another document providing guidance on integrity-related issues. The GET considers this a positive move which should be pursued so that it effectively materialises in practice.

Transparency and oversight of executive activities of central Government

Access to information

57. The Law 19/2013 on Transparency, Access to Information and Good Governance introduces rules regarding, *inter alia*, the publication of public contracts, good governance, access to information, the development of website portals of public administrations, etc. It embeds the principles of transparency of the public administration's activities, proactive publicity and information disclosure. Spain has been a member of the Open Government Partnership since 2011 and is currently implementing its Third Action Plan for the period 2017-2019 (a fourth plan is currently under development). Further, the GET heard that Spain plans to accede to the Council of Europe Convention on Access to Official Documents (CETS 205). The GET encourages the authorities to do so in due time.

58. The GET was told that Law 19/2013 was a latecomer for information rights in Spain and that a proper culture of transparency is gradually evolving. Citizens have yet to become more acquainted with the new legislative framework and the opportunities it brings to access administrative information; the latest survey on this matter revealed that only 47.3% of the respondents knew of the existence of Law 19/2013[19]. This also applies to the data already at public disposal in the Transparency Portal but not yet well known by citizens. Additional steps could also be taken by public administration to facilitate application of the law.

59. Whilst the procedures for making requests are being progressively refined (for example, pursuant to recent developments, it is no longer necessary for citizens to have an electronic certificate for the submission of online applications), the GET was told on-site that additional improvements were desirable in this domain. For instance, anonymous requests are not possible at present. The press also indicated it had to be very precise when formulating a request; if the heading (title) of the case was not fully correct, access could be denied easily. Additional procedures have yet to be developed regarding information requests received by email, namely, regarding their recording and efficient handling. Finally, effective disclosure comes late in time. Law 19/2013 provides for a delay of one month to answer information requests, which in the GET's view is long and should be considerably shortened. **GRECO recommends (i) further advancing in the implementation of**

[19] See 2017 Activity Report of the Council for Transparency and Good Governance.

Law 19/2013, notably, by facilitating information request procedures, providing for a reasonable time to answer such requests and introducing appropriate requirements for the registration and handling of public information provided in electronic form, and (ii) raising awareness among the general public about their right to access information.

60. Regarding transparency in the operation of Government, and the decisions and activities of PTEF, the situation is evolving. Law 50/1997 on Government establishes that the internal deliberations of the Council of Ministers are secret (Article 5, Law 50/1997), but the minutes including information on the time and place of the meeting, the list of participants, the agreements adopted and the reports submitted must be set down in writing (Article 18, Law 50/1997). The foregoing, without prejudice to the publication of the summary and the right to access of citizens according to Law 19/2013. On various occasions, the minutes of such meetings have been provided to individuals upon request. Likewise, every Friday, after the Council of Ministers' meeting the Government spokesperson holds a press conference to comment on the most important decisions and respond to media queries. The GET was told that, while information on the content of the preparatory meetings of the Council has never been requested, the authorities would not see, in principle, any objection to its disclosure.

61. In terms of proactive disclosure (i.e. information to be made available without the need for a specific request), a Transparency Portal was launched in 2014 as the key point of access and diffusion of public data. In particular, information is divided into (i) institutional (organisations, structures, ministries, functions, etc.); (ii) normative (draft laws); (iii) economic (public contracts). The GET finds that the Transparency Portal is a laudable initiative and understands that its maintenance can prove to be quite demanding in order for it to be up to date. During the on-site visit, civil society representatives concurred that this is indeed a challenge in many of the areas currently covered by the platform, and practice on the type of information uploaded and its currency varies over ministries and other public institutions (e.g. public companies, regulatory agencies). The GET considers it important that, in keeping the Transparency Portal up to date, attention is paid to streamlining its contents.

62. The Council for Transparency and Good Governance (hereinafter the Council) is responsible for overseeing implementation of access to information and transparency rules. More precisely, the law says that it is granted autonomy and full independence in the fulfilment of its functions, which include, among others: adopting (non-binding) recommendations to facilitate the implementation of Law 19/2013 on Transparency, Access to Information and Good Governance; providing advice concerning transparency, access to information and good Government; capacity-building, training and promoting the compilation and exchange of good practices; and finally, evaluating the implementation of the law. For this purpose, the Council is to present a yearly report before Parliament. Following adoption of Law 3/2015 virtually all "good governance-related" functions of the Council are now in the hands of the Office for Conflicts of Interest.

63. The Council is composed of a President and a Commission. The President is appointed for a non-renewable term of five years, proposed by the Ministry of Territorial Policy and Public Service, and ratified by absolute majority in the Chamber of Deputies. The Commission is integrated by the President, a Deputy, a Senator and representatives from the Court of Auditors, the Ombudsman Office, the Spanish Agency for Data Protection, the State

Secretariat of Public Administrations and the Independent Authority of Fiscal Responsibility. At the time of the on-site visit, the position of the President had been vacant since 2017.

64. The Council is staffed by 23 persons. The GET was told that the Council resources were extremely scarce, all the more so given its growing workload: in 2018, public complaints were 50% higher than the previous year (from 572 in 2017 to 725 in 2018). In 2018, there was a 22% cut in the budget of the Council. A recent report of the Court of Auditors, which was adopted after the on-site visit on 18 March 2019, flags these problems which are, *inter alia*, also affecting financial reporting and activity planning obligations of the Council.

65. It is to be noted that the Council is not only responsible for citizens' complaints against the central administration, but it also takes care of demands against some regional administrations (Asturias, Cantabria, La Rioja, Extremadura, Castilla La Mancha, Madrid, Ceuta and Melilla).

66. In addition, it needs to respond to the administrative suits brought by public administration against the Council's decisions[20]. Since public administration bodies are represented by state attorneys, the Council has had to pay for the fees of private lawyers to defend its cases, which adds a supplementary financial burden to its already scarce resources (up to now the cost of engaging private lawyers has amounted to 287 000 €[21]). The GET finds the disclosure reluctance by public bodies (in particular public companies/entities[22]) highly regrettable.

67. The GET heard that most of public administration refusals to disclosure are based on data protection, security or privacy grounds, which are sometimes understood in broad terms. The GET considers that this sort of reluctance does not bode well for the general governance culture of transparency in which Spain has embarked. It is also troublesome when viewed from the perspective of the public's role in helping prevent and detect corruption. The time is more than right for all public authorities to move from a legalistic compliance approach in the submission of information, to a commitment towards meaningful disclosure and real openness on public decisions and acts. With respect to PTEF, most of the complaints refer to non-disclosure of agendas, gifts, travel expenses and salaries.

68. Against this background, the GET can only praise the efforts deployed by the Council since its establishment to further transparency in the public sector; its proactive approach to work was acknowledged by all civil society representatives interviewed by the GET. The Council's recommendations are very much assisting in, not only clarifying, but also further developing legislative provisions. Court decisions have consistently endorsed the Council's advice, setting the right balance between the right to privacy (e.g. regarding information on salaries of top officials, their respective agendas, etc.) and the right of citizens to

[20] Once the Council for Transparency and Good Governance issues a decision for a public administration to release information, the concerned administration has two options, either providing the information requested, or contesting the decision of the Council in administrative court.
[21] Los pleitos del Gobierno contra la transparencia, El País, 3 March 2019
[22] See for example, case of Spanish Public Radio and Television (RTVE) denials of access to information:
https://elpais.com/politica/2019/02/14/actualidad/1550161328_836426.html
https://www.elmundo.es/economia/empresas/2019/03/19/5c8fffe7fc6c831c358b469e.html

information. The recommendations of the Council are, however, not binding. Furthermore, the Council has no sanctioning powers; because of this, sometimes public bodies do not even challenge in court, but simply ignore the Council's voice.

69. It was clear to the GET that the budgetary and compositional independence of the Council needs to be substantially enhanced. The participation in the Council of entities that are subject to Law 19/2013 may raise conflicts of interest. Some of the interlocutors met reflected on the added value of involving civil society representatives in the work of the Council, as done in other jurisdictions. Likewise, it has proven (and it is proving) difficult to appoint all members of the Council, with vacancies extending in time – this problem has become particularly acute regarding its presidency which has been empty for one and a half years already. The available human resources of the Council are patently insufficient, as also recently flagged by the Court of Auditors. Moreover, in order to give meaningful effect to individuals' right of access to administrative documents, and to prevent abuses in administrative litigation which can drag information requests out for years, the powers of the Council need to be reinforced. In this connection, consideration could be given to providing the Council with the authority to order an administrative body to provide access to requested information. **GRECO recommends providing the Council for Transparency and Good Governance with proper independence, authority and resources to perform its monitoring functions effectively.**

Transparency of the law-making process

70. Law 50/1997 on Government lays out the procedure for drafting a bill. Important efforts have been made to improve openness of the law-making process with an eye towards better regulation, including by providing for *ex ante* consultation channels, as well as the *ex post* monitoring of the implementation of newly adopted laws and implementing regulations. It is required that annual forward regulatory plans for primary and subordinate regulations are made publicly available on the Transparency Portal. Law 50/1997 on Government, which lays out the procedure for drafting laws and subsidiary laws, was modified in 2015 to introduce a new preliminary phase of public consultation. This consultation is published through the web portals of the ministerial departments prior to the preparation of the text, which in no case will be less than 15 days.

71. Moreover, in addition to the required reports, opinions and approvals that may be considered appropriate to guarantee its pertinence and legality, once drafted, if the bill affects the rights or legitimate interests of the citizens, they must be heard over a reasonable term, never less than 15 working days, directly or through organisations or associations recognised by law. Sectors are also consulted through formally organised bodies in certain regulations. A Report on Impact Assessment, which is publicly available on the Transparency Portal, shall summarise the result of consultations and its reflection on the text and shall assess impacts on the economy, budget, administrative burdens, gender, childhood and adolescence and family (and other that may be relevant such as social, environmental, or on equal opportunities and universal accessibility for people with disabilities) for all governmental legislative drafts.

72. The Constitution provides the Government with an accelerated legislative procedure to issue the so-called decree-laws (*decreto ley*) in cases of emergency or urgency. Decree-laws may not affect basic institutions of the State, rights, duties and liberties of the citizen,

the system of the Autonomous Communities, or the general electoral law. Within a period of 30 days they must be ratified by the Congress of Deputies (Article 86, Constitution).

73. A new oversight body, the Office on Regulatory Coordination and Quality was established in 2017 and began its activities in 2018. The GET was positively impressed by the proactive role taken by the Office on Regulatory Coordination and Quality and the level of expertise and commitment of its staff. The GET trusts that, with the newly adopted legislative package, greater openness and inclusiveness of law making procedures effectively occur not only in theory (in law), but also in practice.

Third parties and lobbyists

74. There are no rules in place that regulate contacts of PTEF with third parties and lobbyists. There are also no reporting or disclosure requirements applicable to those who seek to influence Government actions and policies. The draft Anticorruption and Whistleblower Protection Law contains specific provisions on lobbying, including the establishment of a lobbyists' register. Although the need to tackle this matter is backed by a broad party consensus, the various political factions differ in points of view regarding the exact breadth and depth of the required regulation.

75. Government agendas are not explicitly covered under access to information requirements; however, because of the reiterated complaints of citizens that PTEF were refusing access to their agendas, the Council for Transparency and Good Governance has issued a specific recommendation[23] to ensure that they are made public and include some pre-established elements (official visits, institutional acts, receptions, official meals, social and protocol acts, official visits, hearings with public entities, press conferences, meetings with lobbyists and third parties, etc.). At present, the agendas available online do not cover all these points, but rather refer to ceremonial events in the Prime Minister/ministers' agendas, which may be of interest for the press, but still fall short of the requirements set by the Council.

76. The GET was further told that a system for electronic registration of "who met whom about what" was under consideration in Spain; this is a welcome development that must effectively be pursued and crystallise in practice. **GRECO recommends (i) introducing rules on how persons entrusted with top executive functions engage in contacts with lobbyists and other third parties who seek to influence Governmental legislative and other work; and (ii) that sufficient information about the purpose of these contacts be disclosed, such as the identity of the person(s) with whom (or on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion.**

Control mechanisms

77. Parliament has, among other functions, to control the actions of the Government. To do so, it has several instruments at its disposal; most of them are spelled out in the Constitution and subsequently regulated in detail in the corresponding Standing Orders of each Chamber. Ordinary oversight and control instruments are written/oral questions, interpellations (by parliamentary groups) and hearings of members of Government. Some

[23] Recommendation 1/2017 of the Council for Transparency and Good Governance on the Agendas of Top Officials

require a demand of explanation or information directed at the Government. They are different in the sense that the questions can return concerning any matter that is incumbent upon the latter, while the interpellations affect the conduct of the executive branch in matters of general politics, from the Government as well as any ministerial department, which are assumed to be reserved for subjects of general interest. In line with its large scope, the interpellations should be formulated during plenary sittings, whereas questions can receive a Governmental response not only in this way, but also in committees, or in writing and then published in the Official Parliamentary Bulletin.

