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FOURTH EVALUATION ROUND

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FOURTH EVALUATION ROUND

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

SECOND *INTERIM* COMPLIANCE REPORT

PORTUGAL

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I. INTRODUCTION

1. This Second *Interim* Compliance Report assesses the measures taken by the authorities of Portugal to implement the recommendations issued in the Fourth Round Evaluation Report on that country (see paragraph 2) dealing with "Corruption prevention in respect of members of parliament, judges and prosecutors".

2. The Fourth Round Evaluation Report on Portugal was adopted by GRECO at its 70th Plenary Meeting (4 December 2015) and made public on 10 February 2016, following authorisation by Portugal (Greco Eval IV Rep (2015) 5E).

3. The Compliance Report on Portugal (GrecoRC4(2017)23) was adopted by GRECO at its 78th Plenary Meeting (8 December 2017) and made public on 6 March 2018, following authorisation by Portugal. The report concluded that only one of the fifteen recommendations contained in the Fourth Round Evaluation Report had been implemented satisfactorily or dealt in a satisfactory manner and three had been partly implemented. 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) and requested further information from the delegation of Portugal.

4. The Interim Compliance Report was adopted by GRECO at its 83rd Plenary meeting (21 June 2019) and made public on 28 June 2019, following authorisation by Portugal. GRECO concluded that only one of the fifteen recommendations (recommendation xii) had been implemented satisfactorily. Of the remaining recommendations, eight (recommendations ii, iii, iv, v, vii, viii, ix and x) had been partly implemented and six (i, vi, xi, xiii, xiv and xv) not implemented. The level of compliance remained "globally unsatisfactory" and the authorities of Portugal were requested to submit further information.

5. As required, the authorities of Portugal submitted a Situation Report on measures taken to implement the pending recommendations. This information was received on 18 December 2020. GRECO had 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 current Second Interim Compliance report.

6. The Second Interim Compliance Report assesses the further implementation of the pending recommendations (i.e. all except recommendation xii) since the adoption of the Interim 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.

7. *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.*

8. GRECO recalls that this recommendation had not been implemented in previous compliance reports. With respect to part (i) of the recommendation, the authorities

had not demonstrated that the timelines established for the adoption of bills via ordinary, not accelerated, procedure were respected in practice. As for part (ii) of the recommendation, nothing indicated that the rules and practice of holding public consultations at the discretion of parliamentary committees, with some exceptions (i.e. mandatory consultations on labour-related bills and local authorities), had been revised.

9. The authorities now report that, in August 2020, the Assembly adopted new Rules of Procedure. These *inter alia* strengthened respect for the deadlines established for various legislative initiatives debated within the Assembly, ensured a better predictability of its work/agenda and widened the opportunities of public involvement in the law-making process. Regarding the latter aspect, reference is made to Rule 140(3) on public consultation, which allows for the holding of public consultations additional to the mandatory ones. The authorities furthermore give many examples of recent legislative initiatives which were developed with participation of a wide range of stakeholders.

10. GRECO takes note of the information provided which it cannot assess as neither the relevant provisions of the Assembly's new Rules of Procedure nor corresponding statistics are yet available for scrutiny.

11. GRECO concludes that recommendation i remains not implemented.

Recommendation ii.

12. *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.*

13. GRECO recalls that this recommendation had been partly implemented in the Interim Compliance Report. GRECO noted the adoption of the Code of Conduct for Members of the Assembly, which it looked forward to assessing in its next report. GRECO also reiterated the importance of complementing the Code with an efficient supervisory mechanism and providing MPs with proper guidance, counselling and training on ethical issues.

14. The authorities now report on the enactment in 2019 of a set of laws known as the "*transparency legislative package*", elaborated by the Parliamentary Ad hoc Committee for the Enhancement of Transparency in the exercise of Public Functions, established specifically for giving effect to GRECO's Fourth Round recommendations. The following laws were adopted as part of this package:

- Law 60/2019 of 13 August, which amends the Statute for Members of Parliament[1];
- Law 52/2019 of 31 July, which approves the Regime governing the Exercise of Functions by Political Officeholders and Senior Public Officeholders[2];

[1] http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=3196&tabela=leis&ficha=1&pagina=1&so_miolo=& https://www.parlamento.pt/sites/EN/Parliament/Documents/StatuteofMembers.pdf (English version)
[2] http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=3192&tabela=leis&nversao=&so_miolo= https://www.parlamento.pt/sites/EN/Parliament/Documents/lei-52-2019-en.pdf (English version)

- Resolution of the Assembly of the Republic 20/2019 of 20 September, which approves the Code of Conduct for Members of Parliament[3]; and
- Organic Law 4/2019 of 1 September, which establishes the Authority for Transparency[4].

