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Groupe d'États contre la corruption

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FOURTH EVALUATION ROUND

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

COMPLIANCE REPORT

PORTUGAL

Adopted by GRECO at its 78th Plenary Meeting
(Strasbourg, 4-8 December 2017)

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I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Portugal to implement the recommendations issued in the Fourth Round Evaluation Report on Portugal which was adopted at GRECO's 70th Plenary Meeting (4 December 2015) and made public on 10 February 2016, following authorisation by Portugal ([Greco Eval IV Rep \(2015\) 5E](#)). GRECO's Fourth Evaluation Round deals with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. As required by GRECO's Rules of Procedure, the authorities of Portugal submitted a Situation Report on measures taken to implement the recommendations. This report was received on 30 June 2017 and served, together with the information submitted subsequently, as a basis for the Compliance Report.
3. GRECO selected Serbia and Malta to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Dražen JELENIC on behalf of Croatia and Mr Kevin Valletta on behalf of Malta. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
4. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities after the adoption of the present Compliance Report.

II. ANALYSIS

5. GRECO addressed 15 recommendations to Portugal in its Evaluation Report. Compliance with these recommendations is dealt with below.

Corruption prevention in respect of members of parliament

Recommendation i.

6. *GRECO recommended that i) measures are taken to ensure that the timelines established by the Rules of Procedure for the various stages of the law-making process are adhered to; and ii) provision is made for ensuring equal access of all interested parties, including civil society, to the various stages of the law-making process.*
7. The authorities refer to the general guarantees of citizens' participation in the parliamentary law-making laid down in the Constitution (in connection with labour, education and occupational career-related issues), Article 140 of the Assembly's Rules of Procedure (in connection with labour, municipal and issues related to persons with disabilities) and the Labour Code. The authorities insist that equal access to all stages of the legislative process is ensured to all parties concerned, including through mandatory consultation and other modalities as well as by observing the established timelines.
8. The hearing of entities representative of the sectors covered by the law-making process and of entities and citizens upon latter's request is said to be the Assembly's prime instrument of public consultation. Such consultations *may* involve: 1) the hearing of citizens and entities with an interest in a subject matter; 2) direct written consultation; 3) formal procedures requesting public reaction to the legislative initiatives disseminated through means other than publication in the

Official Journal of the Parliament; and 4) new consultation procedures, i.e. online forums, public hearings, conferences, seminars and colloquiums held in the Assembly or externally *prior* to the initiation of the new legislation or once bills are presented to the Assembly.

9. Pursuant to Article 131 (h) of the Assembly's Rules of Procedure, its services are to prepare a technical note for each bill/amendment, which is to include a reference to contributions received from the entities concerned by the subject and any opinions submitted. The list of entities consulted by each parliamentary committee and texts of the written opinions produced are to be published on the Assembly's website. Most consultations, including audio and video recordings, are made directly accessible on the Assembly's website as well by means of hyperlinks incorporated into the minutes of relevant committee meetings.
10. In so far as the timelines are concerned, reference is made to Decision 670/992 of the Constitutional Court, which found the period of 15 days to be reasonable and sufficient to secure the effective exercise of the constitutional right to be heard, including in the framework of public consultations in the Assembly. The authorities underscore that the timelines set in the Assembly's Rules of Procedure for various stages of the law-making process are respected, except in urgent cases, and that interested parties, including civil society, are guaranteed equal access to the different stages of the law-making process.
11. GRECO takes note of the information provided which is not new. With respect to part (i) of the recommendation, it has not been proven that the timelines established for the adoption of bills via ordinary, not accelerated, procedure are respected in practice, or, conversely, that such timelines have been reconsidered to allow for in-depth and quality discussion of all legal acts, particularly when these would merit being brought to a public debate. As for part (ii) of the recommendation, the situation as described in paragraphs 31 and 36 of the Evaluation Report remains valid in the sense that public consultations continue to be held at the discretion of the parliamentary committees, with some exceptions (i.e. mandatory consultations on labour-related bills or those of concern to local authorities). GRECO renews its calls on the authorities to move towards a law-making process that allows for genuine equality and diversity of access and for the contribution of all interested parties to the law-making process.
12. GRECO concludes that recommendation i has not been implemented.