78. There are also two extraordinary mechanisms: motions of censure and questions of confidence. The approval of a motion of censure or the refusal of confidence are tools with which the Congress of Deputies can instigate the fall of Government. In either case, they evidence a break in the relation of trust which must exist between the Government and Parliament. The motion of censure is positive, in the sense that it must include the proposal of a candidate for Prime Minister. It must be presented by at least one tenth of the Congress members and for its approval an absolute majority is required[24]. As regards questions of confidence, only the Prime Minister, following the previous deliberation of the Council of Ministers, can raise them. Its purpose is to confirm the endorsement of the Congress of Deputies, and it must be related to the Government's political programme or to a general political declaration. Only a simple majority is needed; if this quorum is not reached, the Government must present its resignation.

79. Several additional mechanisms are also sometimes considered part of the oversight and control arsenal of the Congress of Deputies over the Government, e.g. parliamentary hearings, motions and resolutions, or nominations of appointments of senior officials. They are, however, not control mechanisms *stricto sensu*, since they could all merely serve as a tool for Parliament to be informed about any political or technical issue.

80. The actions and decisions of the Government, as a whole as well as of each individual minister, are reviewable through administrative law and, ultimately, before the Constitutional Court (appeals for individual protection of human rights). Ministers are both civilly and criminally accountable - individually, jointly and severally - for their decisions (see also paragraph 118 for criminal ministerial responsibility).

81. The Government is also subject to financial and economic control by the Court of Auditors. More particularly, the Court of Auditors is the external audit body of the accounts and the financial management of the public sector. Without prejudice to its judicial function, it focuses on the prosecution of accounting liability incurred by those who are responsible for the management of public funds. The latter function is reviewable before the Supreme Court. The Court of Auditors is also responsible for the control of political financing. The Court is accountable to Parliament and presents an annual report to it in which it codifies violations, abuses or irregular practices, indicating the liability incurred and actions to remedy. In this regard, it can make (non-binding) recommendations for improvements, as necessary.

[24] A motion of no confidence was held between 31 May and 1 June 2018. The motion was successful and effectively resulted in a change of Government. It is the fourth one tabled since the entry into force of the 1978 Constitution and the first successful one.

82. Moreover, the General Intervention Board of the State Administration, which is attached to the Ministry of Finance, is responsible for verifying - through previous monitoring of legality, continuous financial control, public audits, and financial control of subsidies - that the state public sector's economic and financial activity complies with the principles of legality, economy, efficiency and effectiveness. Internal control is performed by the general inspection services of the ministerial departments.

83. The Ombudsman monitors the activities of all persons/bodies carrying out functions within the public administration, including PTEF. The purpose of the investigations of the Ombudsman, which are either instigated at his/her own initiative or following a request, is to establish whether the acts and decisions of persons fulfilling the duties of the public administration are in compliance with the guiding principles of the administration.

Conflicts of interest

84. Law 3/2015 is the main piece of legislation regulating the prevention of conflicts of interest of PTEF. It reads that these professionals face a conflict of interest when the decision to be adopted may affect their personal interests, of a financial or professional nature, because it will be beneficial or detrimental to those interests. Personal interests cover own interests, family interests, those persons with whom PTEF have pending litigations or are close friends or manifest enemies, legal persons or private entities to which PTEF have been linked by an employment or professional relationship of any kind in the last two years before the appointment, and those legal or private entities with which the spouse or close relatives are linked by an employment or professional relationship of any kind, providing this entails the exercise of managing, advisory or administration functions (Article 11, Law 3/2015).

85. The law establishes a so-called “early warning system” which is in fact a recusal obligation or routine withdrawal from public duties when PTEF realise that to participate in a meeting or to make a decision would place them in a position of conflict (Article 12, Law 3/2015). This obligation is to be read in conjunction with Law 40/2015 on Public Administration and Administrative Procedure which establishes an obligation for public officials to recuse on matters that bear upon a private interest (Articles 23 and 24, Law 40/2015). All cases of abstention must be communicated in writing, within one month, to the Office for Conflicts of Interest for their inclusion in the Registry of Activities.

Recusal notifications received by the Office for Conflicts of Interest (2015-2019)

Year	Recusals
2015	30
2016	65
2017	80
2018	67
TOTAL	**242**

Prohibition or restriction of certain activities

Incompatibilities, outside activities and financial interests

86. PTEF have absolute incompatibility with any other position, whether public or private, on their own accounts or on that of others, and cannot therefore receive any other remuneration (Article 13, Law 3/2015).

87. However, exceptions to the aforementioned principle apply: notably, PTEF are allowed to occupy top positions in political parties, hold an unremunerated directorship or membership of the board of directors of a public company when the purpose of the company has a relationship with the responsibilities of the public position held, or participate as members of Foreign Service delegations. Also, members of Government and Secretaries of State can be members of Parliament, with the right to participate and vote in parliamentary discussions (Article 13, Law 3/2015).

88. Finally, with regard to private activities (and to the extent that these do not affect the required neutrality of a public official) PTEF can administer their personal/family wealth, participate in NGOs, charity organisations and foundations provided that they do not receive any kind of remuneration (Article 13, Law 3/2015).

89. The GET notes that Law 3/2015 provides for certain exceptions to the principle of prohibition of outside activities. However, these rules are also to be seen in the context of the required neutrality of public officials and their duty to declare financial interests and ad hoc situations of conflicts of interest, as well as to recuse themselves if conflicts of interest occur.

Contracts with state authorities

90. PTEF cannot hold, either personally or through an intermediary, directly or indirectly, more than 10% of the share capital of companies having concerted or concluded contracts of any kind with the public sector, nor can they receive subsidies or grants from the public sector (Article 14, Law 3/2015).

91. If a person becomes a PTEF and holds more than 10% of the share capital of companies in the circumstances mentioned above, s/he must dissociate himself/herself by selling or transferring the management of the share capital within a period of three months. The Office for Conflicts of Interest must be informed and is to issue a favourable opinion before the selling or transferring takes place (Article 14, Law 3/2015).

92. If the total value exceeds 100 000 €, PTEF must engage a company authorised to provide investment services for the management and administration of shares and convertible negotiable obligations in regulated markets or in multilateral trading systems. The same applies to derivative products on the former, as well as shares of companies having announced their decision to ask for admission to trading shares in collective investment undertakings. PTEF must deliver copies of the signed contracts of the Office for Conflicts of Interest for their inclusion in the relevant Register, as well as to the National Stock Market Security Commission (Article 18, Law 3/2015).

Gifts

93. Law 19/2013 on Transparency, Access to Information and Good Governance states that any gift, favour or service under favourable conditions should be refused (beyond the limits of normal courtesy or social convention) if they put at risk the required principle of impartiality of public service. In the case of valuable presents, they will become the property of the State (Article 26(6), Law 19/2013). The GET was told that token gifts of around 25-30 € would be acceptable; this would stem from common sense and practice rather than written requirements. The GET considers it important to adopt more formalised criteria on gifts, for example, by setting maximum thresholds and establishing reporting, returning, recording and disclosure obligations. The recommended code of conduct should contain specific rules in this respect (recommendation iii, paragraph 54).

Misuse of public resources

94. The misuse of public resources constitutes a criminal offence of embezzlement (Articles 432 to 435, Penal Code) and is also punishable under administrative law since PTEF have an obligation to properly manage, protect and preserve public resources (Article 26, Law 19/2013 on Transparency, Access to Information and Good Governance).

Misuse of confidential information

95. The disclosure of confidential information which PTEF may obtain because of their position is punished under criminal law (Articles 428 to 431, Penal Code) and under administrative law (Article 26, Law 19/2013 on Transparency, Access to Information and Good Governance).

Post-employment restrictions

96. Law 3/2015 articulates a post-public employment reference framework, which is based on three key components: cooling-off period, oversight mechanism (the Office for Conflicts of Interest) and sanctions. At present, post-public employment requirements are only imposed on PTEF; Law 53/1984 on Incompatibilities of Personnel of the Service of Public Administrations (which are the rules that apply to all other public officials) does not include any provision in this domain.

97. More particularly, a cooling-off period of two years applies in which (i) PTEF are prohibited from working for or providing services to associations or businesses that have been affected by decisions they have taken part in; (ii) PTEF working in regulatory agencies are prohibited from working in private sector entities which are being supervised by the former; (iii) it is also forbidden for PTEF to draw up contracts of technical assistance, directly or through companies where they hold more than 10% of the share capital, with public administration. PTEF will not breach any post-employment restriction when they return to the private company in which they worked before being appointed as long as the activity they are going to carry out in the private sector is not directly related to the competences of their previous office, or where they cannot take decisions related to that office (Article 15, Law 3/2015).

98. During the cooling off period, PTEF are required to seek approval from the Office for Conflicts of Interest prior to accepting any position. The Office communicates the decision to the interested party, who can reply and provide further information for consideration. Further, the former PTEF is given the opportunity to appeal if not satisfied. The final approval decision made by the Office is communicated to the former PTEF and published in the Transparency Portal. In particular, the Office publishes a list of the authorisations granted.

99. Breaches of post-employment provisions are punishable with the loss of severance payments, an obligation to the return the sums received, a ban from occupying public posts from five to 10 years, and a public statement of non-compliance which is issued in the Official Gazette (Article 26, Law 3/2015). Two sanctions were imposed in 2013 and 2016 (under the previous legislative regime) in this domain; they included debarment (from five to seven years) and the publication of a statement of non-compliance in the Official Gazette. No sanctions have been imposed so far for breaches of post-employment provisions under Law 3/2015.

100. The GET considers that, whilst the architecture of the revolving door standard is reasonably developed on paper (and more articulated than the average in GRECO membership[25]), what undermines the credibility of the system is its operation. The authorities underscored that some improvements have occurred in recent years with the adoption of new legislation in this area. The Office for Conflicts of Interest indicated that it can now take a more proactive monitoring function: it requests information to the Social Security in order to identify non-declared private activities carried out by former PTEF during the two year cooling-off period. If the Office identifies any eventual incompatibility, it can act *ex officio*. However, it was clear to the GET that this is one of the most problematic conflict of interest-related areas for PTEF in citizens' eyes. Since 2006, the Office for Conflicts of Interest has issued 525 post-public employment authorisations (some PTEF requested authorisation for several simultaneous positions in the private sector during the cooling-off period) and has only refused 11 requests[26].

101. With a 98% authorisation rate in over a decade and very few sanctions for breaches of revolving door requirements, doubts arise as to whether this situation is the result of effective non-incompatible situations, or rather a lax system of authorisations and the need for more efficient control by the monitoring body. The media has revealed on several occasions the existence of a direct relationship between the activity performed by the PTEF while in office and the new competencies acquired in the private sector thereafter, including during the cooling-off period; this is also true for law enforcement officials, as will be discussed later in the report (see paragraphs 179 to 183)[27]. The Court of Auditors has also pinpointed deficiencies in the type of control that the Office for Conflicts of Interest has performed in the past in this respect (i.e. a formalistic approach which did not go beyond the presumed good faith of the PTEF requesting the authorisation). For the GET, these are

[25] Post-Public Employment. Good Practices for Preventing Conflicts of Interest. OECD, 2010

[26] https://www.eldiario.es/economia/Oficina-puertas-giratorias-conflicto-intereses_0_876662862.html

[27] See for example: https://hayderecho.expansion.com/2019/03/21/fenomeno-puertas-giratorias-agenda-politica-ni-esta-ni-espera/
https://elpais.com/politica/2017/04/11/actualidad/1491918937_808225.html
https://www.elmundo.es/cronica/2016/03/01/56d0adebca4741466b8b466b.html

worrying signs that require further intervention; the oversight and accountability regime which applies to post-public employment needs to be upgraded.

102. Moreover, as experience with the law evolves, new areas may need additional regulation. For the GET, the rules are strict and detailed on paper, but the problem is that, in the attempt to examine a few specific cases exhaustively, several more are left unattended. Accordingly, the GET sees merit in reviewing and adapting some aspects of the revolving door standard. For example, the cooling off clause only refers to temporary disqualification for employment, but does not address the issue of abstinence from involvement in certain cases or areas that relate to the PTEF's spheres of responsibilities while in office. Even the temporary employment disqualification leaves scope for circumventing the spirit of the law, e.g. in situations where the PTEF may not be working for a company which has been affected by decisions s/he has taken part in, but for a third party on their behalf, as a lobbying or a law firm, in cases where the PTEF is not under the regular payroll of the private company, companies' foundations, etc. Complimentary risk-areas may well also emerge in the future (e.g. reverse revolving doors – restrictions on those entering public administration, not from civil service or political files, but from the private sector). Finally, the fact that advisors do not currently fall under the requirements of Law 3/2015 – and are not subject to any other requirement in this respect (civil service law does not cover this matter) is also particularly troublesome.

