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Groupe d'États contre la corruption

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FOURTH EVALUATION ROUND

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

SECOND COMPLIANCE REPORT

SPAIN

Adopted by GRECO at its 87th Plenary Meeting
(Strasbourg, 22-25 March 2021)

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I. INTRODUCTION

1. The [Fourth Round Evaluation Report on Spain](#) was adopted at GRECO's 62nd Plenary Meeting (6 December 2013) and made public on 15 January 2014, following authorisation by Spain. The Fourth Evaluation Round deals with "Corruption Prevention in respect of members of parliament, judges and prosecutors".
2. In the [Compliance Report](#), which was adopted by GRECO at its 72nd Plenary Meeting (27 June-1 July 2016) and made public on 10 October 2016, it was concluded that none of the 11 recommendations contained in the Fourth Round Evaluation Report had been satisfactorily implemented or dealt with in a satisfactory manner by Spain. 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 Spain to provide a report on the progress in implementing the pending recommendations (i.e. all recommendations).
3. In the [Interim Compliance Report](#) adopted by GRECO at its 78th Plenary Meeting (8 December 2017) and made public on 3 January 2018, GRECO again qualified Spain's level of compliance with the recommendations as "globally unsatisfactory" since the total number of recommendations outstanding remained unchanged. GRECO therefore reiterated its conclusion that the level of compliance with the recommendations was "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO asked the head of the Spanish delegation to provide a report on the progress made in implementing the pending recommendations (i.e. all recommendations).
4. In the [Second Interim Compliance Report](#) adopted by GRECO at its 83th Plenary Meeting (21 June 2019) and made public on 13 November 2019, it was concluded that Spain had made progress, with two out of 11 recommendations implemented satisfactorily, eight partly implemented and one not implemented. GRECO therefore concluded that the level of compliance with the recommendations was no longer "globally unsatisfactory". Application of Rule 32 was discontinued and Spain was requested to submit additional information regarding the implementation of the outstanding recommendations by 30 June 2020. The reporting deadline was extended by the Secretariat at its own initiative and the aforementioned report was submitted on 30 September 2020; it served as a basis for this Second Compliance Report.
5. This [Second Compliance Report](#) evaluates the progress made in implementing the pending recommendations since the last Interim Report (recommendations i, ii, iii, iv, v, vi, ix, x and xi) and provides an overall appraisal of the level of compliance of Spain with these recommendations.
6. GRECO selected Iceland (with respect to parliamentary assemblies) and Italy (with respect to judicial institutions) to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed for the current Second Interim Compliance Report were Mr Helgi Magnús GUNNARSSON on behalf of Iceland and Ms Emma RIZZATO, on behalf of Italy. They were assisted by GRECO's Secretariat in drawing up this report.

II. ANALYSIS

7. The authorities point at some challenging times since the adoption of the Second Interim Report. Two general elections were held in 2019, one in April 2019, and another one in November 2019. The new government took office at the beginning of January 2020 and thus, during most of 2019, the interim government could neither

table initiatives nor take decisions which could compromise future policies. Less than two months after the new government had taken office, and in the light of the COVID-19 crisis, the state of emergency was declared in March 2020. This has delayed/put on hold several reforms, including on the anticorruption front.

Corruption prevention in respect of members of parliament

Recommendation i

8. GRECO recommended for each Chamber of Parliament, (i) that a code of conduct be developed and adopted with the participation of its members and be made easily accessible to the public (comprising guidance on e.g. prevention of conflicts of interest, gifts and other advantages, accessory activities and financial interests, disclosure requirements); (ii) that it be complemented by practical measures for its implementation, including through an institutionalised source of confidential counselling to provide parliamentarians with guidance and advice on ethical questions and possible conflicts of interest, as well as dedicated training activities.
9. GRECO welcomed, in its Second Interim Compliance Report, the adoption of a Code of Conduct and a dedicated mechanism for its implementation for the Congress of Deputies. Given that the Senate had yet to embrace an ethics and conduct regime of its own, GRECO concluded that recommendation i had been partly implemented.
10. The authorities of Spain indicate that a Code of Conduct for Parliament (i.e. for both Chambers: Congress and Senate) was adopted on 1 October 2020, and published in the [Official Bulletin of Parliament](#) on 8 October 2020¹. Its adoption was broadly echoed by national media. It represents the culmination of an inclusive participatory process where parliamentarians have reflected on their ethical obligations and the way to ensure that a robust integrity framework is in place for both Chambers. The Code contains provisions on ethical principles, transparency, conflicts of interest prevention, ad hoc declaration, upgraded register of financial interests, gifts (to parliamentarians and their close relatives), and applicable sanctions if breaches occur.
11. The Code establishes a dedicated implementation authority, which is entrusted with (confidential) advisory and monitoring responsibilities, i.e. the Office on Conflicts of Interest.

