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FIFTH EVALUATION ROUND

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

COMPLIANCE REPORT

SPAIN



Adopted by GRECO
at its 88th Plenary Meeting (Strasbourg, 20-22 September
2021)



Group of States against Corruption
Groupe d'États contre la corruption

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

I. INTRODUCTION

1. GRECO's Fifth Evaluation Round deals with "Preventing corruption and promoting integrity in central governments (top executive functions, PTEF) and law enforcement agencies (LEA)".
2. This Compliance Report assesses the measures taken by the authorities of Spain to implement the recommendations issued in the Fifth Round Evaluation Report on Spain which was adopted at GRECO's 83rd Plenary Meeting (21 June 2019) and made public on 13 November 2019, following authorisation by Spain ([GrecoEval5Rep\(2018\)5](#)).
3. As required by GRECO's Rules of Procedure¹, the authorities of Spain submitted a Situation Report on measures taken to implement the recommendations contained in the Evaluation Report. This report was received on 31 May 2021 and served as a basis for the Compliance Report.
4. GRECO selected Italy (with respect to top executive functions in central governments) and the United States of America (with respect to law enforcement agencies) to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Emma RIZZATO, on behalf of Italy and Ms Michelle MORALES, on behalf of the United States of America. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. The Compliance Report examines the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any pending recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

II. ANALYSIS

6. GRECO addressed 19 recommendations to Spain in its Evaluation Report. Compliance with these recommendations is dealt with below.
7. At the start, the authorities recall that two general elections took place in 2019 in Spain, and just few weeks after the new government took office, due to the COVID-19 crisis, a state of alarm was declared. These circumstances have significantly hampered legislative activities and national actions and policies relating to GRECO's Fifth Evaluation Round.

¹ The compliance procedure of GRECO's Fifth Evaluation Round is governed by its Rules of Procedure, as amended: Rule 31 revised bis and Rule 32 revised bis.

Recommendation i.

8. *GRECO recommended reinforcing the current regime applicable to advisors, subjecting them to equivalent transparency and integrity requirements as those applied to persons with top executive functions.*
9. The authorities of Spain indicate that the IV Open Government Plan (2020-2024) includes a specific axis (number 3) on strengthening ethical values and integrity mechanisms of public institutions. Among other interventions to meet this goal, a bill for the Prevention of Conflicts of Interest of Public Employees is underway (thus replacing Law 53/1984 on Incompatibilities of Public Administration Personnel). The authorities further recall that the regime on incompatibilities of public administration personnel set in Law 53/1984 currently applies to all public employees and civil servants, including advisors. The objective of the legislative reform is to modify the general regime applicable to all public employees and civil servants and to establish a new stricter regime to advisors, similar to the one applicable to other PTEF. The new piece of legislation will be a basic law, meaning that it will apply to all national, regional and local administration. Therefore, it is key to pursue a wide agreement among all public administrations so that the new basic law may be adequate to the circumstances and particularities of all national, regional and local public employees and civil servants. This requires a complex negotiation and legislative procedure with established timelines.
10. To this effect, a process of public consultation on the aforementioned project was launched on 28 April 2021 and concluded on 28 May 2021; its [results](#) are available online. Additionally, a working group was established in June 2021; it gathers representatives from national ministerial departments, regional governments and the Spanish Federation of Municipalities and Provinces to discuss the contents of the future draft law. The working group held five plenary meetings in June. It discussed, inter alia, an advanced prevention regime of conflicts of interest for political advisors, notably, with increased transparency requirements (e.g. publication of their CVs, functions and salaries) and the application of post-employment limitations similar to those applicable to other PTEF.
11. A preliminary draft bill is expected in October 2021, which will then be subject to the required consultation with the responsible State bodies, and subsequently put for parliamentary discussion in May 2022.
12. GRECO takes note of the plans of the authorities to reinforce the applicable regime on conflicts of interest, transparency and other integrity related matters for the public sector, including advisors. This is a positive move and the authorities are encouraged to pursue their action in this regard. However, the legislative initiative reported is still at inception stages. Although some well-grounded preparatory work has been carried out, including through a public consultation exercise and the establishment of a working group, a draft bill with concrete proposals and contents awaits until October 2021.
13. GRECO concludes that recommendation i has not been implemented.

Recommendation ii.