Recommendations ii, iii, iv and v.

13. *GRECO recommended:*

- *GRECO recommended that i) clear, enforceable, publicly-stated principles and standards of conduct for MPs are adopted and equipped with an efficient supervisory mechanism; and that (ii) awareness of the principles and standards of conduct is promoted amongst MPs through dedicated guidance, confidential counselling and training on issues such as appropriate interactions with third parties, the acceptance of gifts, hospitality and other benefits and advantages, conflicts of interest and corruption prevention within their own ranks (recommendation ii);*
- *GRECO recommended i) carrying out an independent evaluation of the effectiveness of the system for the prevention, disclosure, ascertainment and sanctioning of conflicts of interest of MPs, including specifically the adequacy of incompatibilities and disqualifications, and the impact that this system has on the prevention and detection of corruption, and taking appropriate corrective*

action (e.g. further developing and refining the regulatory framework, strengthening oversight, introducing dissuasive sanctions, etc.); and ii) ensuring that MPs' reporting of private interests – whether advance or periodic – is subject to substantive and regular checks by an impartial oversight body (recommendation iii);

- GRECO recommended that i) adequate sanctions are established for minor breaches of the asset reporting obligation, including incomplete and inaccurate reporting; and ii) MPs' asset declarations are made publicly available on-line (recommendation iv);
- GRECO recommended that i) asset declarations of all MPs undergo frequent and substantive checks within a reasonable timeframe in accordance with law; and that ii) commensurate human and other resources are provided to the independent oversight body, including any of its auxiliary structures, and the effective co-operation of this body with other state institutions, in particular, those exercising control over MPs' conflicts of interest, is facilitated (recommendation v).

14. The authorities report that, on 8 April 2016, the Assembly adopted Resolution 62/2016 establishing an *ad hoc* Committee for the reinforcement of transparency in the exercise of public functions¹. The Committee's goal is to strengthen democracy by reviewing the legislation applicable to public office holders, including political office holders, heads of public administration and independent administrative entities, focusing specifically on: performance of duties; exercise of mandate; wealth control; incompatibilities and impediments; disclosure of interests and prevention of conflicts of interest; and sanctions. The Committee is to evaluate *inter alia* measures to be taken in connection with GRECO's recommendations. Up until May 2017, the Committee had held 19 meetings and elaborated the following draft laws currently debated by the Parliament:

- Draft Law 142/XIII, which amends the Legal Framework on Incompatibilities and Impediments of Political Officers and Senior Public Officers (8th amendment to Law No. 64/93 of 26 August)²;
- Draft Law 150/XIII, which reinforces the rules of transparency in the exercise of political positions and high public offices and control of unjustified capital increases³;
- Draft Law 152/XIII which amends the Statute of Members of Parliament and the Rules on Incompatibilities and Impediments of Political Officers and Senior Public Officials⁴;
- Draft Law 157/XIII on the Transparency of Political Office Holders and High Public Officials⁵;
- Draft Law 160/XIII on combatting unjustified enrichment⁶;
- Draft Law 219/XIII on the 9th Amendment to the Rules on Incompatibilities and Impediments of Political Officers and Senior Public Officials, approved by Law 64/93 of 26 August⁷;
- Draft Law 220/XIII on the 6th Amendment to Law No. 4/83, of April 2 on Public Control of the Wealth of Political Office Holders⁸;

¹ <http://www.parlamento.pt/sites/COM/XIII/LEG/CERTEFP/Apresentacao/Paginas/Competencias.aspx>