Organigramme of the Office on Conflicts of Interest



12. The Office on Conflicts of Interest is physically located in the Congress of Deputies and is headed by an experienced lawyer (*letrado*), who is appointed by the respective

¹ This Code supersedes the Code of Conduct of the Congress of Deputies which was adopted in 2019.

Bureau of each Chamber and has the rank of Director General. The Director of the Office for Conflicts of Interest is assisted by the legal services of the Commission on the Statute of Deputies (Congress) or the Committee on Incompatibilities (Senate), as well as by a support unit which is staffed by personnel of parliament.

13. The Office is entrusted with advisory tasks regarding implementation of the Code. It may also request deputies and senators any information that may be necessary to determine the existence of a conflict of interest and, based on this information, to identify potential conflicts of interest. In this connection, the Office addresses the parliamentarian to request him/her the relevant details and, should the latter not be satisfactory, it refers the matter to the Bureau of the Chamber or relevant Committee, so that appropriate enforcement measures be taken (see also paragraph 32). The Office issues an annual activity report, including any possible recommendations for improvement of the integrity system in Parliament, as necessary.
14. As regards training and awareness-raising activities, the Resolution issued by the Bureau of the Congress of Deputies and the Bureau of the Senate determining the personnel and tasks of the Office, entrusts the Director of the Office with the submission of proposals for training activities and other awareness-raising activities on ethical matters. To date, the Clerk, who is provisionally providing advice to Deputies and Senators regarding the completion of their declarations of financial interests, has held a series of meetings with the heads of several parliamentary groups to guide them on the new declaration provisions included in the Code. Likewise, the advice that is being offered on a permanent basis to MPs by the technical services of parliament, will be complemented in the coming months by several training and awareness-raising activities in the pipeline.
15. GRECO salutes the adoption of the Code of Conduct for Parliament. It is a consensual, well-thought and thorough document, which is coupled with a dedicated mechanism for its implementation, including confidential counselling and awareness-raising activities. The Code has been published in the Official Bulletin of Parliament and it is also available on the website of parliament for easier access to the public. GRECO also takes note of the timely appointments that have followed to ensure the effective operability of the Office on Conflicts of Interest. The Code, and its implementation set-up (supervision/enforcement/advisory channels), now need to be tested in practice. Time will prove their effectiveness and whether any further adjustments are needed or desirable. The authorities may wish to keep GRECO informed on their practical experience, as it evolves, in this respect.
16. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

17. *GRECO recommended the introduction of rules on how members of Parliament engage with lobbyists and other third parties who seek to influence the legislative process.*
18. GRECO took note of a legislative proposal underway to regulate lobbying, including through the establishment of a lobbying register. However, in the absence of concrete rules on how members of Parliament engage with lobbyists and other third parties who seek to influence the legislative process, GRECO, in its Second Interim Compliance Report, assessed recommendation ii as partly implemented.

