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FOURTH EVALUATION ROUND

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

INTERIM COMPLIANCE REPORT

PORTUGAL

Adopted by GRECO at its 83rd Plenary Meeting
(Strasbourg, 17-21 June 2019)

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I. INTRODUCTION

1. The Fourth Round Evaluation Report on Portugal was adopted at GRECO 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. GRECO selected Serbia and Malta to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Ivana CVETKOVIĆ on behalf of Serbia and Mr Kevin VALLETTA on behalf of Malta. They were assisted by GRECO's Secretariat in drawing up the present Interim Compliance report.
3. In the Compliance Report ([GrecoRC4\(2017\)23](#)) which was adopted by GRECO at its 78th Plenary Meeting (8 December 2017), it was concluded that one of the fifteen recommendations contained in the Fourth Round Evaluation Report had been implemented satisfactorily or dealt in a satisfactory manner by Portugal. In view of this result, GRECO concluded that the very low level of compliance with the recommendations was "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decided 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 asked the Head of delegation of Portugal to provide a report on the progress in implementing the pending recommendations (i.e. recommendations i to xi and xiii to xv) by 28 February 2019. This report was received on 28 February 2019 and served as a basis for the Interim Compliance Report.
4. It is recalled that in the Compliance Report, recommendation xii was assessed as dealt with in a satisfactory manner, recommendations iii, iv and v were considered as partly implemented and recommendations i, ii, vi, vii, viii, ix, x, xi, xiii, xiv and xv as not implemented. The current Interim Compliance Report assesses the further implementation of the aforementioned recommendations since the adoption of the Compliance Report and performs an overall appraisal of the level of Portugal's compliance with these recommendations.

II. ANALYSIS

Corruption prevention in respect of members of parliament

Recommendation i.

5. *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.*
6. GRECO recalls that this recommendation had been assessed as not implemented in the Compliance Report. With respect to part i of the recommendation, it had not been made clear that the timelines established for the adoption of bills via ordinary, not accelerated, procedure were respected in practice or that such timelines had been reconsidered to allow for in-depth and quality discussion of all legal acts. As for part ii, GRECO noted that public consultations continued to be held at the discretion of the parliamentary committees, with some exceptions.

7. Regarding the first part of the recommendation, the authorities refer to the Parliament's Rules of Procedure, which lay down the timelines for the various stages of the law-making process. These timelines are implemented by the Conference of Political Parties' Leaders, which is responsible for scheduling plenary meetings, setting the agendas and evaluating other issues relevant to the proper functioning of Parliament.
8. As to the second part of the recommendation, the authorities refer to the Parliament's website¹, which provides information on legislative initiatives, work agendas and reports on legislative activity. They also refer to the possibility for parliamentary committees to organise public hearings and ask for the advice of independent experts, specialised bodies or target groups. Some consultations are mandatory, for instance as regards labour legislation or local authorities. Guidelines for consultation are posted on the Parliament's website and include a list of stakeholders to be consulted according to the subject of discussion.
9. GRECO takes note of the information provided which is not new. Nothing indicates that specific measures have been taken to address the concerns of the recommendation. GRECO, therefore, again calls on the authorities to show that legislative timelines are adhered to in practice and to move towards a law-making process that allows for genuine equal access of and contribution by all interested parties to the law-making process.
10. GRECO concludes that recommendation i remains not implemented.

Recommendation ii.

11. *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.*
12. GRECO recalls that this recommendation had been assessed as not implemented in the Compliance Report. An Ad-hoc Committee for the Strengthening of Transparency in the Exercise of Public Functions had been established to review legislation applicable to public office holders, including political office holders. At the time of adoption of the Compliance Report, it was considering to review existing legislation or elaborate complementary legislation. GRECO had reiterated the need for a comprehensive, single text containing standards of conduct for MPs and to connect this instrument to a robust integrity system.
13. The authorities now report that several parliamentary groups proposed legislative initiatives on transparency in the exercise of the mandate of MP, strengthening MPs' incompatibilities and immunities, as well as on establishing a future Code of Conduct, following the work of the Ad-hoc Committee for the Strengthening of Transparency in the Exercise of Public Functions.
14. In January 2018, the Ad-hoc Committee approved the "Code of Conduct for Members of the Assembly of the Republic"² and three draft laws on the subject of registration of interests:

¹ <https://www.parlamento.pt/ActividadeParlamentar/Paginas/IniciativasLegislativas.aspx>