14. *GRECO recommended (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.*
15. The authorities of Spain emphasise their commitment to adopt a national anti-corruption plan, and their intention to do so in conjunction with the development of a holistic framework for the protection of whistleblowers. In respect to the latter, a public consultation process was launched in January 2021. More than 40 contributions were received from civil society organisations and individuals. These contributions were further taken on board for the drafting of a bill on whistleblower protection which is to be subject to public hearing.
16. The authorities further report that, in the framework of the IV Open Government Plan (2020-2024) (axis 3), further refinement of corruption prevention, diagnosis and risk analysis is foreseen, notably, through the following activities:
 1. diagnosis of public integrity systems;
 2. promoting values of integrity in quality management models;
 3. promoting the drafting of new codes of conduct for the general state administration;
 4. training activities;
 5. promoting the adoption of risk maps in organisations;
 6. designing ethical surveys and self-assessment guides;
 7. inter-administrative cooperation.
17. The authorities stress that several of the aforementioned activities (1 to 3) are underway. Accordingly, in relation to the diagnosis of public integrity systems (the first-of-its-kind exercise for Spanish administration), the General Directorate of Public Governance (within the Ministry of Territorial Policy and Civil Service) has distributed an online questionnaire on integrity among the inspection services of all ministerial departments. A report was issued thereafter, in June 2021, and was sent to a Working Group of the IV Government Plan for comments before it turns into a formal commitment. The [report](#) is available online.
18. Regarding the promotion of integrity within public service, this has been ensured through the introduction of specific questions on the matter in the evaluation/appraisal system of public officials (so-called EVAM). Moreover, a so-called Cyklos quality test has been developed to guide public organisations on quality management (with a particular focus on processes, people and results); it consists of an online tool which includes questions and provides feedback via email on less than 24 hours. It also serves as a way to map the situation of quality management throughout public administration, to draw up conclusions and to identify common trends.
19. As for training, the 2021 Training Plan of the National Institute of Public Administration (INAP), now includes a thematic area exclusively devoted to principles and public values; the issue of integrity is also dealt with in other training modules. Further training on

ethics is expected to be launched following completion of the diagnosis of public integrity systems. As to the remaining activities (4-7), their commencement date is yet to be reached.

20. GRECO is pleased to note that Spain has moved forward to strategic planning and risk assessment for anti-corruption purposes; some activities are on-going, and some others still await concrete implementation. GRECO also welcomes the intention of the authorities to develop a coordinated anti-corruption plan; in GRECO's view this should constitute a priority action. Having said that, GRECO considers that, notwithstanding the valuable measures reported, these are mainly geared towards public officials in general (public administration). There is no indication on how such measures would specifically cover risk areas of conflicting interests and corruption in respect of persons with top executive functions. These categories of persons - which are the focus of GRECO's Fifth Round - face some different challenges from other public servants because of the political nature of their role, their close interactions with the private sector, etc. More substantiation is needed in this respect.
21. Consequently, GRECO concludes that recommendation ii has not been implemented.

Recommendation iii.

22. *GRECO recommended 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.*
23. The authorities of Spain refer to Law 19/2013 on Transparency, Access to Information and Good Governance establishes a Code of Good Governance for members of government and high-level officials at national, regional and local level. The authorities also refer to ethical principles of Law 19/2013, which are reinforced by Law 3/2015 on the Exercise of High Office in the General State Administration, which establishes eligibility requirements for the appointment of high-level officials at national administration. All principles included in Laws 19/2013 and 3/2015 shall be considered for interpretation of the rules that apply to the exercise of high office and sanctioning purposes. The Office for Conflicts of Interests (OCI) is responsible for ensuring guidance, enforcement and carrying out investigations.
24. Moreover, the authorities state that the Code of Conduct for Public Employees, which makes an integral part of the Basic Statute of Public Employees (Legislative Royal Decree 5/2015), is also to be taken into account for interpretative purposes. Many national public entities and institutions have also adopted their own codes of conduct. Finally, it is expected that further progress will occur in the framework of the IV Open Government Plan (2020-2024) (axis 3), which establishes the adoption of new codes of conduct in public administration and the development of support implementation measures thereafter.
25. The authorities further highlight the role of OCI, which has reinforced its guidance and confidential counselling activities. Following GRECO's Fifth Round Evaluation Report on Spain, OCI is systematically compiling data on consultations made by PTEF so that

guidance and counselling activities could be modelled after most common questions. In particular, the following consultations by PTEF were resolved by the OCI in 2020 by phone, email, written format or in-person:

SUBJECT	NUMBER OF CONSULTATIONS
Presentation of declarations	1.173
Good reputation requirements	45
Assets	751
Activities (incompatibilities while in post)	177
Post-employment activities	247
Oversight and monitoring	54
Sanctions regime	15
Other consultations by PTEF	209
Other consultations by public organizations	73
<i>Total</i>	<i>2.744</i>