² <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=40136>

³ <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=40171>

⁴ <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=40178>

⁵ <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=40202>

⁶ <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=40213>

⁷ <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=40336>

⁸ <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=40337>

- Draft Law 221/XIII on Unjustified Enrichment, 35th amendment to the Criminal Code⁹.
 - Draft Law 225/XIII, which regulates the activity of professional representation of private interests ("Lobbying")¹⁰;
 - Draft Law 226/XIII, which reinforces the transparency of the exercise of Political Positions and High Public Positions¹¹.
15. As for individual recommendations, the authorities indicate that the review of the existing legislation or the elaboration of complementary legislation or provisions is being considered in connection with recommendation ii.
 16. With reference to recommendation iii, the authorities stress that the evaluation of the effectiveness of the system for the prevention, disclosure, ascertainment and sanctioning of conflicts of interest of MPs is at the heart of the Committee's mandate. Therefore, several bills are aimed at reforming the regulation of MPs' conflicts of interest and of incompatibilities with an MP's office.
 17. Concerning recommendation iv, the bills foresee: 1) the criminalisation of the non-submission and false disclosure of *interests*; 2) the establishment of an accessory penalty of prohibition to exercise public office and/or resignation for breaches of the *interests'* disclosure rules; and 3) the introduction of sanctions for false declaration of *assets*. The accessibility of MPs' asset declarations, which are at present only consultable on the premises of the Constitutional Court, will be improved.
 18. With reference to recommendation v, the establishment of an Entity for the Transparency of Political Office Holders and High Public Officials to be attached to the Constitutional Court is proposed.
 19. GRECO takes note of the launching by Portugal of a reform which is meant to bolster integrity and enhance accountability and transparency of a wide range of public office holders, including MPs. The package of draft legal acts currently before Parliament appears to go in the direction suggested in the Evaluation Report and is therefore supported by GRECO as a promising initiative. That being said, certain dimensions of the reform are still at a relatively early stage.
 20. With respect to recommendation ii, GRECO recalls that the reason for the recommendation was that MPs' obligations were scattered across several legal acts and that specific standards of conduct were largely missing. The rather general information reported is insufficient to warrant a conclusion on even partial compliance. The authorities are urged to establish comprehensive single text (not necessarily through legislation) containing principles and standards of conduct for MPs and to connect such an instrument to a robust integrity system that is responsive to public concerns and instills public confidence in parliamentary decision-making.
 21. GRECO concludes that recommendation ii has not been implemented.
 22. As for recommendation iii, GRECO is satisfied that the holistic approach it had suggested in the Evaluation Report seems to have been followed and that the effectiveness of the system for the prevention, disclosure, ascertainment and sanctioning of conflicts of interest of MPs is being analysed also in the broader context of other related measures and rules, notably those regulating MPs' incompatibilities (a regime that was found to be highly controversial at the time of the on-site visit), disqualifications, asset disclosure and MPs' contacts with third

⁹ <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=40338>

¹⁰ <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=40347>

¹¹ <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=40348>

parties as well as oversight mechanisms. GRECO looks forward to examining the conclusions of the evaluation and impact assessment and the action to be taken pursuant to them in light of the lacunae highlighted in the Evaluation Report.

23. GRECO concludes that the recommendation iii has been partly implemented.
24. Concerning recommendation iv, it is unclear whether or not more adequate (administrative) sanctions are to be established for allegedly widespread minor breaches of *asset* disclosure rules, e.g. incomplete and inaccurate reporting. Such omissions and inaccuracies are already prohibited under Article 256 of the Penal Code on false declaration, but until today they have never been punished in practice. GRECO is nonetheless pleased that, pursuant to one of the bills, MPs' asset declarations would be made available for public scrutiny both on the Assembly's official website as well as on that of a dedicated oversight body, as is required by the second part of the recommendation. For this reason, it concludes that this recommendation has been partly implemented.
25. GRECO concludes that recommendation iv has been partly implemented.
26. With respect to recommendation v, the intention to assign the supervision of assets of political office holders, including MPs, to an independent entity attached to the Constitutional Court is noted and welcomed. The authorities seem to be moving in the right direction, which allows GRECO to conclude that the aims of this recommendation have been partly met.
27. GRECO concludes that recommendation v has been partly implemented.

Corruption prevention in respect of judges

Recommendation vi.