² <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailheIniciativa.aspx?BID=42032>

- Draft Law 225/XIII, which regulates the activity of professional representation of private interests ("Lobbying")³;
 - Draft Law 734/XIII, which approves the legal framework of the professional activity of mediation in the representation of interests⁴;
 - Draft Law 735/XIII, which approves the legal framework for the registration of private entities that represent interests⁵.
15. The authorities add that the "Draft Law on public control and sanctioning framework for political officers and senior public officials" discussed in the Ad-hoc committee contains a rule which provides that "within the scope of entities and under the conditions referred to in (...) codes of conduct should be established and published on the websites of their respective entities, in which principles and rules of transparency should be applied to their members, in particular regarding the acceptance of offers and hospitality provided by public or private entities." All these draft laws were approved by Parliament in second reading on 7 June 2019. They will need to be promulgated by the President of the Republic and published in the Official Gazette in order to enter into force.
16. GRECO takes note of the adoption of the "Code of Conduct for Members of the Assembly of the Republic", which it looks forward to assessing in its next report. It is a positive step towards the implementation of the first part of the recommendation. GRECO recalls, however, that this Code needs to be complemented with an efficient supervisory mechanism. Moreover, proper guidance, counselling and training on ethical issues need to be provided to MPs as per the second part of the recommendation, which remains not implemented.
17. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

18. *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.*
19. GRECO recalls that this recommendation had been assessed as partly implemented. It welcomed that the effectiveness of the system for the prevention, disclosure, ascertainment and sanctioning of conflicts of interest of MPs was being analysed also in the broader context of other related measures and rules, notably those regulating MPs' incompatibilities, disqualifications, asset disclosure and MPs' contacts with third parties as well as oversight mechanisms. GRECO looked 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.
20. The authorities reiterate that the evaluation of the system for the prevention, disclosure, ascertainment and sanctioning of MPs' conflicts of interest is at the core of the mandate of the Ad-hoc Committee for the Strengthening of Transparency in the Exercise of Public Functions. They refer to several draft laws which have been

³ <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=40347>

⁴ <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=42033>

⁵ <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=42034>

under analysis by the Ad-hoc Committee and that deal with conflicts of interests and incompatibilities, namely:

- Draft Law 141/XIII, 12th amendment to the Statute of the Members of Parliament⁶;
- Draft Law 142/XIII, which amends the legal framework of incompatibilities and impediments of political officers and senior public officials (8th amendment to Law No. 64/93, of August 26)⁷;
- 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 increases⁸;
- 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 Officials⁹;
- Draft Law 153/XIII, which amends the Statute of Members of Parliament establishing a rule of mandatory exclusivity for Members of Parliament¹⁰;
- Draft Law 157/XIII on the Transparency of Political Office Holders and High Public Officials¹¹;
- Draft Law 160/XIII on combatting unjustified enrichment¹²;
- 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 August¹³;
- 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 Holders¹⁴;
- Draft Law 221/XIII on Unjustified Enrichment, 35th amendment to the Criminal Code¹⁵;
- As well as Draft Laws 225/XIII, 734/XIII and 735/XIII, already mentioned in paragraph 14.

21. The authorities add that the draft laws contain provisions aimed specifically at implementing the second part of the recommendation. In one of the draft laws, there seems to be a consensus towards the establishment of a supervisory body, the “Transparency and Supervisory Entity”, attached to the Constitutional Court. Holders of political positions and senior public officials would have to present electronically, within 60 days after the beginning of their functions, a declaration of income, assets and interest, the model of which is annexed to the draft law. All the draft laws referred to in paragraphs 20 and 21 have been adopted by Parliament in second reading on 7 June 2019.

22. GRECO takes note of the continuation of the work of the Ad-Hoc Committee for the Strengthening of Transparency in the Exercise of Public Functions and of the adoption of relevant draft laws by Parliament. However, these draft laws have not entered into force yet and GRECO did not have the opportunity to assess their content. As to the second part of the recommendation, GRECO welcomes the apparent consensus towards the establishment of a supervisory body attached to the Constitutional Court. Its composition, mandate, functions and powers will need to be assessed in due course to verify that they satisfy the requirements of the recommendation.