26. OCI published in 2020 a Frequently Asked Questions (FAQ) guide on conflicts of interest and declarations by high-level officials and an English version of the Guide on the Regime for Senior Officials Working within the General State Administration². The latter Guide (in its Spanish version) is to be updated by December 2021; it will include new practical guidance on recusal.
27. Finally, regarding training activities, the authorities indicate that training activities carried out by the OCI and other national institutions continue to take place. PTEF may take part in these training activities targeting all categories of public employees and civil servants.
28. GRECO, in its Fifth Round Evaluation Report on Spain, already took note of the legislative provisions on conduct and ethics which are referred by the authorities once again now. However, the evaluation noted that a stand-alone code (separate and more user friendly than the scattered provisions in legislation) would be preferable to meet the first component of recommendation iii. Therefore, this part of the recommendation cannot be considered as implemented.
29. For GRECO, a key feature of a code of conduct is its living nature; this also entails the development of practical measures for its implementation. For this reason, GRECO is pleased to note the on-going action, as well as the reported intention to advance implementation of ethics provisions. In this connection, GRECO values the advisory function performed by the Office for Conflicts of Interest (OCI), which has been significantly stepped up. This is a positive development which goes in the direction of the second component of recommendation iii. Regarding training activities, the authorities have not provided concrete data as to the type and frequency of the relevant training sessions, or the number of PTEF that actually attended such events
30. GRECO concludes that recommendation iii has been partly implemented.

² OCI publications are available at: https://www.mptfp.gob.es/portal/funcionpublica/etica/altos_cargos.html.
FAQ are available at: <https://sede.funciona.gob.es/public/servicios/solicitudes-alto-cargo/solicitudes-alto-cargo-electronica.html>.

Recommendation iv.

31. *GRECO recommended (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.*
32. The authorities of Spain underscore their intention to address this recommendation through three separate legislative initiatives (all of which are listed in the IV Open Government Plan on Spain – axis on Transparency and Accountability):
 - Amendment of Law 19/2013 on Transparency, Access to Information and Good Governance. Such changes will take stock of the experience gathered in implementing the law. A public consultation process has started, including through a quick off seminar, which was held on 17 May 2021. It is foreseen that by May 2023, a preliminary draft of the law would be sent to the Council of Ministers for subsequent referral to Parliament.
 - Adoption of regulation (royal decree) developing Law 19/2013. A draft is at an advanced stage of development, with assessments of different institutions already gathered.
 - Ratification of the Council of Europe Convention on Access to Official Documents (CETS 205), which is expected to take place before the end of 2021. More particularly, on 6 July 2021, the Council of Ministers adopted an [agreement](#) authorising the signature of the Convention. The process will continue with the report to be issued by the Council of State and with the discussion in parliament prior for the ratification of the Convention.
33. As to awareness-raising activities, an Open Government Education Programme for primary, secondary, and high-school students materialised in the framework of the III Open Government Plan (2017-2019). Guides for teachers and students were issued, in paper and electronic format, on the right of access to information³. The on-going IV Open Government Plan (2020-2024) establishes the development of an Inclusive Communication Plan of Open Government so that citizens, with special attention to most vulnerable groups and/or those with less digital skills, know and exercise their rights of access to information and participation in public affairs. For the implementation of this Plan, an [agreement](#) was adopted, on 24 March 2021, by the Open Government Forum (i.e. a body which brings together, in equal composition, all Spanish administrations with representatives of civil society).
34. GRECO welcomes the legislative developments reported, including the foreseen ratification of CETS 205. They all constitute positive steps to advance implementation of access of information requirements; however, their stage of development varies. More concrete action needs to materialise, both in law and in practice, to tackle the very specific issues raised by the first component of recommendation iv.

³ The results of this project are available at: https://transparencia.gob.es/transparencia/transparencia_Home/index/Gobierno-abierto/sensibilizacion-formacion/EduGobAbierto.html; and at https://transparencia.gob.es/transparencia/transparencia_Home/index/Gobierno-abierto/sensibilizacion-formacion/Materiales.html#Componente1.

35. Regarding the second component of this recommendation on awareness-raising activities, GRECO notes that some action has already been taken on this front, and more is well underway. GRECO encourages the authorities to pursue their efforts in this area.
36. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

37. *GRECO recommended providing the Council for Transparency and Good Governance with proper independence, authority and resources to perform its monitoring functions effectively.*
38. The authorities of Spain report that, in 2021, the budget of the Council for Transparency and Good Governance has been increased by 4.7%. The authorities recognise that this body was established in a particularly difficult context of economic and financial crisis; time and experience have evidenced several shortcomings which need to be tackled. An important reorganisation of the Council is therefore foreseen in the next few years.
39. GRECO takes note of the increase in the 2021 budget of the Council for Transparency and Good Governance. However, the recommendation has a much broader and holistic remit. The authorities are urged to pursue their efforts in this respect.
40. GRECO concludes that recommendation v has not been implemented.