28. *GRECO recommended that i) the role of the judicial councils as guarantors of the independence of judges and of the judiciary is strengthened, in particular, by providing in law that not less than half their members are judges elected by their peers; and ii) information on the outcome of disciplinary procedures within the judicial councils is published in a timely manner.*
29. The authorities report with respect to part (i) of the recommendation that the Statute of Magistrates is being updated and that GRECO's recommendations will be taken into account in the revision process. As for part (ii), the information on the outcome of disciplinary procedures conducted in the High Judicial Council and in the High Judicial Council for Administrative and Tax Courts is published in a timely manner on the respective websites. The names of judges concerned are removed to safeguard their intervention in future proceedings in court. The High Judicial Council for Administrative and Tax Courts moreover publishes a summary of the decisions made at each of its sessions in connection with the launching of inquiries, the initiation of disciplinary procedures and their outcome, including the imposition of disciplinary measures. The personal data of judges is always anonymised.
30. GRECO can only conclude that the judicial councils' composition as provided by law has not been altered to ensure that judges elected by peers constitute not less than half of the councils' members, as required by the first part of the recommendation. Moreover, accountability towards the public has not been reinforced through the timely publication of more complete information on the outcome of disciplinary procedures in cases of serious misconduct, as required by the recommendation's second part.

31. GRECO concludes that recommendation vi has not been implemented.
Recommendation vii.
32. *GRECO recommended that at least half the members of the authorities taking decisions on the selection of second instance court and Supreme Court judges are judges elected (or chosen) by their peers.*
33. The authorities refer to Articles 47(4) and 52(2) of the Statute of Magistrates and Articles 69(3) and 66(3) of the Statute of Administrative and Tax Courts. These govern the composition of panels responsible, respectively, for the selection of second instance court and supreme court judges in ordinary, administrative and tax courts. The panel responsible for the selection of judges of the Supreme Administrative Court consists, for example, of two judges, one prosecutor, one professor of law and one lawyer. The authorities also inform of the new draft Statute of Magistrates which is supposed to reform the selection panels along the line of the recommendation.

GRECO notes that the panels overseeing the short-listing of candidates to the post of appeal court judge and of supreme court judge continue to rely on a majority of members who are non-judges, as was the case when the Evaluation Report was adopted. Nothing new has been reported in this respect. Nonetheless, GRECO welcomes the preparation of the new draft Statute of Magistrates which intends to fulfil the requirements of this recommendation.

34. GRECO concludes that recommendation vii has not been implemented
Recommendation viii.
35. *GRECO recommended ensuring that periodic evaluations of first instance court judges and inspections/assessments of second instance court judges ascertain, in a fair, objective and timely manner, their integrity and compliance with the standards of judicial conduct.*
36. The authorities report, with respect to ordinary court judges, that the new Regulation of the High Judicial Council adopted on 17 November 2016 provides for the even distribution in the number of inspections and for the principle of equality and evaluation of judges. Article 12 of the Regulation states that a judicial inspector is to consider the following criteria as part of the evaluation of judges: "independence, exemption, dignity of conduct and civic suitability". As for administrative and tax court judges, relevant criteria are established by Article 57 of the Statute of Administrative and Tax Courts (which applies Article 34 of the Statute of Magistrates) and notably include "the subject in which a judge performs his/her functions, the volume, difficulty and management of the workload, the capacity for simplification of procedural acts, working conditions, technical preparation, intellectual capacity, exercise of functions of a trainer of justice auditors, legal articles published and suitability". The authorities furthermore mention other criteria, such as "assiduity and dedication, productivity and celerity in decision-making, serenity and discretion in the performance of duties."
37. GRECO refers to paragraph 107 of the Evaluation Report which underscores weaknesses in the system of periodic evaluation of first instance court judges and of inspections/assessments of second instance court judges. The key pre-occupation was the absence of a *comprehensive assessment of the ethical dimension of a judge's comportment* and the insufficient criteria underpinning evaluations, which relied on quantitative rather than qualitative indicators. The adoption of standards of conduct for judges, recommended separately and assessed under recommendation xi below, was supposed *inter alia* to provide concrete and

measurable benchmarks for evaluation/assessment. Judging by the information provided above, this is not yet the case: relevant standards of conduct remain to be developed and taken into account for the purpose of periodic evaluations or *ad hoc* assessments of judges. Moreover, it does not appear that widespread delays in the carrying out of evaluations have been tackled and that the “timely” element of the recommendation has been met.

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

Recommendation ix.