⁶ <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=40137>

⁷ <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=40136>

⁸ <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=40171>

⁹ <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=40178>

¹⁰ <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=40179>

¹¹ <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=40202>

¹² <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=40213>

¹³ <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=40336>

¹⁴ <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=40337>

¹⁵ <http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=40338>

23. GRECO concludes that recommendation iii remains partly implemented.

Recommendation iv.

24. *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.*

25. GRECO recalls that in the Compliance Report, it had found it unclear whether or not more adequate (administrative) sanctions were to be established for allegedly widespread minor breaches of asset disclosure rules, e.g. incomplete and inaccurate reporting. GRECO was nonetheless pleased that, pursuant to one of the draft laws under consideration, 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 concluded that this recommendation had been partly implemented.

26. The authorities explain, as regards the first part of the recommendation, that the draft law on public control and sanctioning regime for political officers and senior public officials discussed in the Ad-hoc Committee contains a proposal for an article regarding the sanctioning regime for infractions related to the submission of asset declarations. This article foresees dismissal or loss of the mandate to elected positions, with the exception of the President of the Republic, the Prime Minister and the President of the Assembly, in case of breach of the provisions of the law.

27. Concerning the second part of the recommendation, the authorities submit that the draft law contains a consensual provision providing for publication of the asset declarations on the supervisory body's website. The draft law was adopted by Parliament in second reading on 7 June 2019.

28. GRECO recalls that the first part of the recommendation calls for adequate sanctions for minor breaches of the asset reporting obligation, *i.e.* for milder sanctions than dismissal or loss of mandate. It is still unclear whether such milder sanctions are foreseen in the law and this part of the recommendation remains, therefore, not implemented.

29. As regards the second part of the recommendation, GRECO welcomes confirmation that the law foresees publication of MPs' asset declarations on the supervisory body's website. This part of the recommendation remains partly implemented.

30. GRECO concludes that recommendation iv remains partly implemented.

Recommendation v.

31. *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.*

32. GRECO recalls that it had welcomed in the Compliance Report the intention to assign the supervision of assets of political office holders, including MPs, to an independent entity attached to the Constitutional Court. The recommendation had, therefore, been assessed as partly implemented.

33. The authorities report that the draft law preliminary agreed by the Ad-Hoc Committee foresees the obligation for office holders to submit an updated declaration within 60 days from the end of their functions or their re-election. Whenever a change in assets of an amount greater than 50 minimum monthly salaries occurs in the course of the mandate, the declaration is also to be updated.
34. Another provision in the draft law foresees electronic filing of declarations of income, assets and interests to the Transparency and Supervisory Entity attached to the Constitutional Court. The draft law was adopted by Parliament in second reading on 7 June 2019.
35. GRECO takes note of the adoption by Parliament of relevant legislation. However, this legislation has not entered into force yet and GRECO did not have an opportunity to assess it.
36. GRECO concludes that recommendation v remains partly implemented.

Corruption prevention in respect of judges

37. As an introductory remark to this part of the report, the authorities of Portugal highlight that the new Statute of Judicial Magistrates has been adopted by Parliament on 30 May 2019. It has to be promulgated by the President of the Republic and published in the Official Gazette for it to enter into force.

Recommendation vi.

38. *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.*
39. GRECO recalls that, in the absence of tangible measure towards implementation of either part of this recommendation, it had been assessed as not implemented in the Compliance Report.
40. The authorities underline with respect to part (i) of the recommendation that the fact that the High Judicial Council and the High Council of the Administrative and Tax Courts do not currently have a majority of judges in their composition does not mean that the independence of the judiciary is not guaranteed.
41. According to article 218 of the Constitution, the High Judicial Council is composed of 17 members, of which seven members are judges elected by their peers, seven members are appointed by the Parliament and two members appointed by the President of the Republic (elected by direct universal suffrage). The president of the Council is the President of the Supreme Court (elected amongst the judges of the Supreme Court).
42. The authorities stress that important factors mitigate this non-majority of judges in the composition of the Council: i) the Council is always presided by a judge; ii) the President has legally a tie-brake vote; iii) only the judges serve their term in a full-time capacity; iv) the current management of the Council is delegated to the Vice-President (Supreme Court Judge elected by all judges); v) the members serve mandates with different lengths, which makes it very difficult to exercise a strong influence in the Council's composition (the President of the Council serves a term of 5 years, the elected members serve a term of 3 years, the members appointed by

the Parliament serve a term of 4 years, the members appointed by the President serve a term of 5 years). Also, there is no record of a vote split between judges and non-judges.