103. On this subject, the GET was made aware that some political parties had advocated for targeted legislative changes, such as a reworked sanctioning regime (including criminal liability or/and the imposition of aggravated pecuniary fines), or for the extension/better determination of the cooling-off period on the basis of risk-analysis. However, political consensus on this end appears far from reachable at present. The right balance must be sought between fostering public integrity and supporting a flexible labour market. **GRECO recommends that the legislation governing post-employment restrictions be subject to a review by an independent body and that it be strengthened wherever considered necessary.** In implementing this recommendation the various considerations made in paragraphs 100 to 102 above are to be taken on board. Additionally, it is to be noted that effective implementation of recommendation ix (paragraph 117), i.e. on reinforcement of the Office for Conflicts of Interest, will also bring about benefits in this domain.

104. On the other hand, the GET was also told that, because of the many scandals that emerged to the public in recent years, the image of the political class in Spain had been critically tarnished, and that, it was becoming more difficult for former politicians to be recruited by the private sector because of the reputational risks that would entail for the company recruiting.

Declaration of assets, income, liabilities and interests

105. PTEF must submit two types of declarations:

(i) Declaration of activities (Article 16, Law 3/2015): a declaration of the activities undertaken, either personally or through an intermediary, in the two years prior to the appointment, as well as those that they intend carrying out after leaving office. They have a period of three months to provide this information starting from the day they take up/leave public office, and must

report thereafter whenever changes occur. They must submit a copy of their two latest declarations of income tax.

(ii) Declaration of assets and property rights (Article 17, Law 3/2015): they must submit, within three months from the day of their appointment, a copy of their declaration of property tax. They must submit a copy of their income tax every year, together with a certification of their tax status with the tax agency. There are safeguards to protect the privacy and security of PTEF.

106. The aforementioned declarations are submitted to the Office for Conflicts of Interest and are stored therefore in a Registry of Activities and a Registry of Assets and Property Rights, respectively. The GET considers that the three-month deadline for the submission of disclosure forms is long; this is an issue that merits review. The Office for Conflicts of Interest is responsible for managing the registries, as well as for the custody, security and integrity of the data and documents contained in them. The Registry of Activities is public, upon demand. The Registry of Assets is of a confidential nature, but the law provides for publication of the content of the declarations of each individual PTEF in the Official Bulletin. The publication of the declarations of assets and liabilities of PTEF has had to wait until 29 September 2018[28]; it consisted of a pdf document. The GET was told that the Office for Conflicts of Interest was moving towards automated databases; as it does so, it would be advisable that electronic formats of financial disclosures are also available in the public domain to ease their comparability and usefulness for corruption prevention purposes.

107. Moreover, the reported information comes in a summarised/aggregated form, which basically refers to the total sum of (i) assets (real estate, other assets) and (ii) liabilities. The forms do not include any detailed information on those numbers. The GET considers that much more can be done to ensure that meaningful disaggregated information is at public disposal. It is commonly recognised that, in comparison with other categories of public officials, political representatives should be subject to more stringent accountability and transparency standards and might expect less privacy. A reasonable balance must be struck between the interests of public disclosure and data protection requirements; it appeared to the GET that, in Spain, the later were outweighing the former. Finally, while former regulation provided for voluntary declaration of income and assets of spouses (and this continues to be a requirement in respect of PTEF working in the Bank of Spain), this possibility is no longer provided in Law 3/2015. **GRECO recommends (i) widening the scope of publication requirements of financial disclosures to include disaggregated/detailed information on assets, interests, outside employment and liabilities; and (ii) considering shortening the timeframes for reporting and publication, and including information on spouses and dependent family members - it being understood that such information would not necessarily need to be made public.**

108. Once PTEF leave public service, the Office for Conflicts of Interest is to assess their financial and property status in order to ensure that there is no evidence of unjustified/illicit enrichment; the Office may turn to the tax agency for information cross-checks. The Office issues a report thereafter (within three months from the PTEF departure from public office) and PTEF are provided with a possibility to respond to the findings of the Commission within 15 days. If there is ground for suspicion of a criminal offence, law enforcement bodies are alerted for further action, as necessary (Articles 23 and 24, Law 3/2015). As will be

[28] The latest publication of PTEFs' asset and liabilities is available at: https://www.boe.es/boe/dias/2018/09/29/pdfs/BOE-A-2018-13218.pdf

highlighted below in the section on accountability and enforcement mechanisms; the weakest aspect of Law 3/2015 is its control regime. Substantial improvements must be made in this regard.

Accountability and enforcement mechanisms

Non-criminal accountability mechanisms

109. The Office for Conflicts of Interest monitors the implementation of Law 3/2015. It is established under the Ministry of Territorial Policy and Public Service and has a legally recognised functional autonomy. Its Director and staff shall neither request nor follow instructions from any public or private institution (Article 19, Law 3/2015). The Director of the Office is appointed by the Council of Ministers, on the motion of the Minister of Territorial Policy and Public Service, after the candidate appears before the corresponding committee in the Congress of Deputies for review of his/her background and training, past experience and ability. The Office is staffed by 20 persons. The Office must inform the Government every six months on compliance with financial reporting requirements, infringements and penalties imposed; this report is then submitted to the Congress of Deputies and only aggregated information on the above is then published in the Official Journal. The GET has already expressed its mischiefs about the fact that publishing aggregated information serves little purpose for public oversight and anticorruption purposes.

Office for Conflicts of Interest: competencies

- demand from PTEF compliance with Law 3/2015
- manage incompatibility regime
- be in charge of the Registry of Activities and the Registry of Assets
- report to the Government every six months on the observance of Law 3/2015
- detect violations of Law 3/2015
- investigate violation cases (the Office can have access to tax and social security records)
- prosecute violations following a due process
- keep records of compliance with eligibility requirements for appointment and request supporting evidence, as necessary at its discretion
- approve post-employment activities
- collaborate with other public authorities for verification purposes (tax agency, social security, law enforcement, etc.)

110. The competent body in charge of filing a case for PTEF who are members of Government (Prime Minister and ministers) or secretaries of State is the Council of Ministers, on the motion of the Minister of Territorial Policy and Public Service; for other PTEF, it is the Minister of Territorial Policy and Public Service who files the case. The investigations are then performed by the Office (Article 27, Law 3/2015). The GET was told that the Office has never encountered any political obstacle to carry out an investigation.

111. In order to render its investigation tasks more effective, the law establishes an obligation for other authorities (in particular, the commercial registry, the register of foundations and social security) to cooperate with the Office. Cooperation with tax authorities is enabled through express authorisation of the PTEF, which is provided at the

time of disclosure. Finally, the Office is the body that opens disciplinary proceedings and that proposes sanctions or authorises subsequent employment after ceasing to hold office.

112. There is a set of innovative sanctions whenever very serious, serious or minor breaches occur, which range from debarment from public office for a period of between five to ten years, publication of the decision that takes note of the breach, loss of severance payment to an obligation to return the amounts received and dismissal from office (Articles 25 and 26 Law 3/2015). The statute of limitations is five years for very serious violations, three years for serious violations and one year for minor violations, respectively (Article 28, Law 3/2015).

Applicable sanctions in Law 3/2015
on the Exercise of High Office in the General State Administration

	Infringements	**Sanction**
Very serious	Incompatibilities False declarations or documents Improper control and management of financial assets and equity shares False declaration of honorability requirements	Dismissal Loss of severance payments Obligation to return severance payments received Debarment from public office 5-10 years Publication of infringement in Official Bulletin
Serious	Non declaration Omission of documents Reiterated breach of recusal obligation Repeated commission of minor infringement	Debarment from public office 5-10 years Publication of infringement in Official Bulletin
Minor	Non recusal Delayed declaration	Admonition

113. Sanctions are imposed by the Council of Ministers when there is a very serious violation, or when the person sanctioned is a member of Government or a Secretary of State. When the violations are serious, sanctions are imposed by the Ministry of Territorial Policy and Public Service. Petty misdemeanours are dealt with by the Secretary of State of Public Administration (Article 27, Law 3/2015). Administrative procedure rules and guarantees apply. If the irregularities detected suggest a potential instance of corruption, they must be reported to law enforcement authorities (Article 26, Law 3/2015).

Sanction procedures (2007-2018)

Very serious and serious offences	8
Minor offences	4
TOTAL SANCTIONS	**12**
Cases with no sanctions applied	5
TOTAL FINISHED CASES	**17**
Suspended cases (until the Court of Auditors or the judiciary resolve their own procedures)	4
TOTAL INITIATED CASES	**21**

Note: Sanction procedures under Law 5/2006 (repealed by Law 3/2015), Law 19/2013 and Law 3/2015.

114. In 2015, the Court of Auditors highlighted some areas for improvement in the way the Office operated, all of which pointed at the need to ensure effective cross-checks and

verification of the data it managed. Whilst the aforementioned report of the Court of Auditors covered the period 2012-2014, i.e. before Law 3/2015 was adopted, the interviews held during the evaluation visit pointed at similar challenges ahead, at present, in the operation of the Office for Conflicts of Interest.

115. Notably, the GET is concerned that the Office for Conflicts of Interest, although provided by functional autonomy, is as a matter of fact a dependent body, and under the structural hierarchy, of the Ministry of Territorial Policy and Public Service. The Office is not equipped with its own budget. It has no right of direct access to fiscal or tax data (and it needs the authorisation of the relevant PTEF to do so). It performs pro-forma - rather than substantial - cross-checks. It cannot impose penalties (just propose them). In this connection, sanctions are left to the political bodies themselves (the Council of Ministers or the Ministry of Territorial Policy and Public Service depending on the seriousness of the misconduct), which *de facto* makes them judge and jury for enforcement purposes. Against such a framework, the effectiveness and credibility of the accountability regime of Law 3/2015 is weakened. Likewise, it can be argued that some of the available sanctions are low, for example, regarding the recusal obligation which is only punished if a repeat offence.

116. Further, while the Office for Conflicts of Interest manages a wealth of information, it would appear that more needs to be done to establish procedures and channels to make that information more effective for corruption prevention purposes, including by exploring meaningful avenues for their publicity and comparability. The GET understood that the Office for Conflicts of Interest is currently developing electronic tools to improve its performance in this respect and also to facilitate information cross-checks.

117. Moreover, in seeking information on how the respective Registers of Activities and Assets are reviewed and resorted to, the GET noted that they are not used in any proactive way to help advise PTEF on how to avoid potential conflicts of interest with their specific decisions and activities. The GET further heard that the Office was doing its utmost given its enlarged remit, following the adoption of Law 3/2015, and its personnel resources. In light of the foregoing considerations, **GRECO recommends that the advisory, supervisory and enforcement regime regarding conflicts of interest of persons with top executive functions be substantially strengthened, including by reinforcing the independence and autonomy, powers and resources of the Office for Conflicts of Interest.**

Criminal proceedings and immunities

118. PTEF are subject to penal, accounting and administrative responsibility. There are some special rules which apply to members of Government (the Prime Minister and the ministers). In particular, proceedings against the Prime Minister and the ministers are heard in the penal division of the Supreme Court; no appeal or review mechanisms are available thereafter. This is known in Spain as "*aforamiento"*. This institution is reportedly meant to protect senior officials from spurious attacks, while at the same time relieving lower courts of any potential pressure when dealing with high-profile figures and protecting their freedom, autonomy and independence. Nowadays, there is a proposal to reform the Constitution to limit the scope of this procedural exception in relation to acts committed in the scope of official duties. Also, the subsequent adaptation of the legal system regarding *aforamiento* is in the pipeline.

119. In addition, pursuant to Article 412 of the Code on Criminal Procedure, the Prime Minister and the ministers are exempted from appearing in court and instead declare in writing; the exception to appear in court extends to Secretaries of State and Undersecretaries who can, in turn, have declarations taken in their offices or the premises of their respective institution. Other than that, ordinary principles of criminal procedure apply.

120. Finally, there is a separate procedure for cases of treason and against State Security which necessitates the initiative of one quarter of the members of Congress and the approval of the absolute majority thereof. The constitutional court can also be invited to give a binding opinion. The possibility of pardon is not applicable in respect of members of Government.

121. The GET heard repeated criticism as regards the institution of *aforamiento*. In this regard, the GET notes that this type of special procedure for members of Government is not uncommon in other GRECO member States. It finds its *rationale* in the need to guarantee a serene performance of public office; this is all the more important in Spain because of *actio popularis* which gives citizens the right to go before the courts and challenge an activity which affects a collective interest. However, in the Spanish case, this special procedure is configured in very broad terms. The number of persons it covers is quite wide: while the Constitution only refers to parliamentarians and members of Government, it has been extended to a considerably larger group of persons[29]. Furthermore, it relates to both offences committed in connection to the performance of official duties, as well as offences unconnected with the exercise of official functions.