39. *GRECO recommended ensuring that the legal framework governing the re-allocation of cases and the re-assignment of judges is consistent, underpinned by objective and transparent criteria and safeguards judges’ independence.*

40. The authorities state that the Law on the Organisation of the Judicial System (LOJS) was amended on 16 December 2016 to vest district court presidents with the competence: “to propose to the High Judicial Council (HJC) and to the High Judicial Council for Administrative and Tax Courts the re-assignment of judges, in accordance with the principle of a judge’s specialisation, to another court or a court in the same district (comarca) or the allocation of cases for processing and deciding by a judge other than the judge in charge, in order to balance the procedural burden and efficiency of services”.¹² Therefore, all cases are now being randomly assigned to judges, with some exceptions. The transfer of judges is also exceptional. It requires the judge’s consent and is to take into account the accumulation of the judge’s functions.¹³

41. GRECO recalls that the origin of this recommendation derived from the inconsistency between the LOJS and the Statute of Magistrates (SOM). The former, which had been revised prior to the on-site visit, vested district court presidents with the power to propose to the HJC the re-assignment of judges and the re-allocation of cases to a judge other than the serving one for procedural and judgment purposes¹⁴. The latter law, which had not been updated to match the revised LOJS, only allowed for a judge’s transfer *at his/her own request* or as a *disciplinary measure*. The information submitted by the authorities does not suggest that the contradiction between the two legal acts has been removed and the risks that such an incongruent legal framework posed for the independence of judges and for the principle of case allocation to a lawful judge have been eliminated.

42. GRECO concludes that recommendation ix has not been implemented.

Recommendation x.

43. *GRECO recommended that final first instance court judgments are made easily accessible and searchable by the public.*

44. The authorities recall that judicial proceedings are public. Final decisions of the Supreme Administrative Court and of the second instance administrative courts are subject to mandatory publication in a dedicated electronic data base. However, as concerns the publication of first instance court judgments, the authorities state that relevant technical and material conditions have not as yet been met and necessary steps are being taken to overcome existing difficulties.

¹² Article 94(4)(f) LOJS

¹³ Regulation of the High Council of the Judiciary pursuant to Article 94(4) (f) and (g) LOJS

¹⁴ Article 94(4)(f) LOJS as referred to in paragraph 115 of the Evaluation Report

45. GRECO notes that at the time of adoption of the Evaluation Report only the judgments of second instance courts and of the two Supreme Courts were made available on a designated website, maintained by the Ministry of Justice. This, in itself, was hailed as a major achievement, as was also the full computerisation of Portuguese courts. That being said, in GRECO's view, even in a system not based on precedent, the publication of judgments plays a key role in assuring certainty in the law and uniformity and predictability in its application. Moreover, publication of final first instance court decisions is known to bring a distinct value in terms of enhanced accountability of judges, better access to justice and wider transparency. GRECO notes that first instance judgments are still not easily accessible and searchable and renews its calls on the authorities to comply with this recommendation.
46. GRECO concludes that recommendation x has not been implemented.
- Recommendation xi.
47. *GRECO recommended that i) clear, enforceable, publicly-available standards of professional conduct (covering e.g. gifts, conflicts of interest, etc.) are set out for all judges and used inter alia as a basis for promotion, periodic evaluation and disciplinary action; and that ii) awareness of the standards of conduct is promoted amongst judges through dedicated guidance, confidential counselling, and initial and in-service training.*
48. The authorities indicate that the Code of Ethics for Judges has been integrated into the Statute of Magistrates (SOM) governing ordinary court judges and that the same rules apply *mutatis mutandis* to administrative and tax court judges. Regarding part (ii) of the recommendation, confidential counselling on specific ethical dilemmas is provided to judges by the permanent members of the two judicial councils. Awareness of the standards of conduct is raised through initial and in-service training organised for judges by the Centre for Judicial Studies.
49. GRECO takes note of the information provided. It understands that a new draft Statute of Magistrates has been elaborated and now awaits approval by the Council of Ministers. The draft makes reference to some general principles found in the current Statute (e.g. the principles of independence and non-removability) and would also cover some duties, notably the duties of impartiality, reserve, confidentiality, due diligence, courtesy and co-operation. While welcoming the integration of those general principles and duties into the new draft Statute of Magistrates, GRECO is not convinced that they amount to a fully-fledged clear and enforceable code of conduct covering issues such as gifts and conflicts of interest, as is required by the recommendation. Given that the draft's content will evolve as it will be submitted to Parliament, GRECO concludes that this part of the recommendation has not been implemented. The authorities are urged to expedite their compliance with it since it is indispensable for the fulfilment of the recommendation's part two. Moreover, in connection with counselling available to judges, GRECO would wish to obtain reassurances that rules are in place that preclude members of the judicial councils who provide advice on ethical dilemmas to judges from participating in any eventual disciplinary proceedings with respect to the same judges.
50. GRECO concludes that recommendation xi has not been implemented.