43. Regarding part (ii) of the recommendation, the authorities explain that information on the outcome of disciplinary proceedings conducted in the judicial councils is published in a timely manner. The High Judicial Council publishes this information on its website with the name of judges involved anonymised. The High Council of the Administrative and Tax Courts publishes a summary of the decisions taken at each Session of the Council regarding the results of disciplinary proceedings, the launch of inquiries and the initiation of disciplinary proceedings, as well as the outcome of such proceedings, the filling of procedures and the penalty applicable, with the anonymisation of personal data of the person involved. The outcome of disciplinary procedures is also disclosed in the annual report of the High Judicial Council to the Parliament, which is published online¹⁶. Moreover, the Supreme Court publishes online¹⁷ a summary of all the appeals from the Council's decisions that concern the Council's disciplinary action.
44. The authorities add that information from disciplinary proceedings is legally considered confidential and sensitive. In the framework of the revision of the Statute of Magistrates that is currently on-going in Parliament, the High Judicial Council suggested, in its written opinion, that a specific provision be included that would allow it to publish summaries of all its disciplinary action.
45. The authorities also submit that the information on the outcome of disciplinary procedures conducted by the High Judicial Council and by the High Council for Administrative and Tax Courts is published in a timely manner on the respective websites. The names of judges concerned are not made public. The High 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.
46. GRECO notes that still no tangible measure has been taken to implement the first part of the recommendation concerning the composition of the High Judicial Council. The information provided is not new and has already been assessed in the context of the Evaluation Report, which recalled the standard set by Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, which stipulates that judges elected by their peers should make up not less than half the members of councils for the judiciary. This part of the recommendation remains not implemented.
47. As regards the second part of the recommendation, the arrangements described regarding information on the outcome of the disciplinary procedures are the same as those assessed in the Evaluation and Compliance Reports. The only new information is the suggestion of the Judicial Council to include a specific provision in the new Statute of Magistrate allowing publishing more information regarding its disciplinary action. This goes in the right direction, however, it is unclear whether this suggestion has been followed and whether such a provision is included in the Statute adopted by Parliament. For this reason, GRECO cannot conclude that this part of the recommendation has been implemented, even partly.
48. GRECO concludes that recommendation vi remains not implemented.

¹⁶ <https://www.csm.org.pt/relatorios-anuais/>

¹⁷ https://www.stj.pt/?page_id=7667

Recommendation vii.

49. *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.*
50. GRECO recalls that this recommendation had been assessed as not implemented in the Compliance Report, as the panels overseeing the short-listing of candidates to the post of appeal court judge and of Supreme Court judge continued to rely on a majority of members who are non-judges, as was the case when the Evaluation Report was adopted. Nonetheless, GRECO welcomed the preparation of the new draft Statute of Magistrates which intended to fulfil the requirements of this recommendation.
51. The authorities report that article 47-A of Draft Law 122/XII, which revises the Statute of Judicial Magistrates¹⁸ and has already been approved by Parliament in first reading, changes the composition of the panel for the short-listing of appeal court judges by establishing a parity of members that are judges elected by their peers and non-judges (3+3).
52. The composition of the panel for the short-listing of Supreme Court judges is as follows: the President of the Supreme Court (chair), the most senior judge who is a member of the High Judicial Council (HJC), a member of the High Council of the Public Prosecution elected by that body, an HJC member who is not a judge elected by the HJC, a university law professor and a lawyer serving in the High Council of the Portuguese Bar Association, appointed by that body. The authorities underline that this composition is justified by the fact that, unlike appeal court judges who are exclusively selected from the ranks of judges, Supreme Court judges may be selected from among appeal court judges, deputy general prosecutors and legal experts of recognised merit.
53. GRECO welcomes article 47-A of Draft Law 122/XII, which foresees that appeal court judges will be selected by a panel of which half the members will be judges elected by their peers. This satisfies the requirements of the recommendation as regards appeal court judges. However, GRECO has not had the opportunity to assess the text of the adopted law, so this positive assessment will have to be confirmed in its next report. Moreover, the requirement of the recommendation has not been met in respect of the panel for the short-listing of Supreme Court judges and GRECO does not agree with the reason given that the more varied backgrounds of justice candidates to the Supreme Court warrant a deviation from the principle referred to in the recommendation.
54. GRECO concludes that recommendation vii has been partly implemented.

Recommendation viii.