19. The authorities of Spain indicate that the Code of Conduct of Parliament contains provisions on transparency. MPs are required to provide their CVs (biographical, academic and professional details), which are published on the Congress/Senate website; all titles, data and files deemed relevant by the parliamentarian can be consulted online. Furthermore, information must be disclosed regarding contacts of deputies/senators with third parties², i.e. through the publication of members' agendas on the "Transparency Portal" of the Congress/Senate, as well as by tracking third party involvement in the elaboration of legislation.
20. The Code of Conduct itself warns that this is a provisional regulation, aimed at meeting the demand of greater transparency in this field, for as long as the adoption of a specific legislation/regulation dealing with lobbying is not adopted. Although in previous legislative terms, several parliamentary groups tabled proposals to regulate this matter, whether by means of a reform of the Standing Orders or the adoption of specific legislation, no such initiatives have been submitted in the incumbent XIV legislative term so far.
21. GRECO welcomes the inclusion of specific provisions in the Code of Conduct of Parliament regarding the transparency of parliamentarians' agendas, as well as on "legislative footprint" (indicative list, attached to a legislative initiative, of interest groups who were consulted and had significant input during the preparation of the draft). These positive measures undoubtedly add to the good level of legislative transparency in Parliament, which was already acknowledged in the Fourth Round Evaluation Report on Spain (paragraph 26), and the authorities must be commended for their continued progress in this regard. That said, GRECO understands that further developments are expected in this area, through the adoption of targeted regulation on lobbying and looks forward to their accomplishment, as they will help to target both sides of the equation and clarify unresolved, yet highly topical matters (e.g. cooling-off periods, lobbyist register, etc.). Moreover, as the Office on Conflicts of Interest develops its advisory function, it will be important to provide further guidance to parliamentarians, for not only transparency, but also integrity and accountability purposes, on "do's and don'ts" in their relations with lobbyists, inside or outside Parliament.
22. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

23. *GRECO recommended that current disclosure requirements applicable to the members of both Chambers of Parliament be reviewed in order to increase the categories and the level of detail to be reported.*
24. GRECO acknowledged, in the Second Interim Compliance Report, the steps taken by the Congress of Deputies to increase the transparency of its activities on its web portal, as well as to require deputies to disclose their economic interests prior to taking up the parliamentary mandate. It, however, considered that additional steps were needed to upgrade the existing asset declaration system, notably, by reporting additional categories of financial interests. Further, GRECO called on the Senate to take more conclusive action in this domain. It therefore concluded that recommendation iii remained partly implemented.

² The Code refers to interest groups which are defined as those individuals or entities, with or without legal personality, which may communicate, whether directly or indirectly, with elected individuals or persons holding public positions, or their staff, in favour of private, public, individual or collective interests, seeking to that end to modify or influence questions related to the drafting or amendment of legislative initiatives (Article 6(2), Code of Conduct of Parliament).

25. The authorities of Spain indicate that the Code extends the categories of economic interests that should be declared by parliamentarians, notably, regarding (a) activities performed prior to the parliamentary mandate, which have generated financial income – with specification of the employer’s name and the sector of activity (with due regard to data protection regulations); (b) donations, gifts and non-remunerated benefits, including travels and invitations to leisure, sports or cultural events; (c) trust and other associations to which the parliamentarian contributes, whether financially or through the provision of unpaid services; (d) any other data which could trigger a conflict of interest³. This obligation to report covers the aforementioned categories of interests obtained in the five years preceding the parliamentary mandate. The onus of the veracity of disclosure is placed on parliamentarians themselves. A reporting deadline in respect of these categories of interests has been fixed on 15 February 2021.
26. The aforementioned categories add to those where the parliamentarians already had a pre-existing obligation to declare regarding financial interests and assets, i.e. land and property, vehicles, any income received from secondary activities and pension plans, financial liabilities (debts, loans, financial transactions, etc.), interest returns from financial investments (stocks and shares), as well as on accessory activities (public sector posts or positions, public responsibilities to which the MP has renounced, pension payments, teaching activities, positions in political parties or parliamentary groups, literary, scientific, artistic or technical productions, authorised activities in the private sector, and any other activity).
27. GRECO acknowledges the progress made to meet this recommendation. The recently adopted Code of Conduct of Parliament provides for a new disclosure form on economic interests, which adds to those in place at the time of the evaluation visit, i.e. on financial interests and assets, and on accessory activities. Accordingly, the obligation to report prior to taking up the parliamentary mandate further broadens the categories and itemisation of interests to be disclosed (e.g. on activities performed prior to the parliamentary mandate which have generated financial income, gifts and official foreign trips, trusts and other associations), and the period of time for which these categories are to be accounted for (five years prior to taking office). There is also a catch-all provision by which any other data which could trigger a conflict of interest must be disclosed. This is a welcome development.
28. In the Fourth Evaluation Round Report on Spain, GRECO pointed at some other areas where the provision of more level of detail would have been desirable, such as information on the market value of real estates and vehicles, names of the companies to which the stocks and shares belong, and interest rates paid for the credits obtained from financial institutions. No additional developments have occurred in this regard. Notwithstanding this fact, GRECO recognises that there is great variation in the depth and breadth of disclosure requirements across its members, and that, with the additional disclosure requirements provided by the new Code of Conduct of Parliament, the financial/interest disclosure regime for MPs is now, overall, reasonably comprehensive, as aimed by the recommendation. GRECO, nevertheless, encourages the authorities to keep in mind its observations (regarding more detailed itemisation of certain categories of interests) for any future reform in this area. GRECO also encourages the authorities to streamline the current format of declaration: there are three different forms (on financial interest and assets, on