Corruption prevention in respect of prosecutors

Recommendation xii.

51. *GRECO recommended that information on the outcome of disciplinary procedures within the High Council of the Public Prosecution Service is published in a timely manner.*
52. *The authorities indicate that the Statute of the Public Prosecution Service is being amended to reflect changes already made effective by virtue of a decision of the High Council of the Public Prosecution Service of 20 April 2017¹⁵. The High Council notably decided that: 1) all disciplinary decisions imposing a measure more stringent than a “warning” are to be published on the intranet site and the publicly available portal of the Public Prosecution Service (PPS); 2) the information on the outcome of a specific procedure not covered by the previous paragraph may be published, if justified, as per the Council’s decision; 3) disciplinary decisions made by the Council’s Disciplinary Section are to be published after the expiry of the time limit set for submitting a complaint to the Council’s Plenary or after a Plenary decision on a complaint has been made; 4) the Council (its Disciplinary Section or Plenary) may decide that certain parts of a decision, including names or facts, may not be disclosed to safeguard privacy or other relevant interests; 5) where the Council’s decision is contested in appeal, a reference thereto is to be made in the publication; 6) in cases where disciplinary measures of dismissal and compulsory retirement are imposed, relevant information is to be published only after the expiry of the time limit set for requesting a judicial suspension of the effectiveness of the measure or when such a request is rejected by court.*
53. *GRECO is pleased that, by virtue of a decision of the High Council of the PPS, greater publicity has been given to cases of prosecutors’ serious misconduct sanctioned by a measure more severe than a “warning”. Previously, only a summary of the facts and of the duties breached, and information on the sanction imposed were published, not the prosecutor’s name or the office s/he belonged to (the same applied to court decisions on appeal). Even if corresponding amendments to the Statute of the PPS are currently pending, GRECO is satisfied that the Council’s decision has been in force since April 2017. GRECO uses this opportunity to encourage the Council to limit to an absolute minimum its discretion not to publish the details of a particular disciplinary decision for reasons of safeguarding privacy and other relevant interests.*
54. *GRECO concludes that recommendation xii has been implemented satisfactorily.*

Recommendation xiii.

55. *GRECO recommended ensuring that periodic evaluation of prosecutors attached to first instance court and inspections/assessment of prosecutors attached to second instance courts ascertain, in a fair, objective and timely manner, their integrity and compliance with the standards of professional conduct.*
56. *The authorities report that, on 3 November 2015, the High Council of the PPS dismantled one of its sections responsible for periodic evaluation. Consequently, since January 2016, the evaluation of all prosecutors has been carried out by a single section responsible for assessing performance, integrity and compliance with the standards of professional conduct. In addition, the position of a Co-ordinating Inspector was established in the Inspections Department to ensure that the PPS’ inspectors (currently 14 prosecutors) perform their duties in a uniform manner.*

¹⁵ http://www.ministeriopublico.pt/sites/default/files/documentos/pdf/deliberacao_publicidade_das_deciso.es.pdf

Better co-ordination and more frequent meetings aim to eliminate subjectivity and divergent criteria being applied. Additionally, a Working Group has been set up to develop a new Inspection Regulation and a new Standard Inspection Report for approval by the High Council. This work has recently come to an end and the proposals will soon be debated by the Council's Plenary.