122. It is recalled that the Council of Europe European Commission for Democracy through Law (Venice Commission) calls for extra caution and restraint in the interpretation and application of special procedures to hold members of Government criminally liable. In particular, and in conformity with the principle of equality, special procedures should preferably be reserved for criminal acts committed in the exercise of official functions. Ordinary criminal acts, committed as a private citizen, should preferably be a matter for the ordinary criminal system[30]. The Spanish authorities underlined that the proposed legislative amendments on *aforamiento* go already in this direction.

123. Taken all together, the institution of *aforamiento* is rightly due for review. Consequently, **GRECO recommends ensuring that the special procedure of "*aforamiento*" be amended, so that it does not hamper the criminal justice process in respect of members of Government suspected of having committed corruption related offences.** While the other categories of officials covered by *aforamiento* (see footnote 29 for their exhaustive

[29] Pursuant to Article 57 of the Law on the Judiciary, the Criminal Chamber of the Supreme Court is responsible for the examination and trying of proceedings brought against the members of Government (Prime Minister, Deputy Prime Minister(s) and ministers), the Presidents of the Congress of Deputies and the Senate, the President of the Supreme Court and the General Council of the Judiciary, magistrates of the Constitutional Court and the Supreme Court, the President of the National High Court and of any of its Chambers and the Presidents of the High Courts of Justice, magistrates of the National High Court or of a High Court of Justice, the State Prosecutor General, state prosecutors attached to the Chambers of the Supreme Court, the President and Counsellors of the Court of Auditors, the President and Counsellors of the Council of State and the Ombudsman, along with any proceedings that may be determined by the Statutes of Autonomy of the respective Autonomous Communities.

[30] Report on the Relationship Between Political and Criminal Ministerial Responsibility, European Commission for Democracy through Law (Venice Commission), CDL-AD(2013)001

enumeration) fall out of the scope of this particular evaluation, GRECO urges the authorities to also take measures in their respect.

V. CORRUPTION PREVENTION IN LAW ENFORCEMENT AGENCIES

Organisation and accountability of law enforcement/police authorities

Overview of various law enforcement authorities

124. Spain has two law enforcement authorities, which operate within their own area of competence (the officials of the two law enforcement authorities described below are hereinafter referred as LEO):

- National Police (*Policía Nacional*): The National Police is an armed body with civil status, with authority at national level, which is regulated by Organic Law 9/2015 on the Staff Regime of the National Police. It is attached to the Ministry of the Interior. It is endowed with specific functions related to citizen security, judicial police[31], immigration and documentation. The National Police works in large cities and towns (with more than 20 000 inhabitants). Out of 17 regions (*Comunidades Autónomas*), in three of them (Catalonia, Navarra and Basque Country) there are regional Police which are competent in citizen security and judicial police. In these three, although the national LEO delegate these competences to regional Police, they may carry out their own investigations as judicial police either individually, or in conjunction with the regional police force.

- Civil Guard (*Guardia Civil*): The Civil Guard is a military-style organisation. It is regulated by Organic Law 11/2007 on the Rights and Duties of the Civil Guard. It mainly works in rural areas. It depends on the Ministry of the Interior (in terms of salaries, positions and resources), but also, due to its military nature, depends in some aspects on the Ministry of Defence (in terms of promotions and military missions). Its main functions are dealing with citizen security, judicial police, traffic police, fiscal services, as well as others (control of firearms and the environment).

125. Both of the aforementioned authorities are organised in a hierarchical manner and headed by a Directorate General, respectively.

126. The information included in this section of the report refers to law enforcement agencies (hereinafter LEA) with competence throughout the national territory, i.e. the National Police (hereinafter Police) and the Civil Guard. For the purposes of this report, the common features of the Police and the Civil Guard are grouped together, but a detailed assessment is provided, wherever necessary, to highlight differences or respective arrangements within each authority – whether those differences are achievements or challenges ahead.

[31] Both the Civil Guard and the National Police are also functionally dependent on judges, prosecutors and courts, in so far as they undertake judicial police missions (assistance to courts and to the Public Prosecutor's Office in the investigation of crimes and on the detection and arrest of offenders). Judicial Police officers who have been entrusted with a specific action or investigation may not be removed or transferred until this action or, in any case, the phase of the judicial procedure from which it originated, is finalised, if not by decision or authorisation of the competent judge or prosecutor.

Law enforcement authorities in numbers

Law enforcement authority	Total	Male %	Female %
Police	**63 157**	**86%**	**14%**
Civil Guard	**82 967**	**93%**	**7%**
• **On duty**	75 564	93%	7%
• **In reserve**	7 403	99,9%	0,1%

127. Spain has a low percentage of women in LEA. During the on-site visit, both forces recognised the challenges of increasing female representation and making the job more attractive to women since, at present, only around 20-35% of women apply to the profession (the percentage of women who take the examinations closely correlates to the percentage of women who actually pass the entry tests). To put things in a historical context, the GET was told that, in the last 40 years, the number of women in LEA has exponentially increased (in the Police: from 42 women in the in 1979 to 9,082 today and an exponential increase from 4% to 14% in the last four years, with two of the four highest ranks occupied by women). Even so, both forces acknowledged that more work needed to be done in this key area.

128. Consequently, the Police has included gender equality as a specific objective of its institutional Strategic Plan for the period 2017-2021. Moreover, a National Office for Gender Equality was established within the Police, in February 2018, in order to promote gender equality within the corps. Since its establishment, it has developed concrete actions, *inter alia*, gathering gender disaggregated statistics (on recruitment, promotion, working conditions, etc.), developing targeted training on gender equality, adopting internal protocols (against gender-based violence and sexual harassment, hate crimes and discriminatory behaviour), improving conciliation, issuing a guide for inclusive language, etc. The Civil Guard is also paying attention to the matter: its action in this particular domain has focused so far in the implementation of individual practical measures (e.g. applying a scoring system for physical tests which differentiate by age and sex, including women in selection boards, etc.), but a more systemic/strategic approach is currently under development (e.g. editing a gender-neutral language guide, setting up a Women and Equality Area in the Civil Guard's Technical Office, drafting a gender equality plan, providing permanent training to officers on gender equality, issuing a protocol against harassment, etc.)

129. The GET welcomes the efforts underway to improve female demographics in LEO. Diversity is indeed a key instrument in the prevention of group-think and in turn corruption. Seeking a better gender balance in LEA, including at managerial and policy-making levels, is not only a requirement under international law[32], but it can also contribute to positive changes in attitude and performance within the profession (e.g. quality of contacts with the public and suspects, countering possible codes of silence, further developing multiple-eyes routines, etc.). Accordingly, a recommendation to pay particular attention to the integration of women at all levels in the forces is made later in this report (see recommendation xv, paragraph 168).

130. There are several well-developed police coordination bodies at the state, regional and local levels, as well as joint operation coordination bodies. Two notable examples are

[32] Rec(2003)3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision making

highlighted: CITCO (Intelligence Centre against Terrorism and Organised Crime) is a joint body that coordinates all police bodies (State and regional levels) in their investigations on organised crime and terrorism. The Security Policy Council coordinates the public security policies of the State and the regions. To do so, it has a committee of experts entrusted with developing and proposing coordination procedures, preparing cooperation agreements, proposing training and development programmes for the police and developing joint action plans. The Council is chaired by the Ministry of the Interior and is composed of Councillors of the Interior or Home Affairs of the regions and an equal number of State representatives appointed by the national Government.

Access to information

131. LEA, as any other public administration, fall under Law 19/2013 on Transparency, Access to Public Information and Good Governance. Restrictions may apply for reasons of public security, national security, defence, the prevention, investigation and sanction of criminal and administrative offences, equality of the parties in a dispute and the right of defence, etc., as specifically listed by the law (Article 14, Law 19/2013). Likewise, limitations may apply by virtue of Law 9/1968 on Official Secrets. Furthermore, the right of access to LEA files is limited and subject to authorisation by the court deciding on the case. All access to police databases must be recorded by identifying the user, date and time, and the reasons for the query. Databases are under the control of the Spanish Data Protection Agency. The GET notes that the remarks expressed in relation to disclosure of public information in the first part of this report, apply *mutatis mutandi* to LEA. A veritable culture of openness needs to take root in this respect.

132. Both LEA have a press office handling relations with the media, and so does the Ministry of the Interior. The corresponding institutional webpages contain information on their services. LEA interaction with social media has proven to be challenging in terms of what is posted by individual agents and the damage that certain statements or images can have to institutional reputation or in the conduct of investigations. Targeted training has been developed to fight against stereotypes, hate speech and discriminatory behaviour.

133. The total budget dedicated to LEA can be consulted in the general budget of the State, which is published in the Official Bulletin, but the breakdown of the expenditure of the respective Directorate Generals (which are responsible for the organisation, management and coordination of LEA) is not accessible to the public. The control of these moneys is, nevertheless, subject to internal (Ministry of the Interior), as well as external control (Court of Auditors and Parliament). In relation to the control performed by the Court of Auditors, its latest reports on public procurement (adopted in 2018) have reflected on the need for the Ministry of the Interior, among other public institutions, to better account for the details of the tenders it has awarded (summary details of technical dossier, justification of the tender, evaluation of bids, solvency of bidders, documents issued/required during the execution of contracts, etc.). The setting up of a dedicated supervisory body for public contracts, the Independent Procurement Regulation and Supervision Office (*Oficina Independiente de Regulación y Supervisión de la Contratación*), is expected to improve the situation in this respect.

Public trust in law enforcement authorities

134. According to national polls, LEA rank as the most trusted institutions in Spain[33]. Likewise, the 2017 Eurobarometer on Corruption shows that 64% of the surveyed would turn to the police to complain about a corruption case (EU average: 60%). The survey also refers to a smaller proportion of Spanish citizens (31%) than the EU average (39%) who thinks that bribery and the abuse of power are widespread in police/customs[34]. Further, the police services are considered reliable in protecting companies from crime[35].

Trade unions and professional organisations

135. The Police has eight trade unions[36] and the Civil Guard has 13 professional associations[37]. No figures are publicly available on the number of associates or affiliates since, for freedom of association reasons, there is no obligation for individuals to declare membership. These organisations have a primary role in negotiating on matters of general interest to the legal status of LEO and their working conditions. Their action has proven to be fundamental to protect and fight for agents' rights at the critical times of recruitment, advancement and dismissal. Moreover, individual officers do turn for advice in many cases to their trade union/professional organisation representatives.

Anticorruption and integrity policy

Policy, planning, risk management and institutional mechanisms

136. Overall, the instruments to prevent corruption and promote ethical behaviour within LEO are taken on the basis of the legislative framework on public administration, as well as their respective professional statutes embedding integrity principles, and particular provisions on legality, neutrality, dignity, community service, discipline, confidentiality, etc. Moreover, there are various measures and mechanisms in place, which both LEA have been implementing and thereby refining along the years to prevent corruption among their ranks, including: ethical principles and related awareness raising and disciplinary tools in case of infringement, systems of internal and external control, structural tools to prevent malpractice (through rotation of staff in sensitive posts, regular IT check logs, the application of the four-eyes' principle, managers' supervision, etc.).

[33] Surveys on Perceptions of the Main Problems in Spain (2013-2018), Centre for Sociological Research (CIS)
[34] 2017 Eurobarometer
[35] Global Competitiveness Report (2017-2018), World Economic Forum
[36] Trade Unions of the Police: SPP Sindicato Profesional de Policía, SUP Sindicato Unificado de Policía, CEP Confederación Española de Policía, UFP Unión Federal de Policía, ASP Asociación Sindical de Policía. These are all represented in the Police Council (a joint collegiate body agreeing on working conditions and the settlement of collective disputes). In addition, there are three more unions, which are not represented in the Police Council, i.e. SIPE Sindicato Independiente de Policía Española, ARP Agrupación Reformista de Policías, and JUSAPOL/JUPOL Justicia Salarial Policial.
[37] Professional Associations of the Civil Guard: ASIGC Asociación Independiente de la Guardia Civil, ASES-GC Asociación de la Escala de Suboficiales de la Guardia Civil Profesional, UO Unión de Oficiales de la Guardia Civil Profesional, AUGC Asociación Unificada de Guardias Civiles, AEGC Asociación Española de Guardias Civiles, GC Unión de Guardias Civiles, IGC Independientes de la Guardia Civil, CEGC Coordinadora Española de Guardias Civiles, Asociación Democrática de Guardias Civiles, APRO GC Asociación PRO Guardia Civil, AIGC Asociación Independiente de Guardias Civiles, AMGC Asociación Militar de Guardias Civiles, APCGC Asociación Profesional de Cabos de la Guardia Civil.