55. *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.*
56. GRECO recalls that this recommendation had not been implemented. Relevant standards of conduct remained to be developed and taken into account for the purpose of periodic evaluations or *ad hoc* assessments of judges. Moreover, it did

¹⁸ <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalleIniciativa.aspx?BID=42400>

not appear that widespread delays in the carrying out of evaluations had been tackled.

57. The authorities report that the HJC approves each year an annual plan for the evaluation of first instance court judges. In that framework, they make reference to Article 12 of a Regulation of the High Judicial Council on inspection services¹⁹, adopted on 17 November 2016.

Regulation of the High Judicial Council on inspection services, article 12:

1 - *The Inspection of judicial magistrates focuses on their capacity for the exercise of the function, its adaptation to the service and technical preparation.*

2 - *With regard to the human capacity to perform the function, the inspection takes into account, inter alia, the following factors:*

- a) *Independence, impartiality, dignity of conduct and civic suitability;*
- b) *Relationship with subjects and procedural actors, others magistrates, lawyers, other forensic professionals, judicial civil servants and general public;*
- c) *the professional and personal prestige which he enjoys as a judge in the exercise of the function;*
- d) *Serenity and reserve with which he / she performs the function;*
- e) *Ability to understand the concrete situations under consideration and sense of justice, in relation to the sociocultural environment where the function is exercised;*
- f) *Capacity and dedication in the training of magistrates.*

3 - *The adaptation to the service is analysed, among others, by the following aspects:*

- a) *Attendance, zeal and dedication;*
- b) *Productivity, in particular as regards the rate of solution of cases, obtained by dividing the number of cases terminated by the number of cases entries in the same year, and the recovery rate, corresponding to the ratio between the number of completed cases and the sum of entries and pending cases;*
- c) *Working method, directed to the final decision, that is demonstrably organized, logical and systematic;*
- d) *Deadlines for decision and duration of proceedings;*
- e) *Ability to simplify procedures;*
- f) *Direction of the hearings and other diligences, mainly regarding the punctuality, timing, discipline and careful management of time;*
- g) *Management of the procedural workload distributed to the inspected and in the participation in the management of the process unit;*
- h) *Contribution of the judge to the achievement of the procedural objectives approved.*

4 - *In the analysis of the technical preparation, the inspection takes globally into account, among others, the following aspects:*

- a) *Legal quality of the work inspected, appreciated, essentially, by the capacity for synthesis in the enunciation and resolution of the issues, by the clarity and simplicity of the exposition and the argumentative discourse, by the practical and legal sense and by the weighting and in decisions;*
- b) *Ability to understand the legal situations in question;*
- c) *Capacity of persuasion from to quality and originality of the critical arguments used in the reasoning of decisions;*
- d) *Intellectual level, in the sense of assessing the legal knowledge acquired and how such knowledge applied in the exercise of their functions.*

5 - *In the assessment referred to in the preceding paragraphs, it shall always be taken into consideration the circumstances in which the performance of her/his duties took place, the working conditions, the volume of service, special difficulties in the exercise of the function, degree of experience in the judiciary combined with the classification and complexity of the court or section, accumulation of service, courts or sections, the exercise of the function of judge-coordinator, as well as other functions legally authorised and the relevance of published legal works.*

58. The authorities also report that in the past three years, thanks to a reinforcement of the inspection body and further coordination, the HJC has been able to complete the inspection plan within the periodicity established by law.

¹⁹ <https://www.csm.org.pt/wp-content/uploads/2017/02/Novo-Regulamento-dos-Servicos-de-Inspecao-do-Conselho-Superior-da-Magistratura.pdf>

59. As for administrative and tax court judges, the authorities refer to Article 57 of the Statute of Administrative and Tax Courts (which applies Article 34 of the Statute of Magistrates), according to which relevant criteria 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.”
60. GRECO notes first that the information provided only concerns first instance court judges and recalls that the recommendation also calls for improvement of the inspection/assessment of second instance court judges.
61. No further details are provided regarding administrative and tax court judges, as the information communicated was already assessed in the Compliance Report. As far as other first instance court judges are concerned, new information has been provided, namely article 12 of the Regulation of the High Judicial Council on inspection services which spells out a number of different capacities and capabilities that are to be evaluated in respect of judges. GRECO notes in particular that independence, impartiality, dignity of conduct and civic suitability are among capacities to measure, in addition to professional skills. GRECO believes that these areas are at the core of ethical conduct of judges, but they need to be further elaborated, e.g. in standards of conduct for judges, the adoption of which is recommended under recommendation xi below. It is apparent that the criteria used to assess the ethical dimension of a judge’s behaviour, which are foreseen under article 12 paragraph 2, remain largely the same as the ones described in the Evaluation Report (see paragraph 105).
62. Finally, GRECO welcomes the indication that recent evaluations have been carried out within the legal deadline, which seems to indicate that the “timely” element of the recommendation has been met.
63. GRECO concludes that recommendation viii has been partly implemented.