57. GRECO recalls that the present recommendation was prompted, as in the case of judges, by the absence of a *comprehensive appraisal of a prosecutor's integrity and of his/her compliance with standards of professional comportment* integrated into the periodic evaluation of prosecutors attached to first instance courts and of inspections/assessments of prosecutors attached to second instance courts. The lack of norms governing prosecutorial conduct (cf. recommendation xv below) and the insufficient criteria underpinning current evaluations/appraisals, which relied on quantitative rather than qualitative indicators¹⁶, were identified as key obstacles. The information submitted does not allow GRECO to conclude that those obstacles have been overcome. Similarly, it is unclear whether the two-year delays in the carrying out of evaluations, which diminished their value for the purpose of prosecutors' promotion, have been eliminated or that the "timely" element of the recommendation has been met.
58. GRECO concludes that recommendation xiii has not been implemented.

Recommendation xiv.
59. *GRECO recommended ensuring that the rules governing prosecutorial hierarchy and competences correspond to the new judicial map and protect prosecutors from undue or illegal interference from within the system.*
60. The authorities report that amendments to the Law on the Organisation of the Judicial System (LOJS) adopted in December 2016 have adapted the rules governing prosecutorial hierarchy and competences to the new judicial map. Moreover, revised Article 11 LOJS (on appointment, placement, transfer, promotion and other acts relating to prosecutors) now states that prosecutors may not be transferred, suspended, promoted, retired or dismissed except in the cases provided for in the Statute. According to paragraph 2 of the same Article, the appointment, placement, transfer, promotion, exoneration, assessment of professional merit of prosecutors and the exercise of disciplinary action in their regard are under the competence of the Prosecutor General's Office and involve the High Council of the PPS, with some exceptions.
61. GRECO takes note of the information provided. It recalls that the recommendation was triggered by the major overhaul of the internal structure of the PPS, which had to adjust to the drastic reduction in September 2014 of the previous judicial counties (first instance courts) – from some 200 to only 23 – and to re-organise prosecutor's offices attached to those counties (courts) as well as to the appellate courts. The establishment of the new judicial map was not accompanied by parallel amendments to *the Statute of the PPS*. Therefore, the previous strict hierarchical subordination, regulated by the Statute, had been eroded, the respective prosecutorial competencies and lines of subordination blurred and interpreted on a case-by-case basis. The extent to which entities vested with the power to issue

¹⁶ The manner in which duties are carried out, workload, any difficulties in service, conditions of the work made, technical training, intellectual capacity, legal publications and "civil aptitude" (i.e. courtesy and good manners), as well as the outcome of past inspections, any inquiries, investigations or disciplinary procedures, employment status, annual reports and any other information in the High Council's possession - Article 110 of the Statute of the PPS and the "Inspection Rules of Procedure".

binding instructions on prosecutors¹⁷ had retained this competence in the new judicial order also remained unclear. It does not appear that the Statute of the PPS has been revised or that the aforementioned legal uncertainties have been adequately remedied to shield subordinate prosecutors from undue or illegal interference or pressure *from unauthorised superiors within their own hierarchy*.

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

Recommendation xv.

63. *GRECO recommended that i) clear, enforceable, publicly-available standards of professional conduct are set out for all prosecutors and used inter alia as a basis for promotion, evaluation and disciplinary action; and ii) awareness of the standards of conduct is promoted amongst prosecutors through dedicated guidance, confidential counselling, and in the context of initial and in-service training.*

64. The authorities inform that a Working Group involving members of the High Council of the PPS has been established to implement this recommendation and that this work is still at an early stage. Additionally, greater emphasis has been placed on the subject of ethics and professional conduct in the initial and in-service training organised by the Centre for Judicial Studies for both prosecutors and judges. For example, by integrating it into the permanent annual training programmes for prosecutors (and judges).