137. A comprehensive plan to prevent corruption is currently under study by the National Police. It is to define and assess jobs at risk, as well as to set in place preventive and remedial action thereafter. The Civil Guard has identified corruption prevention as a key objective in its Institutional Strategy; moreover, specific anticorruption objectives and targeted measures are included in the Civil Guard's Strategic Plan for 2017-2020 (e.g. training on ethics, continuous monitoring of the actions of the chain of command, risk assessment by Internal Affairs, etc.).

138. The GET notes that Spanish LEA enjoy high consideration among citizens, as well as internationally. That is not to say that there have not been episodes of corruption among their ranks, one of which is highly topical nowadays in the country[38]. The case in question is not in itself representative of the profession, but it has rung alarm bells on the effectiveness of internal control systems. All the more since the irregularities detected were committed over a 25-year period, from 1993 to 2015. This case has sparked national concern over Police politicisation - the GET heard that this concern was not restricted to the Police, but also applied to the highest ranks of civil service in general - and has evidenced how oversight mechanisms do not work as they should when there are partisan interests at stake. It has further proven the need to re-assess the available control systems, particularly at top management level.

139. For the GET, understanding key themes of concern or vulnerabilities is paramount in order to implement control measures to counter poor behaviour or practice which can range from an honest mistake, often caused through lack of knowledge, through to the ultimate result of corrupt practice. When such a threat or challenge is reviewed, quantified and understood, a plan to address can be devised through policy and process which can be implemented to reduce the relevant threat and risk. Over time, requirements and an expectation statement of how a police officer undertakes his/her daily duties, through a set of defined principles, sets the tone and culture of the force and ultimately outlines what is acceptable and what is not. With this concept in mind, the GET could not identify a strategic assessment which singled out key national themes of vulnerability. Without a national approach to key challenges such as, for example, selling police information or abusing position for personal benefit, the GET is of the view that the Police and the Civil Guard are not maximising the opportunity to define risks and may thus be more vulnerable to unethical or even corrupt behaviour.

140. There is room for improvement in this domain. Both forces recognised that, although they had started work in this area (see paragraph 137), further strategic action lay ahead. The GET believes that LEA need to pursue a more pro-active and ambitious approach when it comes to assessing risks which can affect their integrity, as well as developing not only remedial (reactive), but also additional prevention measures thereafter. In this connection, the GET could not find evidence of a dedicated prevention strategy within either force, which puts in question the effective ability of LEA to predict or analyse trends in either public complaints or internal malpractice. This significantly reduces the opportunity to either anticipate problems or to design out vulnerabilities through effective communication, aimed at setting standards, and thus defining what is acceptable behaviour and what is not. As a

[38] The on-going so-called Caso Villarejo (a former Police Commissioner) has been broadly covered by the press, see for example: https://elpais.com/tag/caso_villarejo/a
https://www.elmundo.es/e/jo/jose-manuel-villarejo.html
https://www.larazon.es/etiquetas/noticias/meta/caso-villarejo

tactical example, in an age of social media, problems may emerge through inappropriate use of multiple media platforms; if un-checked, this can lead to vulnerabilities through police officers behaving in an unethical way, either on or off duty. As mentioned previously in this report, this is not a theoretical problem, since, in practice, communications by individual officers in social media currently constitute a growing challenge for LEA.

141. The GET considers that the time has come for LEA to take a step forward in demonstrating its zero tolerance to corruption through the development of a targeted integrity policy. This can represent a valuable opportunity for LEA to engage in an inclusive dialogue within its ranks to further reflect on their respective corruption prevention and ethical challenges, lessons learned, emerging risks and the way forward. Such a move could also further assist LEA to enhance their organisational reputation and reinforce their respective internal mechanisms, among employees and partners, to help deter corruption. For LEA to be supported when confronted with corruption and unethical behaviour they should have a comprehensive "ethics infrastructure" in place. **GRECO recommends that the Police and the Civil Guard (i) conduct a strategic risk assessment of corruption-prone areas and activities to identify problems and emerging threats, and (ii) the data gathered are used for the proactive design of an integrity and anticorruption strategy. Preferably, a joint consultation between both forces in such exercises should be considered.**

Handling undercover operations and contacts with informants and witnesses

142. The use of undercover agents for the investigation of organised crime schemes is regulated in the Code of Criminal Procedure (Article 282bis) and subject to authorisation by the competent judge or prosecutor (who must then report to the judge). The Ministry of the Interior is responsible for granting the assumed identity for extendable periods of six months and due (confidential) recording.

143. Rules are in place for the protection of witnesses and other persons who cooperate with judicial authorities, notably, Organic Law 19/1994 provides for broad protection measures both during the pre-trial/investigation phase (deletion of data which may enable personal identification, replacing name with alphanumeric code, covered presence in court, etc.) and in the oral trial (including anonymity). Police informants must be registered in a restricted access database. Concerns were raised on-site as to the sufficiency of the rules in place to effectively protect witnesses and the need for legislative review/upgrade in this domain (see also considerations made later in this report in connection with whistleblower protection).

Code of ethics, advice, training and awareness on integrity

144. The provisions of the Royal Legislative Decree 5/2015, approving the revised text of the Basic Statute for Public Officials (Articles 52 to 54) serve as general guidance for LEO in so far as they are public servants. They prescribe, for example, honesty, competence, fairness and impartiality, preventing conflicts of interest, etc. Ethical principles are also enshrined by the respective framework legislation of LEA e.g. Organic Law 2/1986 on Security Forces, Organic Law 9/2015 on Staff Regulations of the National Police, Law 29/2014 on Staff Regulations of the Civil Guard, Organic Law 11/2007 on Rights and Duties of Members of the Civil Guard, Royal Decree 96/2009 including a Code of Conduct for

Military Forces (and which applies with certain limitations to the personnel of the Civil Guard), etc.

145. The Police issued, in 2013, its own Code of Conduct which closely follows international standards in the domain, particularly, the European Code of Police Ethics. For the GET, setting the tone or standards of behaviour which are expected from LEO is naturally important. For that reason, the fact that the Police has developed a Code of its own is good practice. When exploring how the Code was promoted and understood by individual agents in their everyday routines, the GET was referred to front line supervisors defining what was acceptable and what was not.

146. The GET finds that more needs to be done to assure the reinforcement of the Code and its communication on a daily basis, for example, by releasing detail of findings against officers, from either internal investigations or criminal cases, or by issuing moral reminders at regular intervals, as a way to constantly call attention to police officers and staff of the standards expected. Both the consequences of unacceptable behaviour as well as commendable behaviour need to be better publicised; personal examples may be more powerful in maintaining and reinforcing organisational values of ethics and integrity than written rules. Moreover, GRECO has repeatedly emphasised the value of codes of conduct as living documents, needing to be embraced and refined by staff, used in daily practice and updated so as to adapt to social changes and new emerging integrity-related issues and risks.

147. The Civil Guard has not yet issued a similar document in nature, but its statutory legislation (see paragraph 144) does comprise rules on conduct which refer to the general principles of public dedication, selflessness, discipline, professional competence, honorability, etc. Failure to meet ethical principles and obligations triggers the disciplinary machinery. The GET considers that it would be worth gathering the different existing integrity-related principles and rules, which are currently dispersed in various pieces of legislation, in one document to ease officers' familiarisation with the applicable provisions and contribute to their visibility amongst the public. Further, the adoption of a separate code of conduct for the Civil Guards could prove extremely valuable to invigorate ethical discussion among the force (by enabling an inclusive process within the force where open talks are held on problems and dilemmas), but also to inform the general public of the conduct they can expect from officers. The Civil Guard shared this view and confirmed, on-site, that they were in the process of developing a code of their own, which they intended to supplement with guidelines and other practical measures to help prevent unethical behaviour. This is a welcome development which needs to materialise in practice; moreover, once the Code is adopted, it important to assure further implementation of a process to make it real to its workforce on a daily basis.

148. Regarding the development of tailored courses on integrity matters, the education scheme of the National School of Police and the Civil Guard School include initial specialised training modules on ethics and human rights. Later, while in service, there are opportunities for refresher courses on professional deontology. The GET was provided with training modules and examples of topics covered. In both forces, training (although not necessarily focused on integrity) serves as a criterion for professional advancement. There are no available records as to the number (and position) of officers attending those modules, but the GET heard that courses on integrity and ethics are seldom attended by higher ranks. The

GET considers it crucial, given that LEO rely on supervision/hierarchical lines, that supervisors lead by example. Visible leadership which consistently displays appropriate behaviour is key to setting the right ethical tone in the organisation. It must, therefore, be assured that specific on-going training is developed for managers to better equip them to provide a lead on integrity matters within their teams. The GET sees merit in constituting a small team of officers dedicated to corruption prevention/reduction and entrusted with advisory and organisational learning responsibilities to this effect

149. There is no clearly signposted procedure for LEO to avail themselves of external, neutral and confidential advice on integrity and ethical matters. In case of dilemma, the step normally taken would be to turn to the line manager, a close colleague or trade union representatives. The GET is of the view that it would be more appropriate if an expert body or persons with no daily contact with law enforcement officials were responsible for providing confidential advice to LEO in the event of an ethical dilemma. Finally, when breaches of ethical standards occur, they give rise to disciplinary action (see paragraphs 207 to 213 on discipline).

150. Nurturing a culture of integrity (and preventing misconduct prior to its occurrence) within an organisation, requires the reinforcement of a certain "ethics infrastructure". Tone at the top and a robust internal communications programme are fundamental. Likewise, a code of conduct, training, advice and assurance are all "must haves". While recognising that strong values and commitment to public service are firmly rooted in Spanish LEO, the GET considers that both the Police and the Civil Guard could undertake some additional steps in this domain. In light of the foregoing considerations, **GRECO recommends that (i) the Civil Guard adopt a Code of Conduct and make it publicly available; (ii) both the National Police and the Civil Guard complement their respective Codes by guidelines and practical measures for their implementation (e.g. regarding conflicts of interest, gifts, use of public resources, confidential information, accessory activities, political neutrality, etc.), as well as a credible and effective mechanism for oversight and enforcement.**

Recruitment, career and conditions of service

Recruitment requirements and appointment procedure

151. All LEO are civil servants; there is no personnel hired on the basis of temporary contracts either in the Police or in the Civil Guard. They are, therefore, subject to the general principles on public office laid out in the Constitution, as well as the requirements of the different laws on public administration. Recruitment processes must, accordingly, be guided by the principles of equal opportunities, merit, competence and publicity.

152. Recruitment at entry level – whether at basic or more advanced ranks (i.e. policemen/policewomen and inspectors in the Police, and corporals, guardsmen/women and lieutenants in the Civil Guard) takes place through competitive examinations, which are published in the Official Bulletin. Those who pass the exams, then undertake theoretical and practical training (probationary period) at the National School of Police or the Civil Guard School before they are formally appointed to enter the forces. While recruitment processes are generally clear, the GET heard some misgivings regarding the development of some of their phases, notably, the physical test and personal interviews (the latter comprise a personality assessment and a questionnaire of biographical information or a curriculum vitae

which are based on modern psychology scientific methodologies designed to identify features such as personality traits, clinical features, motivation, ethical values, professional qualities, etc.).

153. With regard to physical tests, the Civil Guard has introduced the good practice of recording this part of the exam; this has not been the case in the Police which, in the GET's view, is a pending task. Regarding interviews, while interlocutors referred to their value as a way to select the best candidates (the underlying *rationale* for their introduction into the recruitment and promotion systems), they also underscored that they can (and have been) misused to favour some applicants over others who may be better qualified. Courts have been quite critical regarding the use of the final personal interview as a way to disqualify a candidate who has otherwise passed all other prior tests, notably, because decisions lacked justification on the evaluation criteria used in such interviews. In those cases where recruitment decisions are contested (according to available statistics, in 2018, the appeal rate amounted to around 5%), a detailed report on the reasons of exclusions is drawn up on the basis of the documentary records kept of the recruitment process in software applications designed for this purpose. A recommendation to improve the transparency of recruitment processes is issued later in this report (see recommendation xv, paragraph 168).

154. The GET learnt of the fixed quota reserved in the Civil Guard School (Valdemoro) for offspring of the force. In particular, the children of former officers enter a basic course of the School which prepares them for the competitive exams for the basic ranks of the Civil Guard. In such competition there is a fixed (maximum) 7.92% quota of the posts which must be allocated to these students (children of the Civil Guard). The GET has strong reserves about such a system in modern times, which clearly departs from the principle of equality of opportunities for all citizens to enter public service and presents non-negligible risks of cronyism and nepotism. The practice also presents problems in relation to legitimacy and public perception.