Recommendation vi.

41. *GRECO recommended (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.*
42. The authorities of Spain indicate that the IV Open Government Plan (2020-2024), (axis 3, project 5.2), includes the establishment of a compulsory register of lobbyists. Although the project was initially expected to be launched in 2022, the Government decided to advance it. Hence, a [public consultation process](#) was launched on 28 April 2021 and concluded on 28 May 2021; a [summary report](#) is available online. In June 2021, the project was subject to discussion within the Integrity Working Group of the Open Government Forum. Additional meetings with stakeholders followed in June and July 2021 to increase the number and quality of proposals and inputs. A preliminary draft bill is expected in October 2021, which will then be subject to the required consultation with the responsible State bodies, and subsequently put for parliamentary discussion in May 2022. The draft bill would cover the following aspects:
- definition of interest groups;
 - regulation of the compulsory register and public access;
 - duties and obligations of members and representatives of interest groups;
 - code of conduct applying to lobbyists;

- limitations of revolving doors between high-level official and public employees, on the one hand, and interest groups, on the other one;
 - responsibility for managing the register - to be given to the Office for Conflicts of Interest (OCI);
 - sanctions.
43. GRECO welcomes the developments reported to regulate lobbying, notably, by establishing a lobbyist register. Although some solid preparatory work has been carried out, including throughout public and expert consultation, a draft bill with concrete proposals and contents awaits until October 2021. Further, whilst recognising the efforts made by the authorities to advance regulation on this sensitive matter (including by accelerating their own commitments in the IV Government Plan), GRECO notes that the establishment of a lobbyist register will not alone address recommendation vi.
44. More can be done in the meantime to approximate to both components of recommendation vi, including by providing guidance to PTEFs on how to engage with lobbyists (“do’s and don’ts” in their relations with lobbyists), as well as by disclosing information about such contacts. GRECO encourages the authorities to reflect on this particular matter as they implement recommendation iii on a code of conduct for PTEF and accompanying measures. Moreover, GRECO refers to the positive action taken by the Spanish Parliament in recent years in this area, in which connection, information is to be disclosed regarding contacts of deputies/senators with third parties, i.e. through the publication of members’ agendas on the “Transparency Portal” of the Congress/Senate, as well as by tracking third party involvement in the elaboration of legislation. Much inspiration can be drawn from this experience.
45. GRECO concludes that recommendation vi has not been implemented.

Recommendation vii.

46. *GRECO recommended that the legislation governing post-employment restrictions be subject to a review by an independent body and that it be strengthened wherever considered necessary.*
47. The authorities of Spain refer to the independence and resources of the Office for Conflicts of Interest, which is the responsible body in this respect.
48. GRECO notes that the information provided by the authorities does not address the core of recommendation vii. No new development has been reported regarding the required independent review of the applicable legislation governing post-employment restrictions.
49. GRECO concludes that recommendation vii has not been implemented.

Recommendation viii.

50. *GRECO recommended (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.

51. The authorities of Spain indicate that new declaration formats were issued in 2020. The information to be gathered in these forms has been further itemised to provide overall sums regarding real estate property, bank deposits, capital stock and equity shares, life insurances and retirement plans, other financial assets and property rights, and liabilities. PTEFs can fill out these forms online through a dedicated portal; declarations are filed on an annual basis. The individual forms are then collated in a single document which is published in the Official Journal and also made available online⁴.
52. The authorities indicate that, regarding the second component of recommendation, consideration has been paid to the two separate issues it raises. On timeframes for reporting and publication, these were analysed, but the government has considered necessary to prioritise other legislative measures. Similarly, the request of financial information on spouses and dependent family members has been discarded for the moment because of data protection legal restrictions. However, the authorities highlight that the structure and presentation of asset disclosure forms may be revisited in the near future as per the requirements on transparency and accountability included in the IV Open Government Plan (axis 1, project 2.2).
53. GRECO welcomes the move towards e-filing and systematic publication of asset declarations on a yearly basis. With particular reference to the first part of the recommendation, GRECO also acknowledges that there is some further itemisation of the types of assets and liabilities to be reported. While this is to be welcomed, there is still scope for disaggregation of such data to render declarations of assets and property rights more meaningful and, thereby, better disclose vested interests. No new information has been submitted as to any further improvement regarding declarations of outside activities. When comparing the applicable disclosure requirements for parliamentarians and those for PTEFs (see also Fourth Round Evaluation Report on Spain and corresponding compliance reports), it is clear that the former have a much higher level of detail/itemisation/disaggregation in disclosure forms. GRECO notes that the authorities have not discarded taking additional action in this area as they implement their commitments under the IV Open Government Plan (2020-2024). GRECO is trustful that this would be the case since more needs to be done to fully meet the first part of recommendation viii.
54. As for the second component, GRECO considered in the Fifth Round Evaluation Report on Spain that the three-month deadline (from the day of taking up/leaving public service) for the submission of disclosure forms was long. The explanation provided by the authorities regarding the lack of any change in this respect falls short of the requirement of due consideration. The same can be said as to the lack of any new development regarding financial disclosure for spouses and dependent family members. In this connection, GRECO recalls that former regulation established voluntary declaration of income and assets of spouses, and this continues to be a requirement in