15. Law 52/2019 sets out the legal framework for the performance of duties by all political and senior public officeholders, including MPs, and establishes rules e.g. on the exercise of the public mandate, incompatibilities, disqualifications and "revolving doors". It circumscribes specific reporting obligations and establishes sanctions. Article 19 stipulates that public entities covered by the law, including the Assembly, *shall approve Codes of Conduct* to be published in the Official Journal and tackle amongst others gifts and hospitality.

16. The Code of Conduct for MPs was approved by the Assembly's Resolution 20/2019 of 20 September, following which it was made public and is available online. The Code sets out the general principles of conduct (freedom, independence, the pursuit of the public interest, transparency and political accountability) and enumerates MPs' duties, such as the duty to comply with the reporting of income, interests and assets, incompatibility and disqualification requirements, the duty to report conflicts of interest and to follow detailed rules on the acceptance of gifts and hospitality.

17. The Code's implementation is incumbent upon the Parliamentary Committee on Transparency and the Statute of Members[5], which is competent to*:* a) carry out inquiries on its own motion, at the request of the MP concerned or upon a decision of the President of the Assembly; b) issue general statements and recommendations; and c) prepare an annual report on the Code's enforcement and the Committee's activities in this regard.

18. GRECO takes note of the adoption of the Code of Conduct for MPs, which fills many of the gaps identified in the Evaluation Report. For example, the Code brings together in a single text the principles that underpin the performance of parliamentary duties, the whole set of obligations and most standards of conduct befitting the status of MPs as elected representatives. It also regulates the acceptance of gifts, hospitality and other benefits with respect to MPs and provides for the establishment of respective registers which are accessible online. Supervision of the Code's implementation is vested in the Parliamentary Committee on Transparency and the Statute of Members[6], which can also provide guidance on ethical dilemmas faced by MPs. GRECO notes that the Committee has already published Guidelines on the acceptance of gifts and hospitality by MPs[7].

19. Several shortcomings nevertheless persist. The scope of permissible contacts between MPs and third parties has not been properly tackled (cf. paragraph 46 of the Evaluation Report). Neither the Code nor the Statute for Members of Parliament has established sanctions for improper acts, which puts the effectiveness of the supervisory mechanism in doubt. Moreover, nothing suggests that confidential counselling is foreseen by the Code nor that training on ethical issues has been provided to MPs, as is requested. GRECO insists that more determined action needs to be taken in order to comply with both parts of the recommendation. It therefore concludes that part (i) of the recommendation remains partly implemented and part (ii) remains not implemented.

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[3] http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=3156&tabela=leis&ficha=1&pagina=1&so_miolo=https://www.parlamento.pt/sites/EN/Parliament/Documents/LEGcodigo-conduta-deputados-ENabril2020.pdf (English version)

[4] https://dre.pt/home/-/dre/124680587/details/maximized

[5] Its powers are stipulated in the Statute of Members of Parliament.

[6] By virtue of both the Code and the Statute of Members of Parliament.

[7] https://www.parlamento.pt/sites/COM/XIVLeg/14CTED/Paginas/RelatoriosActividade.aspx

20. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

21. *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.*

22. GRECO recalls that this recommendation had been partly implemented. It had taken 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, since those draft laws had not yet entered into force, GRECO was unable to assess their content. As to the second part of the recommendation, GRECO welcomed the apparent consensus for the establishment of a supervisory body attached to the Constitutional Court.

23. With respect to part (i) of the recommendation, the authorities now indicate that the evaluation of the effectiveness of the system for prevention, disclosure, ascertainment and sanctioning of conflicts of interest of MPs was and remains at the core of the mandate of the following parliamentary committees: the Ad Hoc Committee for the Strengthening of transparency in the exercise of public functions (the 2016-2019 legislature) and the Committee on Transparency and the Statute for Members of Parliament (at present). The latter was established directly by the Statute for Members of Parliament and granted powers e.g. to: a) verify cases of MPs' incompatibility and issue recommendations; b) receive and register MPs' declarations giving rise to possible conflicts of interest; c) ascertain MPs' specific conflicts of interest and issue recommendations; d) ascertain the possible existence of MPs' conflicts of interests not yet declared and issue recommendations; e) verify the correctness of such declarations *ex officio* or upon substantiated request from a citizen in the use of his/her political rights; and f) carry out inquiries into facts that occurred within the scope of parliament and that compromise the honour and dignity of an MP as well as into any serious irregularities practiced in violation of MPs' duties, of their motion, at the request of a member or of the President of the Assembly.