155. When discussing the reasoning behind this quota, the authorities referred to a 170-year old tradition in this respect, as well as to it being a supporting measure for members of the force who serve in rural areas offering limited education opportunities to their children. Likewise, this entry system is proving to be a supportive measure for assuring female representation in the Civil Guard[39]. Further, the authorities indicated that this was a residual quota as compared to the other means of entry ways to the corps, i.e. 52.08% free entrance to any person and 40% reserved for soldiers and seamen. The authorities also stressed that court decisions in this domain (two judgments of the Supreme Court's Chamber for Contentious Administrative Proceedings: 1770/2016 and 407/2019) have not put into question the principle of equality in the application of such quotas. Having said that, the Civil Guard is currently reassessing the operation of the Civil Guard School of Valdemoro. The GET welcomes the on-going reflection and the efforts of the Civil Guard to strive for continuous improvement regarding an education system for its officers, which is publicly acknowledged to be already of a very high level. In line with such a process, **GRECO recommends reassessing the system of entry quotas for the offspring of the Civil Guard.**

[39] In the period 2014-2018, the percentage of women who entered the Civil Guard through the School of Valdemoro amounted to 24.64%. This figure is almost four times the total percentage of women in the corps (around 7.3%). It is markedly higher than the percentage of women who enter through the quota reserved for the military (5.71%), and is also noticeably higher than for those women who enter through open competition (15.84%).

156. Regarding vetting, the general standard is to have a clean criminal record and to be physically and mentally fit for the position. Financial background checks are not performed as part of vetting processes. No security checks are carried out in relation to the close relatives/associates of the applicant. There is no policy providing for periodic in-service vetting/security checks, other than the carrying out of occasional drugs and alcohol consumption tests and the integrity-related aspects considered and assessed in the course of performance appraisals. The authorities added that, obviously, in the event that there is evidence of a possible criminal conduct, the relevant investigation would be carried out under the direction of the responsible judicial authority. There is no separate, differentiated vetting process for officials working in Internal Affairs Units.

157. The GET discussed the issue of vetting in detail with the authorities during the evaluation visit. The vetting procedures adopted by both forces are based upon questionnaires (a battery of around 100 questions, so-called *biodata*), interview processes and a significant reliance on the interviewer identifying potential concerns. Applicants for both the Police and the Civil Guard have criminal records checked as a matter of course and are subjected to drug testing, but no further background checks are conducted. Against this background, reassurance was given on-site that the present measures were sufficient and that indeed, legislation denied the opportunity to conduct additional police criminal record checks on wider associates of the applicant. Other methods, such as interviewing wider family associates or conducting background checks were discussed as a further opportunity to identify concerns, but these suggestions were regarded as unnecessary. The GET, however, is of the view that vetting processes in the current format should be reviewed and strengthened.

158. The GET draws the attention of the authorities to the experience already developed in some other countries regarding recruitment vetting and re-vetting. For example, for new recruits, a capacity to extend background checks on people associated with applicants could be considered. This can also be a useful measure later on since the environment or personal situation of individual officers can change throughout their working life and expose them to new risks. In this context, vetting at regular intervals could indeed prove an indispensable tool to prevent attempts to corrupt officers already in post and who, through their daily work, may be in contact with people linked to criminal networks. Also, a system to check whether police officers have received a conviction since they joined the service would be a further asset. This is necessary as an officer may have been arrested off duty and to protect his/her job, did not disclose his/her occupation at the time of arrest. If no process is in place to check such matters, vetting concerns from existing officers can constitute a vulnerability for the force. **GRECO recommends strengthening the current vetting processes in the Police and the Civil Guard and introducing vetting at regular intervals during its staff members' careers.**

Performance evaluation and promotion to a higher rank, transfers and termination of service

159. The Police does not carry out individual appraisals but team performance exercises on an annual basis by which the achievement of certain objectives is assessed (e.g. reduction of crime rates, number of reports, records, visual inspections, etc.); the results of this exercise bears weight in salary rises. The Civil Guard, in turn, subjects its officers to performance appraisals (biannual for lowest ranks and annual for the rest of the officers),

which are carried out by the superior in line; the topic of ethics is a part of this performance exercise. For the Civil Guard, performance results do not play any role in salary conditions, but are taken into account for promotion purposes.

160. Staff transfers are voluntary unless the result of discipline or in cases of necessary urgent secondments. When the latter occur, always for a particular need and only on a temporary/provisional basis, the relocation must be in the same city. Rotation is not a policy *per se*, but it may apply in cases of sensitive positions (e.g. border control) or in higher ranks (in respect of the Civil Guard).

161. Assignment to a higher rank is to follow the same criteria of equal opportunities, merit, competence and publicity. There are three possible ways in which vacancies can be filled from the existing pool of officers (i) selective seniority; (ii) competitive examination (with a selection board, including trade unions' representatives); and (iii) discretionary appointment (*libre designación).* In the latter system, although vacancies are advertised, the appointing authority is free to choose the candidate and does not need to motivate its final choice nor is there a pre-established methodology/scoring system for the selection as is the case for a competitive examination. Further, in the same terms, removal decisions do not need justification.

162. The method of discretionary appointment is restricted to certain managerial posts or posts which require a particular degree of trust or responsibility. The possibility of making discretionary appointments applies throughout public service (it is provided by Article 74 of Royal Legislative Decree 5/2015, approving the revised text of the Basic Statute for Public Employees) and is not exclusive to LEA. The use of this particular way of promotion amounts to around 4 % in the Police (2 824 posts) and 12% in the Civil Guard (10 147 posts). Courts, however, have been rather strict in allowing their application and have recommended that they are limited in number and per type of rank. The authorities underscored that (as per the figures provided above), in practice, seniority prevails over discretionary appointments unless the personal or professional conditions of the most senior candidate advise against his/her appointment. The authorities also argued that, whenever a discretionary appointment is made, the decision has to be duly motivated by the competent authority; the GET was, nevertheless, made aware of common practice that proved otherwise.

163. The GET considers that transparency in how a workforce is treated in day to day operations and procedures helps a workforce to be confident in its leaders. When such processes are in place, the officials can be assured that if they feel aggrieved on any matter, they will receive support through robust internal systems and human resources processes. This confidence leads to assured officers thereby increasing their professional commitment to public service. When this is not in place, it can result, in turn, in a workforce being demoralised and focussed on internal grievance and a sense of personal injustice, rather than outward public duty. This can further be conducive to officers complaining about the system to their peers and reduced trust in leadership principles can spread throughout the corps. Ultimately, this can cause a systemic lack of trust across the corps and, in a worst case scenario, unethical, misguided or even corrupt behaviour.

164. The GET found several areas of concern in relation to internal procedures affecting career development within both the Police and the Civil Guard. These concerns negatively impact on transparency principles and, ultimately, on the legitimacy of internal selection

processes or decisions. The GET was told that these issues are also affecting general workforce morale.

165. As already described, there are some shortcomings in relation to recruitment processes (see paragraph 153). Regarding performance evaluations, annual appraisals do not provide the option to challenge scores; furthermore, they appear to be considerably subjective and their outcome highly dependent on one person: the direct hierarchical superior. This can be a particularly sensitive matter because performance appraisals do play an important role in the career life of LEO, not only for promotion, but also for pay rises. From the interviews held on-site, the GET found that there is a strong perception among LEO that promotion processes are preferential and fundamentally unfair.

166. Moreover, it would appear that secondments and lateral moves to other roles are made by appointment, and left to the discretion of managers/supervisors, rather than selection, which would give equal opportunity to others who may have been interested in such a move. Misgivings were conveyed to the GET regarding decisions on the duty-station assignment, temporary attachment and secondment, particularly, in relation to certain regions of Spain, as well as posts abroad in embassies and consular services which receive salary supplements or increases of substantial amounts. As a result, while not in law, lateral development is restricted *de facto*, leading to a sense of lack of fairness which was said to benefit the few at the expense of the wider majority.

167. The system of discretionary appointment is present within both the Police and Civil Guard. A significant number of places are retained for this process and are present in all ranks. Concerns were raised regarding how discretionary appointments were decided as there was no clear process to define selection criteria. Whilst there was an acknowledgement from the professional unions' and associations' representatives that it may be necessary in sensitive roles, the fact that no available rationale to explain decisions is released raises concerns of subjectivity over objective business needs. The GET considers that the use of discretionary appointment for positions of trust or because of special needs of a service should constitute an exception and should be limited to top positions. In practice, the GET was told that the system of discretionary appointment was being used to fill roles such as Internal Affairs and overseas Embassy posts (which in the case of the latter attracts significant financial benefits) and was deemed unfair.

168. For the GET, the procedures for recruitment and post assignment should follow a process which is vested with greater guarantees of transparency and fairness in order to remove any possible doubt of "hand-picking" practices, cronyism and favouritism. Additionally, as already anticipated, targeted measures must be devised to increase the representation of women in the forces. **GRECO recommends that the Police and the Civil Guard review their career-related internal processes (recruitment, promotions, discretionary appointments, appraisals/merit systems) with the sole aim of identifying opportunities to improve the recording and publication of rationale in decisions in order to evidence a more objective and transparent approach. In reviewing such processes, particular attention must be paid to the integration of women at all levels in the forces.**

169. Regarding termination of office, there are various types of discharge at own request, due to unsuitability, or punitive dismissal. All the acts issued in connection with

appointment, promotion, mobility or dismissal may be appealed through internal conciliation channels, labour-law mediation, and ultimately, before court.

Salaries and benefits

170. By way of example, the gross annual salary in the Police ranges between 40 488 € (inspector) and 26 414 € (police officer). In the Civil Guard, the gross annual salary of agents at the beginning of their career is 24 187 € (corporals and guardsmen/women) and 26 970 € (lieutenant). Productivity bonuses are possible for both the Police and the Civil Guard. The fact that the average wages for the Civil Guard are lower (especially, but not only in entry level positions) than those of their colleagues in the Police constitutes a source of unease and dissatisfaction among serving guards.

171. The Police does not offer any rent or housing allowance. The Civil Guard provides a social action plan (extending beyond the regular social security scheme) and official housing (the latter if so requested) to its staff. Both the Police and the Civil Guard can also provide allowances which are paid in addition to the basic salary, such as for certain special operations, as well as in relation to location-based duty (Basque Country and Navarra, Ceuta and Melilla and the Balearic and Canary islands).

172. A problematic issue raised on-site referred to decisions on medals and decorations. The particular case of the so-called red medals was raised on-site. These medals are not only an honorific title, but they also constitute a financial award whilst in service and in pensions post-service equalling a 10% lifelong salary rise. From 2016 to 2018, a total of 510 and 197 red medals were awarded in the Police and the Civil Guard, respectively. Rules exist, which lay down the requirements and procedures for awarding this type of reward (i.e. Law 5/1964 for the Police and Order INT 2008/2012 for the Civil Guard), but the GET noticed much criticism on-site from the profession regarding their practical application. In this connection, it was argued that an objective format should be available to evidence decisions, which were felt to be favouring some officials. The GET noted that, due to lack of transparency, doubts and a feeling of resentment and injustice in this domain were present among the front line workforce. The GET was further told that the Council of Transparency and Good Governance had received several complaints from LEO trade unions regarding the opacity in the adjudication of decorations (as well as expenses incurred in special operations). Also, there have been cases where officers awarded the red medal were later found to be subject to criminal or serious misconduct procedures, yet there was no evidence of the medal being denounced and the consequent financial reward withdrawn. Such an option is not provided by law. The authorities, nevertheless, indicated that the possibility of prohibiting the use of decorations for conduct reasons is foreseen.

173. The GET understands that benefits in various forms (including allowances, productivity bonuses, training opportunities, medals and decorations, as applicable) could be useful to encourage outstanding service. However, the GET found potential for abuse in the way these rewards are handed out, in practice, at present. Unless such benefits are subject to transparent decision-making and accountability, such systems may be open to favouritism and potential misuse. **GRECO recommends (i) reviewing criteria and procedures for the allocation and withdrawal of allowances, bonuses and other benefits, thereby promoting transparency, consistency and fairness in their application, and (ii) introducing adequate controls and monitoring in this field.**

Conflicts of interest

174. Rules pertaining to the general incompatibilities for civil servants are contained in Law 53/1984 on Incompatibilities of Personnel of the Service of Public Administrations. The norm derives from the principle that civil servants are committed to a specific employment post and that ancillary activities must not hinder or cause prejudice to the strict accomplishment of duties, nor the efficiency of the service, or cast doubt on the objectivity of the official.

175. There is an obligation of recusal when officials are confronted with situations that may generate conflicts of interest; the law provides grounds for recusal in the following situations: having personal interests, having a bond of marriage or kinship, having close friendship or enmity, having intervened as an expert or witness in the proceedings, having a service relationship, being a hierarchical superior (Law 40/2015 on the Legal Regime of the Public Sector, Article 23). The GET considers that this is an area that could further benefit from more developed guidance (as per recommendation xii, paragraph 150), including practical examples on situations that may occur in daily routines and possible ways and internal channels to address them.