⁴ Asset declarations of PTEF are publicly available at:

https://www.mptfp.gob.es/portal/funcionpublica/etica/declaracion_bienes.html and https://transparencia.gob.es/transparencia/transparencia_Home/index/PublicidadActiva/AltosCargos/DeclaracionesBienesAACC.html.

respect of PTEFs working in the Bank of Spain. Following the experience of other GRECO members, a right balance can be sought between individual privacy concerns and the general interest of public disclosure. GRECO is not convinced that sufficient consideration has been paid to this matter, as recommended. Consequently, GRECO calls on the authorities to do more in respect of the second part of recommendation viii.

55. GRECO concludes that recommendation viii has been partly implemented.

Recommendation ix.

56. *GRECO recommended 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.*
57. The authorities of Spain underscore that the Office for Conflicts of Interest (OCI) is an independent body with full functional autonomy, pursuant to Law 3/2015 (Article 19.1). To substantiate this independence, the authorities refer to the recruitment process of OCI's Director. Moreover, the law establishes that the Director and employees of OCI may not request nor accept instructions from public or private organisations.
58. The staff of OCI currently stands at 21 employees and one security official; there are two vacant positions which are expected to be filled shortly. The authorities underscore that the resources of OCI have been strengthened: in the period 2020-2021, three new civil servants joined OCI; this represents an increase by 16.66% in relation to the available human resources in 2019. One of those persons is working at the Sub-directorate General of the Regime of High-Level Officials, which means a 12.5% increase in personnel devoted to the functions of this unit. New electronic systems/ automated databases have been devised.
59. Regarding the powers and competencies of OCI, it is expected that it will also manage the lobbyist register (see paragraph 42). Likewise, OCI may acquire greater responsibilities following the enactment of the new law on the prevention of conflicts (see paragraph 9). OCI has already reinforced its advisory activities (see paragraphs 25-26). The authorities also clarify that, although it does not have direct access to fiscal or tax data unless authorised by the PTEF, it can request special collaboration from the National Tax Agency (AEAT), without authorisation of the PTEF. This type of collaboration took place in one particular case in 2020-2021. Finally, OCI does not only perform pro-forma checks, but also substantial ones, including by looking into data from the Central Business Register (*Registro Mercantil Central*) and the Social Security General Treasury (*Tesorería General de la Seguridad Social*). As a result of these (together with other control activities), sanctioning procedures may be initiated. For instance, in the first semester of 2021, six sanctioning procedures were initiated against PTEF.
60. GRECO takes note of the new developments reported to increase the human resources of OCI as well as its IT systems, as *inter alia* required by the recommendation. This has facilitated the advisory, supervisory and enforcement activities of OCI, as substantiated earlier in this report. GRECO considers that the issue of resources merits continued

attention, all the more, given the increasing competencies to be acquired by OCI with the new regulatory developments in preparation. GRECO insists on the reinforcement of the independence and autonomy of OCI. No additional measures have been introduced in this respect.

61. GRECO concludes that recommendation ix has been partly implemented.

Recommendation x.

62. *GRECO recommended 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.*
63. The authorities of Spain explain the rationale for “aforamiento”, which according to Article 102 of the Spanish Constitution establishes a special procedural regime for the President of the Government and ministers that consists of criminal liability to be exercised before the Criminal Chamber of the Supreme Court in order to on the one hand, to protect senior officials from arbitrary attacks; on the other hand, preventing lower courts from being subjected to potential pressure when dealing with high-level political figures.
64. The authorities add that there are some initiatives underway to restrict the scope of *aforamiento* to acts committed in the exercise of office. The government commissioned a study to the Procedural Section of the General Encoding Commission (*Comisión General de Codificación*, i.e. the senior collegiate advisory body to the Minister of Justice) and to the State Council to develop a proposal for a limited reform of the constitution for further discussion by parliament. The authorities however stress the inherent difficulties of a constitutional amendment and the need for a very broad parliamentary agreement, which is currently being sought.
65. GRECO notes that the authorities have commissioned a study to look into the issue of criminal responsibility of members of government (*aforamiento*) in order to restrict its scope. GRECO understands the challenge of a legal reform in this area, given that it entails changes to constitutional provisions, but calls on the authorities to push for effective action.
66. GRECO concludes that recommendation x has not been implemented.