24. Since its establishment approximately one year ago, the Committee on Transparency and the Statute of Members of Parliament has issued several recommendations to the Assembly (e.g. on MPs' incompatibilities). In the authorities' view, those examples demonstrate the effective and proper functioning of the parliamentary control.

25. The authorities further report that the package of draft laws which was assessed in the Interim compliance report and which is also relevant for the present recommendation has been consolidated into the four legal acts adopted in 2019 referred to above as the "transparency legislative package" (cf. paragraph 14).

26. Regarding part (ii) of the recommendation, the authorities inform that a new independent body, the Authority for Transparency attached to the Constitutional Court has been established by Organic Law 4/2019[8]. It is composed of a president

[8] https://dre.pt/home/-/dre/124680587/details/maximized

and two members, of which one must be a lawyer. Members are elected from a list[9] by the Constitutional Court sitting in plenary, by a majority of eight votes. The Authority's members are appointed for a period of four years, renewable once.

27. The Authority's duties *inter alia* include: a) analysis and inspection of so-called single declarations of income, assets and interests of political and senior public officeholders, including MPs; b) clarification of the content of such declarations in case of doubts; c) deciding on the regularity of declarations and compliance with deadlines; d) organising the single declaration; e) reporting to the prosecutor irregularities not covered by the legal regime for declarations; f) reporting to the prosecutor suspicions of criminal offences resulting from the analysis of declarations; g) guaranteeing public access to declarations; and i) considering and deciding on requests to oppose the disclosure of elements of the single declaration. The Authority is also responsible for developing an e-database provided for in the legal framework. Its decisions on access and consultation of single declarations may be appealed to the Constitutional Court, with suspensive effect.

28. GRECO understands that a number of parliamentary committees have had the mandate to carry out the evaluations of the system on conflicts of interest. However, GRECO regrets that so far it has not been able to examine the conclusions of an *independent* evaluation and impact assessment of the effectiveness of the conflicts of interest prevention system established for MPs, as required in part (i) of the recommendation. For this reason, GRECO concludes that this part of the recommendation remains partly implemented.

29. Regarding part (ii) of the recommendation, GRECO welcomes the establishment *on paper* of an independent body, the Authority for Transparency, attached to the Constitutional Court, responsible for assessing MPs' declarations of income, assets and interests. The Authority's mandate satisfies the requirements of the recommendation. However, the manner of its composition/appointment remains to be clarified. As to its functions and powers vis-à-vis single declarations by MPs, these are dealt with under recommendation v below. GRECO looks forward to the confirmation that the Authority has been established also *in practice* (cf. recommendation v below) and concludes that, for the time being, this part of the recommendation has been partly implemented.

30. GRECO concludes that recommendation iii remains partly implemented.

Recommendation iv.

31. *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.*

32. GRECO recalls that this recommendation had been partly implemented in previous compliance reports. The first part of the recommendation required adequate sanctions to be established for minor breaches of the asset reporting obligation, *i.e.* milder sanctions than dismissal or loss of mandate. It was unclear whether such sanctions were provided for in the law and this part of the recommendation therefore remained not implemented. As regards the second part of the recommendation, GRECO welcomed confirmation that the law foresaw publication of MPs' asset declarations on the supervisory body's website. This part of the recommendation was thus partly implemented.

[9] The list is composed by the President of the Constitutional Court.

33. The authorities now report that both elements of the recommendation have been addressed by the "transparency legislative package", namely by Law 52/2019 and the revised Statute for Members of Parliament. With respect to part (i) of the recommendation, Article 18 of Law 52/2019 establishes sanctions for irregularities and failure to comply with the asset reporting obligation. If the declaration and updates are not submitted or if they are incomplete or incorrect, the Authority for Transparency is to notify the MP in question and ask him/her to submit, complete or correct the declaration within 30 consecutive days. An MP (with the exception of the President of the Assembly) who, following the notification, fails to declare, is subject to a declaration of loss of seat, dismissal or legal removal.