Prohibition or restriction of certain activities

Incompatibilities, outside activities and post-employment restrictions

176. Outside activities must be declared and authorised; failure to meet these requirements is liable to disciplinary or criminal penalties. There are some exceptions to the requirement for declarations and prior authorisation in the case of administration of personal or family heritage[40], participation in training seminars/courses not exceeding 75 hours per year, as well as the preparation for admission to public service, production and publication of literary, artistic and scientific material, occasional participation in social communication conferences or programmes, collaboration or attendance at congresses, seminars or conferences on a professional basis (Article 19, Law 53/1984).

177. Authorisation is granted by the Office for Conflicts of Interest, at the proposal of the Undersecretary of the Ministry of the Interior, following a report from the General Director of the Police/Civil Guard. The authorisations granted for secondary activities are recorded in the personal dossier of the officer. According to the information provided, practice in terms of granting authorisation is very restrictive. The situation is particularly stringent in the Civil Guard; interlocutors agreed that the norms in this domain were obsolete and time was ripe for their review. In the last three years, 14 Police officers, and 8 Civil Guard officers have been sanctioned for the exercise of incompatible activities.

178. No prohibitions or restrictions are in place to guard against inappropriate political activity or risks of nepotism (hiring relatives, for instance). A concern raised by the Police itself referred to the lack of a ban on association to a political party (at present, four police

[40] The participation of an officer in a company is permitted insofar as it constitutes what is considered administration of personal or family heritage, s/he cannot be director or proxy, nor can s/he incur financial/patrimonial obligations or legal transactions with third parties when this may pose a conflict of interest with public duties.

officers have been granted a period of leave from the forces to take up political activity); such a prohibition applies for the Civil Guard. The GET takes note of the mischiefs expressed by the Police, notably, that active participation of officers in politics may cast doubt on his/her neutrality, an indispensable value for LEO. This is particularly important in the Spanish context in the light of the topical debate on alleged politicisation of the Police. On the other hand, political rights, as a principle, apply to all citizens, including LEO and restrictions to these rights may only be made when they are necessary for the exercise of the function of LEO in a democratic society in accordance with the law and in conformity with the European Convention on Human Rights[41]. The GET calls on the authorities to deal with this situation, having due regard to the case-law of the European Court of Human Rights, when implementing recommendation xvii, paragraph 183 below.

179. Regarding post-employment, as a general rule, LEO may be employed in other posts after they leave the forces. There is no particular policy which regulates employment in certain posts/functions or engagement in other paid or unpaid activities after leaving the forces. The only exception to the latter applies to staff on non-operational duty[42] (*segunda actividad sin destino/reserva activa*), according to which officers will be able to carry out professional, labour, trade or industrial activities of a private nature without the need to request authorisation, provided that they have not been granted with an authorisation to perform another activity of a private nature. The exercise of activities related to the duties that he/she had been performing during the two years immediately prior to moving to non-operational duty shall be subject to the prior approval of the Director-General of the Police during a period of two years, counting from the day following the date of the move to that situation. There are very few cases of staff on non-operational duty who have engaged in private activities.

180. The GET was made aware of incidents and abuse in relation to outside activities, both in service and (especially) post-retirement. In this connection, the GET was made aware of several (not infrequent) cases of retired officers moving to high/leading positions of security services in the private sector[43]. This being the case, the GET can only underscore the importance of ensuring monitoring of, not only in-service ancillary activities (a control which the authorities must step up in the light of blatant irregularities having surfaced in recent years), but also post-service employment, in order to avoid improper assignments in the private sector which could generate situations of conflicts of interest.

181. The GET acknowledges that certain specialist skills and knowledge that police officers can bring to the private sector can be invaluable, and are rare; the crucial issue here is not whether a competent professional from the public sector is hired in the private sector, but rather whether the employment was conferred in exchange for an official act/omission to act. The challenge is to strike an appropriate balance, the goal being threefold, and notably aimed at (1) ensuring that specific information gained while in public service is not misused; (2) ensuring that the exercise of authority by a police officer is not influenced by personal gain, including by the hope or expectation of future employment; and, (3) ensuring that the access and contacts of current as well as former police officers are not used for the unwarranted benefits of the officials or of others.

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[41] The European Code of Police Ethics, Recommendation Rec(2001)10

[42] Staff who change professional status because of disability in originally assigned post (namely owing to age reasons)

[43] https://elpais.com/politica/2019/02/02/actualidad/1549140039_141705.html

182. The GET points out that Recommendation No. R (2000)10 on Codes of Conduct for Public Officials includes specific guidelines on leaving the public service (Article 26). In particular, it provides that the public official should not take improper advantage of his/her public office to obtain the opportunity for employment outside the public service. The GET underlines the risks the opportunity of certain employment outside LEA can entail (e.g. offers of jobs as rewards, use of communication channels with former colleagues or specialised knowledge on police procedures for the benefit of new employers, etc.)

183. This is an area where clarity and oversight are essential tools. The GET is convinced that substantial reflection lies ahead for LEA in this respect. **GRECO recommends that the Police and the Civil Guard carry out a study concerning risks of conflicts of interest in service and post-employment (including the top level), and develop, thereafter, more targeted regulations and guidance in this domain**.

Gifts

184. The acceptance of gifts is banned in criminal legislation; relevant jurisprudence determines that only social courtesy gifts can be accepted and that what matters is not so much the economic value of the benefit but rather its rewarding nature which purpose is to influence a public official's action in service. The Code of Conduct of the Police reiterates that its staff may not accept services, gifts, gratuities or any other personal or professional advantage in connection with their work other than those received as matter of courtesy (Article 16(3), Police Code of Conduct). When discussing this matter on-site, the interlocutors systematically pointed at bribery provisions. GRECO has extensive jurisprudence in this particular domain where it elaborates on the need to pay attention to grey areas (e.g. hospitality), and to do so through (preventive) administrative rules or guidance rather than exclusively relying on (repressive/punitive) criminal legislation. This is a subject-area that would benefit from further refinement (e.g. practical scenarios and procedures for situations in which gifts are offered, reporting and registering of gifts, etc.) in the guidance recommended before (recommendation xii, paragraph 150).

Misuse of public resources

185. The use of public resources for personal interests may constitute a criminal (embezzlement) or disciplinary offence. There have been incidents of misuse of public resources for private matters, such as the use of official vehicles by top managers (in particular, in relation to the so-called K-vehicles), or even seized items (e.g. bicycles). The authorities stressed that instructions are given by the relevant responsible unit within each LEA in charge of the use of vehicles, which are only to be used for the provision of official services and not for personal purposes; misuse is liable to disciplinary action. However, the GET heard that, again, reality proved otherwise; for this reason, the GET believes that this is yet another area which would benefit from further development, as per recommendation xii (paragraph 150) and recommendation xvi (paragraph 173).

Misuse of confidential information

186. LEO are bound by professional secrecy. Unofficial contacts are not expressly prohibited, but any act that compromises the impartiality of LEO could lead to the

commission of a criminal offence or a disciplinary offence. The GET notes that the leaking of information/unauthorised access to data remains a serious risk which has occurred in practice. In this light, the GET heard of an on-going criminal case where a commissary had a private company providing security and advisory services where he was benefiting from information and databases accessed in the post.

187. The GET considers that additional steps must be taken to better deal with the protection of information, including where requests or solicitations are made from trusted sources, as peer officers, supervisor or former colleagues who may have moved to the private sector. This is a specific matter which should be dealt with when implementing recommendation xii, paragraph 150.

Declaration of assets, income, liabilities and interests

188. The most senior posts of the Police and the Civil Guard, i.e. the respective Directors General, are bound by the asset disclosure system which applies to high posts of public administration, as explained in paragraphs 105 and 106 of this report – see PTEF section for details. No other LEO is under a financial reporting obligation, other than for fiscal purposes.

189. The GET is aware that it is not uncommon that financial reporting obligations for LEO are restricted to senior posts, which are more exposed to corruption than their subordinates (other than petty bribery). Even so, there can well be other corruption prone positions where the use of financial reporting can be of use for preventive purposes, for example, for officials dealing with public procurement decisions. Moreover, if ever developed in the future for all echelons of the respective organisations, financial disclosure should not be seen merely as an obligation for police officers, but also as an opportunity for the system to help prevent situations that could ultimately lead to corruption. For example, situations of indebtedness, which can benefit from welfare support, if properly identified. The GET encourages the authorities to examine this issue in connection with the improvements to the vetting and re-vetting systems recommended above (recommendation xiv, paragraph 158).

Oversight mechanisms

Internal control

190. The following services undertake internal control activities in LEO (the infrastructure described below is generally quite similar in the Police and the Civil Guard):

- Internal Affairs Unit
- Disciplinary Regime Unit
- Provincial Operational Coordination Units or Territorial Coordination Units
- Inspectorate for Security Personnel and Services of the Ministry of the Interior

191. Without doubt, a primary development in the investigation of corruption within the services was the establishment of the respective Internal Affairs Units in the Police (in 1987) and the Civil Guard (in 1991). They have to be informed of those proceedings or matters for the alleged commission of criminal offences involving LEO. If there are signs of possible involvement of LEO in matters of a criminal nature, prior to initiating any action, Internal

Affairs must be informed of the facts and will determine the appropriate procedure to be followed. Their action is always supervised by and coordinated with judicial authorities.

192. Accordingly, in its dual role as investigator and coordinator of the actions of other units, Internal Affairs can perform its functions in three different ways depending on the complexity and special circumstances of the investigation:

- authorise another peripheral or central unit to carry out the investigation in full, limiting itself to the supervision and final control;
- carry out a joint and coordinated investigation with another unit;
- fully undertake the investigation, excluding all others.

193. Coordination with the Disciplinary Regime Units is bidirectional. If a disciplinary unit investigating an administrative offence discovers the commission of a criminal act, this is referred to in the corresponding Internal Affairs Unit which in turn initiates the investigation in coordination with the judicial authority or prosecutor. If, on the other hand, a conduct investigated by Internal Affairs is identified as an administrative offence, this is communicated to the judicial authority so that, if deemed appropriate, it can archive the case, and send it to the disciplinary regime unit to start its process.

194. On the other hand, it is important to note that, at the criminal level, all investigations must be entered into a secret database to which no one has access except the investigators themselves. The purpose is to verify that there is no other unit already investigating the same perpetrators. Information crossovers with other investigations are sent to the investigation leaders who must decide if it should be carried out jointly, separately or delegated.

195. In the event that the investigation involves several bodies, discrepancies between them and coordination are regulated in the CITCO (Intelligence Centre against Terrorism and Organised Crime). Therefore, investigations are always coordinated and subject to rules according to which the importance, the secrecy, the quantity and quality of the data, the subsidiarity, the judicial authority in charge of the operation and other aspects are fundamental when deciding which unit will conduct the investigation.

196. The Internal Affairs Units do not have their own financial resources, but rather the general resources of the Directorate General of the Police/Civil Guard just like any other Unit. Their structure, organisation, operational techniques and sources of information fall under the Law 9/1968 on State Secrets; because of that they are not published in the catalogue of jobs. Staff are selected on the basis of discretionary appointments (because of the type of work they carry out their qualifications and skills must be varied) and they do not undergo separate/special vetting procedures, nor do they undergo re-vetting. The GET recalls its previous remarks regarding appointment and vetting processes, which are all the more important for the relevant Internal Affairs Units of the Police and the Civil Guard (see recommendation xiv, paragraph 158 and recommendation xv, paragraph 168). The Civil Guard referred to the selective and training processes for the agents working in Internal Affairs, which are reportedly geared towards ensuring their suitability and readiness to deal effectively with the job.

197. Normally, citizens are not provided with statistics on the actions of Internal Affairs, although at times press releases can be prepared at the request of the media and press

offices. The Parliament, the Ministry of the Interior and the two Directorates-General (National Police and Civil Guard) have this information at their disposal, some automatically (chain of command of the Ministry of the Interior), others upon request (deputies, senators and Ombudsman).

External oversight

198. Generally speaking, the judiciary (criminal investigations) and Parliament (parliamentary questions) have a primordial supervisory role over LEA. The Data Protection Agency oversees compliance of officers' access to databases and due privacy requirements. Additionally, the Ombudsman has key control responsibilities over all entities of public administration; the Constitution specifically vests it with overseeing powers regarding police abuse.

199. The Ombudsman can act upon individual or on its own motion (e.g. triggered by a media report). Its decisions are not only of importance for the individual claimant (who may be requesting compensation for damage), but they inform, more generally, public administration agencies how they can improve their services. Institutional cooperation between the Ombudsman and LEA was said to be very good, with LEO being genuinely cooperative. The Ombudsman receives an average of 20 000-25 000 citizens' complaints per year and only 100 of those relate to the Police and the Civil Guard (this 0,4% ratio was acknowledged by the Ombudsman to be rather low as compared to other public administration bodies).