65. GRECO regrets that, aside from the setting up of a Working Group within the High Council of the PPS, no tangible steps have been taken in pursuit of this recommendation. It recalls that the Statute of the PPS only enumerates the overarching principles to be adhered to by all prosecutors and prohibits comportment incompatible with the decorum and dignity of the profession. More specific standards of conduct have not been prescribed, including those that might lead to disciplinary action¹⁸. In the absence of clearly stipulated rules, as before, familiarisation with the disciplinary decisions of the High Council of the PPS which is a component of the initial three-year training organised by the Centre for Judicial Studies, remains the sole way of framing a prosecutor's professional conduct. GRECO reiterates that this is not an appropriate way to shape and ensure ownership of the values, principles and standards of conduct underlying this office. It urges the authorities to accelerate the fulfilment of part (i) of the recommendation, which is also a pre-requisite for compliance with its part (ii).

66. GRECO concludes that recommendation xv has not been implemented.

III. CONCLUSIONS

67. In view of the foregoing, GRECO concludes that Portugal has implemented satisfactorily or dealt with in a satisfactory manner one of fifteen recommendations contained in the Fourth Round Evaluation Report. Of the remaining recommendations, three have been partly implemented and eleven have not been implemented.

68. More specifically, recommendation xii has been dealt with in a satisfactory manner, recommendations iii, iv and v have been partly implemented and recommendations i, ii, vi, vii, viii, ix, x, xi, xiii, xiv and xv have not been implemented.

¹⁷ That is the Prosecutor General and the General Prosecutor's Office, the Deputy District Prosecutors General and their Offices, and the District Prosecutors - Articles 10, 12, 56, 58, 63 of the Statute of the PPS

¹⁸ Cf. paragraphs 165-167 of the Evaluation Report

69. With respect to members of parliament, GRECO notes with interest the launching by Portugal of an ambitious reform which is meant to bolster integrity, enhance accountability and heighten transparency of a wide range of public office holders, including MPs. The package of draft legal acts deliberated by Parliament appears to go in the direction suggested by GRECO and is therefore supported as a promising initiative. That being said, certain dimensions of the reform are still at a relatively early stage and need to take a clear and concrete form. For example, it remains to be seen whether, and how, the overarching principles and standards of conduct for MPs are developed, the regulatory framework on conflicts of interests and asset disclosure further refined, related oversight mechanisms strengthened and more adequate sanctions introduced and applied in practice. Furthermore, the authorities are yet to move towards a law-making process that allows for genuine equality and diversity of access and for the contribution of all interested parties, including civil society.
70. As far as judges are concerned, GRECO is disappointed by the non-fulfilment of recommendations that it deems crucial for fostering greater independence of the judiciary and of judges and enhancing public trust in this branch. The role of judicial councils as guarantors of judicial independence has not been reinvigorated. As before, their mandates remain limited, being confined to the exercise of managerial and disciplinary responsibilities over judges and some administrative duties with regard to district courts. The councils' composition and that of panels overseeing the short-listing of candidates to the post of appeal court judge and supreme court judge relies on the majority of members who are not judges, although amendments to the Statute of Magistrates are being prepared. Periodic evaluations of judges do not ascertain, in a fair, objective and timely manner, integrity and compliance with the standards of conduct, and information on the outcome of disciplinary procedures is kept anonymised. Even if GRECO is pleased with the on-going revision of the Statute of Magistrates, the drafting process needs to advance to warrant a definitive conclusion on successful compliance with all of GRECO's requirements.
71. In contrast, GRECO commends the Public Prosecution Service for rendering the information on the outcome of its internal disciplinary procedures public, with minor exceptions. It encourages the Service to move swiftly towards the adoption of clear, enforceable and publicly-available standards for prosecutors' professional conduct, which are to serve, among other things, and as in the case of judges, as a basis for promotion, timely evaluation and disciplinary action. Furthermore, the establishment of the new judicial map is yet to be accompanied by a parallel revision of the Statute of the Public Prosecution Service that is to shield subordinate prosecutors from undue or illegal interference or pressure from unauthorised superiors from within their own ranks.
72. In view of the above, GRECO therefore concludes that the current very low level of compliance with the recommendations is "globally unsatisfactory" in the meaning of Rule 31 revised, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides to apply Rule 32, paragraph 2 (i) concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the Head of delegation of Portugal to provide a report on the progress in implementing the outstanding recommendations (i.e. recommendations i to xi and xiii to xv) as soon as possible, however – at the latest – by 31 December 2018.
73. Finally, GRECO invites the authorities of Portugal to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.