34. The intentional failure to submit a declaration following notification is punished by a prison term of up to three years for the crime of qualified disobedience. Where the intentional failure to submit the declarations has not been accompanied by an omission in the declaration of income or assets to the tax authorities during the term of office, the conduct is punished by a fine of up to 360 days. Any person who, even after being notified, omits to declare assets or income amounting to more than 50 monthly minimum wages which he/she was required to declare in order to conceal them, is liable to a prison term of up to three years.

35. Concerning part (ii) of the recommendation, the authorities stress that, as per Article 26 of the revised Statute for Members of Parliament, the Assembly must publish parts of MPs' single declarations covering private interests on the Assembly's website (https://www.parlamento.pt/RegistoInteresses/Paginas/RegistoInteressesDeputados.aspx).

36. GRECO takes note of the information provided. With respect to part one of the recommendation, nothing suggests that adequate sanctions have been established for minor breaches of reporting obligations, including incomplete and inaccurate reporting. Paragraph 66 of the Evaluation Report notes that such minor breaches were allegedly widespread and had never been punished even though they are prohibited under Article 256 of the Penal Code. As before, the new sanctioning regime and procedures it establishes appears to be too complex and ill-suited for holding MPs accountable for minor breaches of their reporting obligation. GRECO concludes that this recommendation remains not implemented.

37. As to the second part of the recommendation, GRECO understands that as per revised Article 26 of the Statute for Members of Parliament and Article 17 of the Regime governing the Exercise of Functions by Political Officeholders and Senior Public Officeholders, the information on MPs' interests is to be published on the Assembly's website, whereas the completed single declarations of MPs' income, assets and interests are to appear on the website of the Authority for Transparency. This part of the recommendation has been implemented satisfactorily.

38. GRECO concludes that recommendation iv remains partly implemented.

Recommendation v.

39. *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.*

40. GRECO recalls that this recommendation was partly implemented in previous compliance reports. It had taken note of the adoption by Parliament of relevant legislation. However, that legislation had not yet entered into force.

41. The authorities now refer to the Statute of the Authority for Transparency, adopted by Organisational Law 4/2019 of 13 September, under which the Authority is endowed with powers to examine and supervise single declarations of income, assets and interests of political and high public office holders, including MPs. The exact scope of powers is set out in Article 8 of the Statute (cf. paragraph 27 above). Law 4/2019 also obliges the Government to include in the State Budget proposal for 2020[10], in the general allocation earmarked for the Constitutional Court, funding necessary for the establishment and functioning of the Authority as well as the setting up of an e-platform for single declarations. Furthermore, the Government is to provide facilities for the Authority, preferably outside the Lisbon and Porto metropolitan areas.

42. GRECO takes note of the information provided and welcomes the progress made. That said, as far as the first part of the recommendation is concerned, Law 4/2019 does not deal with the issue of *frequent* and *substantive checks within reasonable time* of MPs' single declaration of income, assets and interests. Part (i) of the recommendation thus remains not implemented.

43. In so far as part (ii) of the recommendation is concerned, GRECO notes the allocation to the Authority for Transparency (as part of the budgetary appropriations for the Constitutional Court) of resources necessary for its operation. Nevertheless, it understands that up until today relevant facilities have still not been provided to this body and that it not as yet functioning. Pending further developments, GRECO concludes that this recommendation has not been implemented.

44. GRECO concludes that recommendation v not been implemented.

Corruption prevention in respect of judges

Recommendation vi.

45. *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.*

46. GRECO recalls that this recommendation had not been implemented in previous compliance reports. There had been no tangible measures taken concerning the composition of the Judicial Council (part(i)). As regards the second part of the recommendation, GRECO noted a suggestion of the Judicial Council to allow for more information to be published regarding its disciplinary actions. It was however unclear whether this suggestion was followed and whether such a provision was included in the Statute adopted by Parliament.

47. The authorities now reiterate the information reported at the previous stages of the compliance procedure. The Statute of Magistrates, in their view, provides for a system of "checks and balances" that ensures the independence of the judiciary. Information on the outcome of disciplinary proceedings conducted by the High Judicial Council and the High Council of the Administrative and Tax Courts is published in a timely manner. The authorities add, as before, that information from disciplinary proceedings is legally considered confidential and sensitive.

[10] The State Budget for 2020 was published by Law 2/2020 of 31 March.