Preventing corruption and promoting integrity in law enforcement agencies

Recommendation xi.

67. *GRECO recommended 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.*

68. The authorities of Spain refer to the legislation and tools already assessed in the Fifth Round Evaluation Report: Internal Affairs, areas identified as sensitive because of their inherent risks or recurrent episodes of misconduct (e.g. management and administration of financial resources, areas where there is contact with criminal organisations engaged in organised crime), thematic studies, training, promotion and specialisation programmes, etc.
69. GRECO regrets the lack of any targeted action to meet recommendation xi. It is recalled that the authorities themselves recognised in the Fifth Round Evaluation Report on Spain that strategic action laid ahead. Currently, there is no dedicated and proactive (and not merely reactive) corruption prevention strategy in either the Police or the Civil Guard. This calls for purposeful action.
70. GRECO concludes that recommendation xi has not been implemented.

Recommendation xii.

71. *GRECO recommended 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.*
72. The authorities of Spain indicate that the process of developing the Code of Conduct for the Civil Guard is advancing: a draft was completed in March 2021 and, since it will take the form of a royal decree, its formal adoption is expected during the second half of 2021. A couple of seminars were organised in 2020 to gather views of officers on the issues the code should comprise; four main thematic areas were identified accordingly: organisational and service performance, education, contribution to institutional leadership and corporate communication. Once the Code is adopted, training will follow. In addition to this training, and in order to monitor compliance with ethical obligations, performance indicators will be developed. Moreover, it is foreseen that a Civil Guard Advice Bureau will be established to act as a contact point for officers who seek advice on ethical matters.
73. As far as the Police is concerned, the authorities refer to the 2013 Code of Conduct. They are of the view that the provisions of this Code, along with some other rules on ethical matters (e.g. rules on the use of public resources as set out in the Resolution of the Directorate General of the Police of 18 September 2014) are sufficient and so is the current training and other awareness raising activities (e.g. in-service meetings) in this respect.
74. GRECO acknowledges the progress reported by the Civil Guard to set in place an ethics infrastructure within the force. The drafting of the Code of Conduct was completed in March 2021 and it now awaits adoption in the second half of 2021. The draft Code is a principle-based document which includes values and institutional principles, as well as rules of conduct. Additional accompanying measures are anticipated to render the Code

enforceable and effective, since it does not include sanctions, as well as to promote awareness on its provisions. As to the Police, nothing has been done.

75. GRECO concludes that recommendation xii has been partly implemented.

Recommendation xiii.

76. *GRECO recommended reassessing the system of entry quotas for the offspring of the Civil Guard.*

77. The authorities of Spain reiterate the *rationale* behind the system of entry quotas. Additionally, they highlight that the issue has been considered by Spanish courts, which have not put into question the principle of equality in the application of such quotas. In 2020, the merits required in the entry test of the Civil Guard School were revised to take into account rural development and gender equality policies.

78. GRECO welcomes the developments reported to promote women recruitment in the Civil Guard (on this particular issue, see recommendation xv). GRECO notes, however, that the authorities reiterate the same grounds for entry quotas for the offspring of the Civil Guard, which were already invoked in the Fifth Round Evaluation Report. No reassessment of the system as such has been done.

79. GRECO concludes that recommendation xiii has not been implemented.

Recommendation xiv.

80. *GRECO recommended strengthening the current vetting processes in the Police and the Civil Guard and introducing vetting at regular intervals during its staff members' careers.*

81. The authorities of Spain refer to the recruitment and periodic appraisal systems, inspections, and complaints schemes, which were described in the Fifth Round Evaluation Report. They further argue that any other measure in this domain would run counter the principle of presumption of innocence.

82. GRECO regrets the lack of any development regarding vetting and re-vetting processes for LEA. It refers to GRECO standards in this area and the practice developed in other member States which indicates the usefulness of targeted background checks for corruption prevention purposes. It urges the authorities to explore this area.