Recommendation ix.

64. *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.*
65. GRECO recalls that this recommendation derived from the inconsistency between the Law on the Organisation of the Judicial System (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 purposes²⁰. 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*. This inconsistency had not been removed and the recommendation had, therefore, been assessed as not implemented in the Compliance Report.
66. The authorities state that the LOJS in its current version (Law no. 62/2013) requires the judge’s consent for the reallocation of cases and his/her reassignment.

²⁰ Article 94(4)(f) LOJS as referred to in paragraph 115 of the Evaluation Report

The relevant provision foresees the adoption by the High Judicial Council of a Regulation defining the criteria to that end (article 94(4)(f) and (g)). The High Judicial Council approved, on 6 July 2018, a new regulation to implement article 94 of the LOJS²¹. Article 3 of this Regulation foresees that transfer of a judge to another section in the same district requires his/her consent. The authorities point out that this new regulation removes the inconsistency that existed in the previous one, which foresaw that the judge's consent could be waived for reasons of excessive workload in the section of destination.

67. According to article 5 of the same regulation, reallocation of cases to another judge is also subject to the judge's consent.
68. As regards the Statute of Magistrates, Law 122/XII²² which has been adopted by Parliament explicitly states in its new article 45-A that the transfer of a judge to another section of the same district, as well as the reassignment of cases to another judge, depend on the judge's consent.
69. GRECO welcomes that article 94 of the LOJS, the Regulation implementing this article and Law 122/XII revising the Statute of Magistrates now all seem to provide for the judge's consent for his/her transfer to another court, as well as for the reassignment of cases allocated to him/her. However, as the law revising the Statute of Magistrates has not yet entered into force and GRECO has not had the opportunity to assess the text of the law as adopted, it cannot yet conclude that the recommendation has been fully implemented.
70. GRECO concludes that recommendation ix has been partly implemented.

Recommendation x.

71. *GRECO recommended that final first instance court judgments are made easily accessible and searchable by the public.*
72. GRECO recalls that this recommendation had not been implemented. It noted in the Compliance Report that first instance judgments were still not easily accessible and searchable, unlike the judgments of second instance courts and of the two Supreme Courts.
73. The authorities report that the High Judicial Council and an entity within the Ministry of Justice, the Institute of Financial Management and Equipment of Justice, have been awarded two co-financed projects to integrate Portuguese case law into the European Case Law Identifier – ECLI. Within the framework of the first project, a full review of the national case-law page²³ was carried out. Since 17 December 2018, case-law in Portuguese is searchable through the ECLI search engine²⁴.
74. The second project, which is currently being executed, foresees the inclusion of first instance court decisions in the ECLI search engine. The authorities add that first instance court decisions are already currently published on some courts' websites.
75. GRECO welcomes the on-going projects foreseeing the integration of first instance court judgments into the ECLI database, which is an easily accessible and searchable website. It looks forward to the completion of these projects, which appear to have the potential to fulfil the requirements of the recommendation.

²¹ <https://www.csm.org.pt/wp-content/uploads/2018/07/Alteracao-C3%A7-C3%A3o-Regulamento-do-artigo-94.-C2%BA-n.-C2%BA-4-al-C3%ADneas-f-e-q-da-LOSJ.pdf>

²² See footnote 18.

²³ <https://jurisprudencia.csm.org.pt/>

²⁴ https://e-justice.europa.eu/content_ecli_search_engine-430-en.do

76. GRECO concludes that recommendation x has been partly implemented.

Recommendation xi.

77. *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.*

78. GRECO recalls that this recommendation had not been implemented in the Compliance Report. GRECO had welcomed the inclusion in the new draft Statute of Magistrates of general principles (e.g. the principles of independence and non-removability) and of some judges' duties – namely the duties of impartiality, reserve, confidentiality, due diligence, courtesy and co-operation. However, GRECO was not convinced that this amounted 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. Moreover, the draft had not yet been submitted to Parliament. GRECO also noted that compliance with the first part of the recommendation was indispensable for the fulfilment of the recommendation's part two. Moreover, GRECO asked for reassurance that rules were 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.