48. GRECO underscores the absence of concrete steps to implement both elements of the recommendation; the composition of the Judicial Council in Portugal falls short of European standards. It also regrets that earlier plans to include a specific provision in the new Statute of Magistrates allowing for more information to be published regarding the High Judicial Council's disciplinary action has apparently been abandoned. GRECO renews its call on the authorities to implement the recommendation fully. In the absence of any substantive developments, GRECO's earlier assessment is maintained.

49. GRECO concludes that recommendation vi remains not implemented.

Recommendation vii.

50. *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.*

51. GRECO recalls that this recommendation had been partly implemented in the Interim Compliance report. It had welcomed article 47-A of Draft Law 122/XII, which foresaw that appeal court judges were to be selected by a panel of which half the members are judges elected by their peers. This would have satisfied the requirements of the recommendation as regards appeal court judges. However, pending the adoption of the provision, GRECO's positive assessment was to be confirmed in the next report. Moreover, the requirement of the recommendation had not been met in respect of the panel for selecting Supreme Court judges.

52. The authorities now refer to the Statute of Magistrates as amended by Law 67/2019 of 27 August which changed the composition of the panel ("jury") responsible for the selection of appeal court judges, by establishing parity between members who are judges (three) and those who are non-judges (three). Decisions on the selection of Supreme Court judges continue to be taken by a panel composed of two Supreme Court judges and four non-judges.

53. GRECO is pleased that appeal court judges are now selected by a panel of which half the members are judges chosen by their peers. In respect to these judges, the recommendation is therefore fulfilled. However, judges are still in the minority in the panel taking decisions on the selection of Supreme Court judges, which is at variance with the recommendation. As before, GRECO disagrees with the authorities' reasoning that ensuring a more varied background of candidates to the Supreme Court justifies 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 been partly implemented in the Interim Compliance Report. It had noted first that the information provided only concerned first instance court judges and recalled that the recommendation also concerns second instance court judges. GRECO had also noted that article 12 of the Regulation of the High Judicial Council on inspection services spelled out a number of different capacities and capabilities that were to be evaluated in respect of judges. Areas such as independence, impartiality, dignity of conduct and civic suitability were at the core

of ethical conduct of judges but needed to be further elaborated, e.g. by adopting standards of conduct for judges, which is required under recommendation xi (cf. below). Finally, GRECO had welcomed the indication that recent evaluations had been carried out within the stipulated deadlines, which seemed to indicate that the "timely" element of the recommendation had been met.

57. The authorities now report the same information as before; they refer to the revised Statute of Magistrates (adopted on 30 May 2019), in particular to Article 33 ((b), (c) and (m)) which, in their view, represent a valid legal basis for ensuring that integrity and compliance with the standards of judicial conduct are ascertained in the framework of the periodic evaluations of first instance court judges.

58. GRECO notes that the revised Statute of Magistrates enumerates the following criteria to be taken into account for the purpose of a judge's evaluation: personal and professional reputation and prestige (Article 33 (b)), respect for duties (Article 33 (c)) and disciplinary sanctions applied in the period to which the evaluation refers (Article 33 (m)). GRECO accepts that these criteria can be useful in the evaluation of judges performance, but they would need to be complemented to represent a suitable basis for ascertaining judges' integrity, as is required by the recommendation. It also recalls that relevant standards of conduct remain to be developed (cf. recommendation xi below) and taken into account for the purpose of assessing judges performance.

59. GRECO concludes that recommendation viii remains partly implemented.

Recommendation ix.

60. *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.*

61. GRECO recalls that this recommendation had been partly implemented in the Interim Compliance report. It had welcomed that the congruence of Article 94 of the Law on the Organisation of the Judicial System (LOJS), the Regulation implementing this article and Law 122/XII revising the Statute of Magistrates had been aligned and that the judge's consent for his/her transfer to another court, as well as for the reassignment of cases allocated to him/her had been provided for. However, as the law revising the Statute of Magistrates had not yet entered into force, it could not conclude that the recommendation had been fully implemented.

62. The authorities reiterate 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. The relevant provision foresees the adoption by the High Judicial Council of a Regulation defining criteria to that end (article 94(4)(f) and (g)). On 6 July 2018, the High Judicial Council approved a new regulation to implement article 94 of the LOJS[11]. Article 3 thereof stipulates that the 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. According to Article 5 of the same regulation, the reallocation of cases to another judge is also subject to the judge's consent.