83. GRECO concludes that recommendation xiv has not been implemented.

Recommendation xv

84. *GRECO recommended 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.*

85. The authorities of Spain deem their recruitment, promotion, discretionary appointment and periodic appraisal systems to be adequate and subject to proper checks and balances.
86. They stress that dedicated gender equality policies have been developed in recent years in both the Police and the Civil Guard. Their implementation is ongoing. More particularly, a Resolution of the Directorate-General of the Police of February 2018 established the National Office for Gender Equality in the Police to promote real and effective equality of women and men at all levels in the security forces. Building on this initiative, in November 2020, the Area of Human Rights and Gender Equality was created within the Police. It is tasked to carry out a detailed and continuous analysis of the situation of women in the Police, the detection of potential areas of discrimination, the adoption of measures for achieving a work-life balance and co-responsibility, as well as the improvement of conditions of representation and empowerment of women in the Police. On 1 February 2021, 15.59% of the members of the Police were women.
87. As for the Civil Guard, actions are being taken within the framework of the Civil Guard Equality Plan, approved in 2019, to improve and promote the development of women's professional careers. Training courses on female leadership were developed and co-responsibility measures were improved. In 2020, the merits required in the entry test of the Civil Guard School were revised to take on board, *inter alia*, a gender equality perspective. Notably, affirmative action measures were introduced, determining that the number of places to be covered by women should be at least 30%. Female aspirants are given preference over men when the previous percentage is not reached only if the difference of the scores obtained is less than 0.5 points. In the last examination, 17 women entered due to this measure, which aims to balance the presence of women and men within the body. Moreover, the establishment of a time-limited quota reserved to women that meet the conditions for access is under consideration. On the other hand, a detailed analysis of the lack of women applying to join the Civil Guard has been initiated, its conclusions will allow adopting additional measures in this subject area and, subsequently, increasing the percentage of women. Currently, 8 % of the member of the Civil Guard are women. The number of women entering this Service is gradually increasing every year. In 2020, 24.74% of the total new corporals and guards and 21.54% of the new officers (direct entry) were women.
88. Moreover, the Civil Guard reports on comprehensive work carried out, following GRECO's evaluation, to provide for clearer, more objective and transparent career-related processes. Annual reviews, studies and consultation with professional associations have followed accordingly, and new regulations have been issued in this area, notably, regarding the appraisal system (which is key for promotion purposes), as well as post assignment and discretionary appointments.
89. GRECO welcomes the development of targeted policies in the Police and Civil Guard to promote gender equality; this constitutes good practice from which other GRECO members can draw inspiration. GRECO further acknowledges the steps taken by the Civil Guard to review its career related internal processes, including through the adoption of detailed/updated regulation, which reportedly followed coordination with professional

associations, and is geared towards increased transparency and objectivity. With this, GRECO considers that the Civil Guard has met recommendation xv.

90. However, the Police has yet to substantiate further progress in this field, particularly regarding a fully transparent and objective approach on areas such as recruitment, transfers, appraisals and posting of staff, to justify personnel decisions in a more open and objective manner and in order to dispel any possible doubt of “hand-picking” practices, cronyism and favouritism.

91. GRECO concludes that recommendation xv has been partly implemented.

Recommendation xvi.

92. *GRECO recommended (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.*

93. The authorities of Spain refer to the steps taken by the Civil Guard to issue detailed regulation (i.e. General Order No. 4/2021), in consultation with professional organisations, geared towards increased transparency of the distribution of performance incentives, including on productivity bonuses, overwork and the corresponding criteria and procedures for managing these performance incentives. The system of monitoring and control rests under the leadership of senior management. As to the Police, the authorities refer to the existing rules which were already described in the Fifth Round Evaluation Report.

94. GRECO recalls that at the time of the adoption of the Fifth Round Evaluation Report, GRECO found potential for abuse in the allocation and withdrawal of allowances, bonuses, and other benefits. GRECO acknowledges the steps taken by the Civil Guard to improve the regulatory framework regarding performance incentives. This is one aspect of recommendation xvi, which, however, does not cover its full scope; more is expected from the Civil Guard in this respect, including regarding other types of allowances, bonuses and other benefits, and more generally, systems of control and monitoring.

95. As to the Police, no new developments have been reported; GRECO urges the Police to take effective action in this area.

96. GRECO concludes that recommendation xvi has been partly implemented.

Recommendation xvii.

97. *GRECO recommended 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.*

98. The authorities of Spain refer to the existing rules on incompatibilities already quoted in the Fifth Round Evaluation Report. They state that the Civil Guard recognises the need to progress in this domain and is currently drafting additional rules; once the new

regulatory framework is adopted, it is expected to undertake a study concerning risks of conflicts of interest in service and post-employment. Nothing has been reported in respect of the Police.