200. Similarly, no particular concerns were raised on-site regarding the role played by LEO when facing the exponential increase of migrants and refugees in the national territory. On the contrary, LEO have made notable efforts to cope with the growing number of asylum applications. This was also acknowledged by the Ombudsman (the latter plays a decisive overseeing role in the protection of the rights of migrants). A recent 2018 Report of the Fact-Finding Mission to Spain of the Council of Europe Special Representative of the Secretary General on Migration and Refugees (SRSG) also recognizes this fact, but calls for additional steps to train the Police and the Civil Guard on how to ensure full respect for the principle of non-*refoulement*[44], access to asylum procedures and identification and referral to assistance of possible victims of trafficking in human beings.

201. Finally, trade unions can act as control and supervision bodies when they receive complaints on dysfunctions from their members or affiliates. These organisations can turn to the Administration (in the case of the Police, in addition to the Police Council) or to judicial authorities.

Reporting obligations and whistleblower protection

202. LEO are required to report (suspected) corruption/related misconduct/breach of duty by fellow members, which they come across in the course of their duties (Article 4 of Organic Law 4/2010 – for the Police, and Article 40 of Organic Law 12/2007). Failure to report may lead to disciplinary sanction. There are external (prosecution service) and internal (line

[44] The principle of non-*refoulement* guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm. This principle applies to all migrants at all times, irrespective of migration status.

manager or the superior of the latter if the line manager is involved in the corruption scheme). Depending on the reported issue, the manager may pass over the file to internal affairs, to disciplinary units or to the prosecution service. It is possible to report anonymously.

203. Law 19/1994 on the Protection of Witnesses and Experts provides protection safeguards for those who feel physically at risk; there are also protocols against harassment in the work place, as provided by Resolution of 10 July 2013 of the Police and Resolution of 8 April 2013 of the Civil Guard. Misgivings have already been expressed as regards the current coverage and effectiveness of Law 19/1994, which is due for review according to its operators. Likewise, the Action Protocol for Harassment Cases, which was introduced in 2013, affords some security of internal protection for officers, but it is not applicable for employees working in a non-police capacity.

204. Moreover, when exploring the specific processes and procedures to protect whistleblowers and how these were managed in practice, the GET found that additional measures had to be introduced to protect whistleblowers' identities. It was clear that the current procedure allows for too many people to become aware of the true identity of the whistleblower. The GET believes that the current mechanisms to warrant protection of the physical identity of whistleblowers ought to be substantially stepped up, with a view to better ensuring that the trust and confidence of the whistleblower is further prioritised and strengthened. **GRECO recommends that a full review of current whistleblower procedures within the Police and the Civil Guard is undertaken, with a primary aim of strengthening the protection of the true identity of whistleblowers and focusing more on the substance of the information provided.**

205. The GET further points to the fact that Spain lacks adequate whistleblower protection legislation. A draft Anticorruption and Whistleblower Protection Law has been under preparation since 2014. For the GET, the adoption of a legislative framework for whistleblower protection is a matter of priority which calls for immediate action. Once adopted, and in line with the recommendation issued above, its procedures will need to be further developed, refined and targeted depending on the particularities of the professional groups at stake. This is markedly relevant for LEO because of the "code of silence" (blue code) that could informally rule in hierarchical organisations, also because of the requirement of strict adherence to the principle of in-service discipline and loyalty, as well as the duty of confidentiality to which officers abide.

Remedy procedures for the general public

206. Public administrative claims (*quejas*) are generally made directly to LEO (at the police headquarters) verbally, or in writing, by letter, phone or email. They may also be raised via the websites of the Police and the Civil Guard, but also the Ministry of the Interior and the Transparency Portal, and even their corporative social media (twitter and Facebook). They are dealt with by the Inspectorate for Security Personnel and Services of the Ministry of the Interior. Administrative claims can be anonymous. There is no charge to make or record an administrative claim.

Enforcement and sanctions

Disciplinary procedure

207. Organic Law 4/2010 on the Disciplinary Regime of the National Police and Organic Law 12/2007 on the Disciplinary Regime of the Civil Guard distinguish between very serious, serious and minor offences which carry sanctions as follows:

- Very serious disciplinary offences
  - Dismissal from service
  - Suspension of employment from three months and one day up to a maximum of six years
  - Loss of position in the career ladder
- Serious disciplinary offences
  - Suspension of employment from one month to three months
  - Loss of five to twenty days of assets with suspension of duties
  - Loss of assignment
- Minor disciplinary offences
  - Reprimand
  - Loss of one to four days of salary with suspension of duties.

208. Most of the disciplinary proceedings opened stem from reports from staff or from the supervision exercised by the responsible managers. As an example, these might be non-compliance with orders, inconsiderate treatment of superiors and colleagues in the exercise of their functions, consumption of narcotic substances, abuse of authority, lack of collaboration, infringement of duties or obligations, not reporting allegations of criminal offences, exercise of incompatibilities, etc.

209. Disciplinary proceedings for serious and very serious breaches are heard before a collegiate board; those referring to minor offences are decided by the line supervisor. Dismissals from the forces are published in official bulletins (the State Official Journal in respect of the Police, and the Official Journal of the Civil Guard and the Official Journal of the Ministry of Defence in respect of dismissals in the Civil Guard). Disciplinary action can be contested before administrative courts; however, appeal channels were said to be cumbersome and lengthy.

210. The GET met recurrent criticism regarding the fairness of disciplinary proceedings. The most critical concern referred to those disciplinary procedures for minor offences that still breach the regulatory framework (which is different from grievance). Those situations are solved, single-handedly, by the line supervisor. In such cases, the manager has responsibility for investigation oversight and consequent sanction. The GET was also told that for minor disciplinary offences the relevant procedural guarantees are lowered, for example, no rationale of the decision is recorded and made available to the applicant post-procedure.

211. In addition, staff representatives stressed that double standards apply depending on the grade of the officer undergoing discipline and that cases where senior managers are punished tend to be very rare. Personnel representatives argued that, for objectivity, proportionality and fairness, it would be preferable that discipline matters and proceedings

were not only taken away from the hands of the command line, but also, and for that reason, placed out of the Police/Civil Guard structures and handled by a separate service at the Ministry of the Interior (e.g. the Inspectorate for Security Personnel and Services) with no direct connection to the person subject to misconduct proceedings.

212. Moreover, the GET heard that owing to the military traits of the Civil Guard, disciplinary decisions in the force are particularly harsh, also because staff representatives (professional associations) do not play an active role like its counterparts in the Police (trade unions which take up the matter to the Police Council). Staff representatives concurred that the use of military tribunals in disciplinary and criminal proceedings, involving officers of the Civil Guard when performing police functions, was a remnant of the past which needed to be reviewed and superseded. Between 2007-2016, 4 794 sanctions were imposed for serious and very serious offences in the Civil Guard, while in the Police, for the period 2006-2015, there were 1 659 sanctions[45].

213. In light of the foregoing remarks, **GRECO recommends reviewing the disciplinary regime of the Police and the Civil Guard, with a view to strengthening its transparency, objectivity and proportionality, among other things and in particular, by excluding any possibility of a supervisor deciding on discipline matters single-handedly.**

Criminal procedure

214. LEO do not enjoy immunity or other procedural privileges. Police officers are subject to ordinary criminal procedure, while Civil Guards may fall under military jurisdiction. In connection with the latter, and as already described, misgivings were cast on-site regarding the proportionality of the current system.

Statistics

215. The information on administrative (discipline) sanctions is not made public. Judgments in criminal cases are public. The GET sees merit in making public statistics on disciplinary action taken for corruption-related misconduct (numbers, no reference to identity of officers or other details protected under Law 15/1999 on the Protection of Personal Data), for example, through annual activity reports of the respective LEA, as a way to reassure the public of their commitment with a culture of zero tolerance for corruption.

[45] https://elpais.com/politica/2017/03/17/actualidad/1489764786_023334.html

VI. RECOMMENDATIONS AND FOLLOW-UP

216. In view of the findings of the present report, GRECO addresses the following recommendations to Spain:

Regarding central Governments (top executive functions)

i. **reinforcing the current regime applicable to advisors, subjecting them to equivalent transparency and integrity requirements as those applied to persons with top executive functions** (paragraph 38);

ii. **(i) devising an integrity strategy for analysing and mitigating risk areas of conflicting interests and corruption in respect of persons with top executive functions and (ii) connecting the results of such a strategy to a plan of action for implementation** (paragraph 50);

iii. **that (i) a code of conduct for persons with top executive functions be adopted and made easily accessible to the public, and (ii) that it be complemented by practical measures for its implementation, including written guidance, confidential counselling and dedicated training** (paragraph 54);

iv. **(i) further advancing in the implementation of Law 19/2013, notably, by facilitating information request procedures, providing for a reasonable time to answer such requests and introducing appropriate requirements for the registration and handling of public information provided in electronic form, and (ii) raising awareness among the general public about their right to access information** (paragraph 59);

v. **providing the Council for Transparency and Good Governance with proper independence, authority and resources to perform its monitoring functions effectively** (paragraph 69);

vi. **(i) introducing rules on how persons entrusted with top executive functions engage in contacts with lobbyists and other third parties who seek to influence Governmental legislative and other work; and (ii) that sufficient information about the purpose of these contacts be disclosed, such as the identity of the person(s) with whom (or on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion** (paragraph 76);

vii. **that the legislation governing post-employment restrictions be subject to a review by an independent body and that it be strengthened wherever considered necessary** (paragraph 103);

viii. **(i) widening the scope of publication requirements of financial disclosures to include disaggregated/detailed information on assets, interests, outside employment and liabilities; and (ii) considering shortening the timeframes for reporting and publication, and including information on spouses and**

dependent family members - it being understood that such information would not necessarily need to be made public (paragraph 107);

ix. **that the advisory, supervisory and enforcement regime regarding conflicts of interest of persons with top executive functions be substantially strengthened, including by reinforcing the independence and autonomy, powers and resources of the Office for Conflicts of Interest** (paragraph 117);

x. **ensuring that the special procedure of "*aforamiento*" be amended, so that it does not hamper the criminal justice process in respect of members of Government suspected of having committed corruption related offences** (paragraph 123);

Regarding law enforcement agencies

xi. **that the Police and the Civil Guard (i) conduct a strategic risk assessment of corruption-prone areas and activities to identify problems and emerging threats, and (ii) the data gathered are used for the proactive design of an integrity and anticorruption strategy. Preferably, a joint consultation between both forces in such exercises should be considered** (paragraph 141);

xii. **that (i) the Civil Guard adopt a Code of Conduct and make it publicly available; (ii) both the National Police and the Civil Guard complement their respective Codes by guidelines and practical measures for their implementation (e.g. regarding conflicts of interest, gifts, use of public resources, confidential information, accessory activities, political neutrality, etc.), as well as a credible and effective mechanism for oversight and enforcement** (paragraph 150);

xiii. **reassessing the system of entry quotas for the offspring of the Civil Guard** (paragraph 155);

xiv. **strengthening the current vetting processes in the Police and the Civil Guard and introducing vetting at regular intervals during its staff members' careers** (paragraph 158);

xv. **that the Police and the Civil Guard review their career-related internal processes (recruitment, promotions, discretionary appointments, appraisals/merit systems) with the sole aim of identifying opportunities to improve the recording and publication of rationale in decisions in order to evidence a more objective and transparent approach. In reviewing such processes, particular attention must be paid to the integration of women at all levels in the forces** (paragraph 168);

xvi. **(i) reviewing criteria and procedures for the allocation and withdrawal of allowances, bonuses and other benefits, thereby promoting transparency, consistency and fairness in their application, and (ii) introducing adequate controls and monitoring in this field** (paragraph 173);

xvii. **that the Police and the Civil Guard carry out a study concerning risks of conflicts of interest in service and post-employment (including the top level), and develop, thereafter, more targeted regulations and guidance in this domain** (paragraph 183);

xviii. **that a full review of current whistleblower procedures within the Police and the Civil Guard is undertaken, with a primary aim of strengthening the protection of the true identity of whistleblowers and focusing more on the substance of the information provided** (paragraph 204);

xix. **reviewing the disciplinary regime of the Police and the Civil Guard, with a view to strengthening its transparency, objectivity and proportionality, among other things and in particular, by excluding any possibility of a supervisor deciding on discipline matters single-handedly** (paragraph 213).

217. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Spain to submit a report on the measures taken to implement the above-mentioned recommendations by 31 December 2020. The measures will be assessed by GRECO through its specific compliance procedure.

218. GRECO invites the authorities of Spain to authorise, at their earliest convenience, the publication of this report, and to make a translation of it into the national language available to the public.

About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe's anti-corruption instruments. GRECO's monitoring comprises an "evaluation procedure" which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment ("compliance procedure") which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at: www.coe.int/greco.

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