[11] https://www.csm.org.pt/wp-content/uploads/2018/07/Altera%C3%A7%C3%A3o-Regulamento-do-artigo-94.%C2%BA-n.%C2%BA-4-al%C3%ADneas-f-e-g-da-LOSJ.pdf

63. As regards the Statute of Magistrates, it has been amended by Law 67/2019 of 27 August and now explicitly provides 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.

64. The authorities indicate that the aforementioned rules are also applicable to judges of Administrative and Tax Courts, by virtue of Article 57 of the Administrative and Tax Courts Statute.

65. GRECO is pleased that the inconsistency between the LOJS and the Statute of Magistrates has now been removed and that a new regulation has been adopted setting out the precise criteria for the implementation of the LOJS. The legal framework governing the re-allocation of cases and the re-assignment of judges has thus been made consistent and is underpinned by objective and transparent criteria aimed at safeguarding judges' independence, as is required by the recommendation.

66. GRECO concludes that recommendation ix has been implemented satisfactorily.

Recommendation x.

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

68. GRECO recalls that this recommendation had been partly implemented in the Interim Compliance Report. It had welcomed the on-going projects foreseeing the integration of first instance court judgments into the European Case Law Identifier (ECLI) database – an easily accessible and searchable website. It looked forward to the completion of those projects, which appeared to have the potential to fulfil the requirements of the recommendation.

69. The authorities reiterate that the High Judicial Council and an entity within the Ministry of Justice - the Institute of Financial Management and Equipment of Justice - have been implementing two projects to integrate Portuguese court judgments into the ECLI. Within the framework of the first project, a full review of the national case-law page[12] was carried out. Since 17 December 2018, judgments *from superior courts* is accessible through the ECLI search engine[13].

70. The second project foresaw the inclusion of *first instance court* decisions in the ECLI search engine. The project was completed in August 2020 and most technical requirements to ensure such publication have been fulfilled. The authorities state that the gradual inclusion of final first instance court judgments into the database is planned as that requires a significant reinforcement of material and human resources, due to the sheer scale of the information involved.

71. GRECO takes note of the completion of projects aimed *inter alia* at integrating first instance court decisions into the ECLI database which is easily accessible and searchable. It would however appear that the criteria for the selection, processing and filing of judgments still require the approval of the High Judicial Council. Furthermore, it is unclear whether sufficient resources have been secured for the ECLI's maintenance, which is a pre-condition for its smooth operation and the timely integration of all final first instance court judgments. Pending further information in this respect, GRECO concludes that this recommendation remains partly implemented.

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

[12] https://jurisprudencia.csm.org.pt/
[13] https://e-justice.europa.eu/content_ecli_search_engine-430-en.do

Recommendation xi.

73. *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.*

74. GRECO recalls that this recommendation had not been implemented in previous compliance reports as the authorities had only referred to the new Statute of Magistrates. GRECO had expressed concern about the general principles in the Statute – which it did not have the opportunity to assess. As the adoption of clear and enforceable standards of conduct was instrumental also for the awareness measures required, the second part of the recommendation also remained not implemented.

75. The authorities now refer to the new Statute of Magistrates, as adopted by Parliament on 30 May 2019, which, in their view, sets out clear, mandatory and publicly available standards of professional conduct for ordinary court judges and administrative and tax court judges. These are used as criteria for promotion, periodic inspection[14] and disciplinary action. The previously mentioned Law 52/2019 on the Regime for the reporting of income, assets and interests by Political Officeholders and Senior Public Officials is applicable to judges as well and relevant for the present recommendation: judges are to submit declarations of income and assets, respectively, to the High Judicial Council and to the High Council for the Administrative and Tax Courts which are competent to examine declarations and sanction any irregularities.

76. In addition, the authorities indicate that the Trade Union of Portuguese Judges approved in 2008 *the Ethical Commitment of the Portuguese Judges – Principles for Quality and Responsibility*, which apply to both ordinary court judges and administrative and tax court judges.

77. GRECO takes note of the information provided. It cannot agree that the provisions[15] of the revised Statute of Magistrates (available to GRECO) 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. It also appears that for the time being various other texts on ethics exist within the judiciary, but their relevance and conformity with each other appears unclear. GRECO concludes that this part of the recommendation remains not implemented[16]. In this respect it also recalls that Article 19 (3) of Law 52/2019 obliges both judicial councils to adopt, with due regard being had to their autonomy, publicly available codes of conduct for judges covering *inter alia* gifts and hospitality. GRECO urges the authorities to expedite compliance with the first part of the recommendation since it is indispensable for the fulfilment of the recommendation's part two. Furthermore, in connection with counselling available to judges, GRECO has not received assurance 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.