79. The authorities reiterate that the Code of Ethics for Judges has been integrated into the new Statute of Magistrates, which has been adopted by Parliament on 30 May 2019. This text governs ordinary court judges and the same rules apply *mutatis mutandis* to administrative and tax court judges. The authorities state that ethical issues are taken into account in the assessments carried out by the High Judicial Council's Inspection Services. 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.

80. GRECO notes that this information provided is the same as was assessed in the Compliance Report, the only difference being that the new Statute of Magistrate has now been adopted by Parliament. GRECO reiterates its doubts that general principles contained in this law – which it has not yet had the opportunity to assess – would offer an adequate substitute to more detailed and enforceable standards of professional conduct dealing *inter alia* with gifts and conflicts of interest. The first part of the recommendation remains not implemented. As the adoption of such clear and enforceable standards of conduct is instrumental to the implementation of awareness measures on such standards, the second part of the recommendation also remains not implemented.

81. GRECO concludes that recommendation xi remains not implemented.

Corruption prevention in respect of prosecutors

Recommendation xiii.

82. *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.

83. GRECO recalls that this recommendation, like the similar one given to judges, had not been implemented. Relevant standards of conduct remained to be developed and taken into account for the purpose of periodic evaluations of prosecutors of first instance courts and inspections/assessments of prosecutors attached to second instance courts. Moreover, it was unclear whether the two-year delays in the carrying out of evaluations, which diminished their value for the purpose of prosecutors' promotion, had been eliminated.
84. The authorities refer to articles 13, 20 and 21 of the Statute of the Public Prosecution Service (PPS) and articles 109 and 113 of the Inspection Regulation of the PPS, which establish qualitative criteria for the evaluation of prosecutors, which include among others their civility, impartiality and independence, common sense, maturity and sense of justice, their relationship with other judicial and criminal police agencies, their intellectual capacity, the technical-legal value of their work and their legal publications. Moreover, the existence of disciplinary proceedings and consequently the deontological behaviour of the prosecutor also has a decisive influence on his/her evaluation.
85. Regarding the timing of evaluations, the authorities report that in the past years, the frequency of inspections has been shortened and they are now carried out as foreseen in article 112 (1) of the Statute of the PPS, namely every 4 years. However, the backlog in evaluation remains: evaluations in 2019 are carried out for the reference years 2012-2013.
86. GRECO notes that the Portuguese authorities have attempted to develop a number of capacities and values to be taken into account in the periodic evaluation of prosecutors. It agrees in particular that impartiality and independence, common sense, maturity and sense of justice are at the core of ethical conduct of prosecutors. However, they need to be further elaborated, e.g. in clear rules of conduct, the adoption of which is recommended below (cf. recommendation xv). GRECO also notes that the backlog of evaluations still remains.
87. GRECO concludes that recommendation xiii remains not implemented.

Recommendation xiv.

88. *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.*
89. GRECO recalls that this recommendation had not been implemented. Amendments to the Law on the Organisation of the Judicial System (LOJS) adopted in December 2016 had adapted the rules governing prosecutorial hierarchy and competences to the new judicial map. However, GRECO had recalled that the recommendation had been given because the establishment of the new judicial map had not been 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 binding instructions on prosecutors²⁵ had retained this competence in the new judicial order also remained unclear. It did not appear

²⁵ 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.

from information submitted in the Compliance Report that the Statute of the PPS had been revised or that the aforementioned legal uncertainties had been adequately remedied to shield subordinate prosecutors from undue or illegal interference or pressure from unauthorised superiors within their own hierarchy.

90. The authorities again refer to the 2016 Amendments to the LOJS and in particular to its article 11. Moreover, they state that approval by Parliament of the new Statute of the PPS is still pending.
91. GRECO notes that the situation remains essentially the same as at the time of adoption of the Compliance Report. The new Statute of the PPS has not yet been adopted by Parliament and the uncertainties in the lines of subordination and the power to issue instructions remain.
92. GRECO concludes that recommendation xiv remains not implemented.

Recommendation xv.