99. GRECO regrets the lack of any material achievement in this field and concludes that recommendation xvii has not been implemented.

Recommendation xviii.

100. *GRECO recommended 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.*
101. The authorities of Spain refer to the existing legal framework on whistleblower protection, which is exactly the same as that described in the Fifth Round Evaluation Report.
102. GRECO deplores the lack of any targeted developments, including of a practical, hands-on nature, to better protect whistleblowers in LEA. This is a sensitive area where determined action is most crucial for corruption prevention and detection purposes.
103. GRECO concludes that recommendation xviii has not been implemented.

Recommendation xix.

104. *GRECO recommended 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.*
105. The authorities of Spain refer to the current legislation on disciplinary procedures and measures which were in vigour at the time of the adoption of the Fifth Round Evaluation Report. They further provide some statistical data as to the number of disciplinary proceedings in 2020. The Civil Guard further clarifies that it is not possible for a Head of Unit to unilaterally impose a disciplinary sanction.
106. GRECO takes note of the clarification provided by the Civil Guard, as to disciplinary decisions being decided by a supervisor single-handedly, but it recalls that recommendation xix does not only deal with this issue. In this connection, GRECO recalls its misgivings regarding the fairness of disciplinary proceedings. In the Police, the most critical concern refers 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. Likewise, 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. Double standards appeared to apply depending on the grade of the officer undergoing discipline and cases where senior managers are punished tend to be rare.

Finally, the use of military tribunals in disciplinary and criminal proceedings, involving officers of the Civil Guard when performing police functions, raises its own challenges, with disciplinary decisions in the force being particularly harsh.

107. GRECO notes the lack of any new development in this area and concludes that recommendation xix has not been implemented.

III. CONCLUSIONS

108. **In view of the foregoing, GRECO concludes that Spain has not implemented satisfactorily or dealt with in a satisfactory manner any of the nineteen recommendations contained in the Fifth Round Evaluation Report.** Of the remaining recommendations, seven have been partly implemented and twelve have not been implemented.
109. More specifically, recommendations iii, iv, viii, ix, xii, xv and xvi have been partly implemented. Recommendations i, ii, v, vi, vii, x, xi, xiii, xiv, xvii, xviii and xix have not been implemented.
110. As far as PTEFs are concerned, some promising developments are foreseen under the IV Open Government Plan (2020-2024), particularly, regarding transparency, integrity, and accountability in the public sector across the line, as well as the development of a more strategic and holistic anti-corruption approach. However, as this process is carried out, it would be important to assure that due attention is paid to the specific risks of persons entrusted with top executive functions, including political advisors. A welcome development is an intensified advisory and supervisory role of the Office for Conflicts of Interest (OCI). Nevertheless, the issue of powers and resources of both the OCI and the Council for Transparency and Good Governance deserves further attention for implementation of the different regulatory initiatives on the horizon to become a reality, not only in law but also in practice. Financial disclosure can benefit from further adjustments, and greater itemisation, for due transparency purposes. Regulating lobbying also remains an outstanding issue. Likewise, the system for criminal responsibility of members of government (so-called *aforamiento*) is due for revision.
111. The situation regarding law enforcement authorities is disappointing. GRECO underscores that the scope of the compliance procedure is to assess the implementation of the recommendations, not to re-assess the situation already described at the time of the evaluation. The authorities have, for most part, reiterated the rules which were already in place in 2019, when the Fifth Round Evaluation Report on Spain was adopted. The Civil Guard has made some progress regarding its ethics infrastructure (which is, however, yet to effectively materialise) and the development of more detailed regulation regarding career-related processes, in particular, evaluation systems, appointment procedures and performance incentives. GRECO also recognises some valuable developments reported, by both the Police and the Civil Guard, to promote gender equality; this can serve as inspiration for other GRECO members who are embarking on this most relevant policy. Having said that, GRECO particularly deplores the absence of any other concrete and factual improvement made by the Police; this is a missed opportunity for setting in place a comprehensive, proactive, and effective ethics infrastructure within the force. To conclude, GRECO expects tangible, committed,

and thorough action being taken by LEA to meet the recommendations, as an issue of priority and without delay.

112. In view of the above, GRECO notes that further progress is necessary to demonstrate an acceptable level of compliance with the recommendations within the next 18 months. Pursuant to Rule 31 revised bis, paragraph 8.2 of its Rules of Procedure, GRECO invites the Head of delegation of Spain to submit additional information regarding the implementation of the pending recommendations, i.e. all recommendations (i to xix), by 31 March 2023.
113. Finally, GRECO invites the authorities of Spain to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.