[14] The authorities state that ethical matters are taken into account in the assessments carried out by the High Judicial Council's Inspection Services.
[15] GRECO notes the following scope of the provisions referred to by the authorities as constituting the judges' code of conduct: Articles 33 (criteria and effects of classification), 82 (disciplinary offence), 83-G (very serious offences), 83-H (serious offences) and 83-I (minor offences)
[16] GRECO notes references to Regulation No. 226/2021 of the High Judicial Council adopted on 3 March 2021 on the regime for submission, review and supervision of single asset and interest declarations by judges but disagrees that it is pertinent for the purposes of this recommendation.

78. GRECO concludes that recommendation xi remains not implemented.

Corruption prevention in respect of prosecutors

Recommendation xiii.

79. *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.*

80. GRECO recalls that this recommendation, like the similar one issued with respect to judges (recommendation viii above), had not been implemented in previous compliance reports. It had noted the development of a number of capacities and values to be taken into account in the periodic evaluation of prosecutors and had agreed, in particular, that impartiality and independence, common sense, maturity and sense of justice were at the core of prosecutor's ethical conduct. However, those needed to be further elaborated, e.g. in clear rules of conduct, the adoption of which is recommended below (cf. recommendation xv). GRECO had also noted that the backlog of evaluations had not been tackled.

81. The authorities reiterate largely the same information presented before. Furthermore, reference is made to Article 24 of Regulation 13/2020 of 9 January on the public prosecution inspection procedures, which aims at eliminating subjectivity and differences in the criteria applied in inspection activities.

82. GRECO recalls that the lack of norms governing prosecutorial conduct (cf. recommendation xv below) and the insufficient criteria underpinning current evaluations/appraisals had been identified as key obstacles to the implementation of this recommendation. The information submitted does not allow GRECO to conclude that those obstacles have been overcome nor that substantial delays in carrying out evaluations have been dealt with.

83. GRECO concludes that recommendation xiii remains not implemented.

Recommendation xiv.

84. *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.*

85. GRECO recalls that this recommendation had not been implemented in previous compliance reports. It also recalls that the reasons behind this recommendation was the establishment in 2014 of a new "judicial map" dividing the country into 23 judicial counties, which had not been accompanied by parallel amendments to the Statute of the Public Prosecution Service (PPS).

86. The authorities now refer to the new Statute of the PPS, adopted by Parliament on 27 August 2019. It provides for the restructuring of the PPS to correspond to the organisation of the judiciary and clarifies hierarchies and the respective lines of subordination. County District Prosecutor's Offices were at the core of the reform. A County District Prosecutor's Offices is now led by a co-ordinating member of the PPS (ranked as Deputy prosecutor general or State prosecutor) appointed, on temporary assignment, by the High Council of the PPS. Each County District Office comprises the County district department for criminal investigation and prosecution and the District prosecutor's offices for specialised jurisdiction, general jurisdiction, proximity and territorial jurisdiction courts.

87. GRECO is satisfied that the revised Statute of the PPS (available to GRECO) has established new rules governing prosecutorial organisation and subordination, which have the potential to prevent undue interference or pressure on prosecutors within the system.

88. GRECO concludes that recommendation xiv has been implemented satisfactorily.

Recommendation xv.

89. *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.*

90. GRECO recalls that this recommendation had not been implemented in previous compliance reports. It had noted the authorities' intention to strengthen codes of conduct for prosecutors and that this was meant to occur with the new Statute of the PPS but no tangible results had been achieved.

91. The authorities now refer to the new Statute of the PPS, adopted by Parliament on 27 August 2019, which, in their view, sets out clear, enforceable and publicly available standards of professional conduct and ethical duties for prosecutors, which are taken into account for promotion and in evaluation or disciplinary action. The authorities explain that the ethics system, as established by the Statute, is based on two pillars: the incompatibility regime (Article 102-109) and the disciplinary regime (Articles 204-279). As in the case of judges, Law 52/2019, which approves the regime for the reporting of income, assets and interests by Political Officeholders and Senior Public Officials, is applicable to prosecutors. They are to submit declarations of income and assets to the High Council of the PPS, a body competent to examine declarations and sanction any irregularities.