93. *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.*
94. GRECO recalled that this recommendation had been assessed as not implemented, as no tangible steps had been taken towards its implementation, aside from the setting up of a Working Group within the High Council of the PPS.
95. The authorities explain that work within the Working Group involving members of the High Council of the PPS 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).
96. They also explain that the High Council of the PPS has approved and published a stricter regime of incompatibilities for public prosecutors²⁶.
97. The authorities state that Portugal agrees with the need to strengthen codes of conduct for prosecutors (and judges), but that prosecutors' professional duties are already set in the Statute of the PPS and the general labour law in public functions. They add that the situation will change substantially once the new Statute of the PPS is adopted by Parliament, as it expressly provides for prosecutors' ethical duties.
98. GRECO notes that the authorities agree with the need to strengthen codes of conduct for prosecutors (and judges) and that this is meant to occur with the new Statute of the PPS. Meanwhile, however, GRECO regrets that no further tangible measure has been taken to implement either part of the recommendation and that the Working Group within the High Council of the PPS still remains at an early stage of its work in this respect. GRECO urges the authorities to accelerate the fulfilment of part (i) of the recommendation, which is also a pre-requisite for compliance with part (ii) of the recommendation.
99. GRECO concludes that recommendation xv remains not implemented.

²⁶ http://www.ministeriopublico.pt/sites/default/files/documentos/pdf/deliberacao_csmp_incompatibilidades.pdf

III. CONCLUSIONS

100. **In view of the foregoing, GRECO concludes that minor improvements have been demonstrated by Portugal towards the fulfilment of recommendations found to be not implemented or partly implemented in the Fourth Round Compliance Report; only one of the fifteen recommendations has been implemented satisfactorily or dealt with in a satisfactory manner.** Of the remaining recommendations, eight have now been partly implemented and six remain not implemented.
101. More specifically, recommendation xii had been dealt with in a satisfactory manner at the time of the preceding Compliance Report. Recommendations ii, iii, iv, v, vii, viii, ix and x have now been partly implemented and recommendations i, vi, xi, xiii, xiv and xv remain not implemented.
102. With respect to members of parliament, GRECO welcomes the adoption of a code of conduct. The package of laws which forms part of an ambitious reform launched by Portugal to bolster integrity, enhance accountability and heighten transparency of a wide range of public office holders, including MPs, has been adopted by Parliament on 7 June 2019 but has not yet entered into force. The details of this reform will need to be assessed by GRECO in a future report, regarding, for example, the regulatory framework on conflicts of interests and asset disclosure, related oversight mechanisms and adequate sanctions. 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.
103. As far as judges are concerned, GRECO welcomes the adoption by Parliament of the new draft Statute of Magistrates, which goes some way towards the implementation of some recommendations. However, it has not yet entered into force and GRECO has not had the opportunity to assess the adopted text. According to the draft, panels overseeing the short-listing of candidates to the post of appeal court judge are to be composed by half of judges and non-judges – which is, however, still not the case of panels overseeing the short-listing of candidates to the Supreme Court. The new draft Statute of Magistrates also is to remove legislative inconsistencies regarding the re-allocation of cases and the re-assignment of judges. Steps are also under way to ensure that first instance court decisions are published online in an easily accessible and searchable manner.
104. By contrast, it is disappointing that the role of judicial councils as guarantors of judicial independence has still not been reinvigorated. Periodic evaluations of judges still do not ascertain, in a fair and objective manner, integrity and compliance with the standards of conduct, and information on the outcome of disciplinary procedures remains anonymised. It is positive, however, that the High Judicial Council has been able, in the past three years, to carry out evaluations within the legal deadline.
105. Regarding the Public Prosecution Service, clear, enforceable and publicly-available standards for prosecutors' professional conduct, that need to underpin the periodic evaluation of prosecutors, are still lacking. 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.

106. In view of the above, GRECO therefore concludes that the current very low level of compliance with the recommendations remains “globally unsatisfactory” in the meaning of Rule 31 revised, paragraph 8.3 of the Rules of Procedure.
107. Pursuant to paragraph 2 (i) of Rule 32 of the Rules of Procedure, GRECO requests 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) by 30 June 2020.
108. Moreover, in accordance with Rule 32, paragraph 2, sub-paragraph (ii.a), GRECO instructs its President to send a letter – with a copy to the President of the Statutory Committee – to the head of the Portuguese delegation, drawing his attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to achieving tangible progress as soon as possible.
109. 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.