92. The authorities also indicate that greater emphasis has been placed on 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 programme for prosecutors (and judges).

93. In their most recent submission, the authorities state that a draft Code of Conduct for prosecutors was approved by the High Council of the Public Prosecution and is undergoing public consultation[17].

94. GRECO takes note of the information provided. As in the case of judges, it disagrees that the revised provisions of the Statute of the PPS (available to GRECO) constitute a comprehensive code of conduct, clearly articulating relevant duties and standards of ethical comportment that befit prosecutors' status. This being said, GRECO notes the development of such a code by the High Council of the Public Prosecution, which is a step in the right direction. It looks forward to examining the text of the Code once the drafting process is more advanced. GRECO concludes that part (i) of the recommendation has been partly implemented and it urges the authorities to accelerate its fulfilment since this is also a pre-requisite for compliance with part (ii) of the recommendation, which remains not implemented

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

[17] https://www.ministeriopublico.pt/pagina/projeto-de-codigo-de-conduta-dos-magistrados-do-ministerio-publico-consulta-publica

III. CONCLUSIONS

96. **In view of the foregoing, GRECO concludes that Portugal has only achieved minor progress in connection with the fulfilment of recommendations found to be not implemented or partly implemented in the Fourth Round Interim Compliance Report; only three of the fifteen recommendations have been implemented satisfactorily or dealt with in a satisfactory manner.** Of the remaining recommendations, seven have now been partly implemented and five remain not implemented.

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

98. With respect to members of parliament, GRECO welcomes the entry into force of the package of laws which form part of an ambitious reform launched by Portugal to heighten transparency, bolster the integrity and enhance the accountability of a wide range of public office holders, including MPs. Nonetheless, progress pertaining specifically to MPs remains partial. Although the code of conduct for MPs has been adopted and fills many of the gaps in the integrity regime, it has not, for example, properly tackled the scope of permissible contacts between MPs and third parties or established sanctions for improper acts. Similarly, although MPs' declarations of income, assets and interests are now accessible online, the independent Authority for Transparency attached to the Constitutional Court, responsible for their assessment, remains to be set up and regular and substantive checks within a reasonable time of MPs' declarations are to be foreseen by law. Adequate sanctions for minor breaches of the asset reporting obligation have not been established. An evaluation and impact assessment of the effectiveness of the conflicts of interest prevention system for MPs does not appear to have been carried out. Last but not least, the authorities are yet to move towards a law-making process that allows sufficient timelines and access for all interested parties, including civil society.

99. As far as judges are concerned, the revised Statute of Magistrates has established a new legal framework governing the re-allocation of cases and the re-assignment of judges, which is now consistent and underpinned by criteria aimed at safeguarding judges' independence. It also provides for the selection of appeal court judges by a panel of which half the members are judges chosen by their peers. Nonetheless, the same principle does not apply to the selection of Supreme Court judges. Likewise, the revised Statute of Magistrates, while containing some general principles, does not amount to a fully-fledged clear and enforceable code of conduct for judges, covering issues such as gifts and conflicts of interest. Periodic evaluations of judges still requires attention and to be in compliance with the standards of conduct. Also, the composition of judicial councils as guarantors of judicial independence has not been enhanced. While steps are under way to ensure that first instance court decisions are published online in an easily accessible and searchable manner, adequate resources are to be secured to the new ECLI database.

100. Regarding the Public Prosecution Service, a positive achievement has been the entry into force of the revised Statute of the Public Prosecution (PPS) providing for the restructuring of the PPS to correspond to the organisation of the judiciary. The process to establish a code of professional conduct, which is still at an early stage, needs to be re-enforced to provide clear, enforceable and publicly available standards for professional conduct, also in order to underpin the evaluation of prosecutors.

101. GRECO concludes that the current slightly improved level of compliance with the recommendations is no longer "globally unsatisfactory" in the meaning of Rule 31 revised, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides not to continue applying Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.

102. Pursuant to Rule 31 revised, paragraph 8.2 of the Rules of Procedure, GRECO requests the Head of the Portuguese delegation to provide a report on the progress in implementing the pending recommendations (i.e. recommendations i to viii, x-xi, xiii and xv) by 31 March 2022.

103. Finally, GRECO invites the authorities of Portugal to authorise, as soon as possible, the publication of the present report, to translate it into the national language and to make the translation public.