³ There is a conflict of interest when a parliamentarian has a personal direct or indirect interest, which may improperly influence the performance of his/her duties, in such a way that his/her objectivity or independence may be called into question, or which implies that as a parliamentarian s/he does not pursue the general interest. There is no conflict of interest when the benefit is obtained solely from belonging to the population as a whole or to a broad category of persons (Article 3(1), Code of Conduct of Parliament). There is an ad-hoc obligation to report any potential conflict of interest to the Presidency of the respective Chamber prior to the discussion of a given matter, whether in the plenary or in a committee (Article 3(2), Code of Conduct of Parliament).

accessory activities and on economic interests) which would benefit from their unification in one single form for easier/more effective consultation and screening purposes. While the recommendation has been complied with, the authorities may wish to keep GRECO informed of further developments in this domain.

29. GRECO concludes that recommendation iii has been dealt with in a satisfactory manner.

Recommendation iv

30. GRECO recommended *that appropriate measures be taken to ensure effective supervision and enforcement of the existing and yet-to-be established declaration requirements and other rules of conduct of members of Parliament.*
31. GRECO welcomed, in its Second Interim Compliance Report, the establishment of a dedicated mechanism of enforcement of the Code of Conduct for the Congress of Deputies. Given that the Senate had yet to embark on a similar path, GRECO concluded that recommendation iv had been partly implemented.
32. The authorities of Spain highlight that the new Code of Conduct for Parliament is coupled with enforcement machinery. Notably, it is for the Speaker of the respective Chamber to initiate infringement procedures whenever the Code's provisions are breached (including in respect of financial disclosure obligations). S/he can act *ex officio* or at the request of a parliamentarian. The investigation of the breach is entrusted to the Commission on the Statute of Deputies (Congress) or the Committee on Incompatibilities (Senate). The Office on Conflicts of Interest is vested with an advisory role and can be consulted, whenever necessary, in the course of the proceedings, including on a confidential basis. In any case, the procedure should allow for the hearing of the parliamentarian concerned. The Commission/Committee's report concludes on whether there has been an infringement and, where appropriate, proposes a sanction in accordance with the Rules of Procedure of the respective Chamber. Then, it is for the Bureau (of Congress/Senate) to decide whether a sanction is imposed. Sanctions consist of temporary suspension, the limitation of certain rights (e.g. assistance or/and vote in plenary or committee sessions, economic benefits, etc.), and even loss of the parliamentary mandate (e.g. in the event of breaches on incompatibility rules).
33. In addition, the Office for Conflicts of Interest may examine financial declarations for preventive purposes, and with a view to resolving any doubts that may arise in relation to them. The Office is to draft a report on compliance with the Code's provisions, which is to be submitted to the Bureaus of the respective Chambers through their Speakers. This report may contain recommendations aimed at rendering the Code more efficient but would remain confidential regarding those cases which had given rise to doubts as to interpretation.
34. GRECO welcomes the articulation of an enforcement system for breaches of the Code of Conduct provisions, which yet needs to be tested in practice to prove its effectiveness. Obviously, given the recent adoption of the Code, experience in this area is still lacking. The authorities may wish to keep GRECO informed on practice in this domain, as it evolves.
35. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

36. GRECO recommended carrying out an evaluation of the legislative framework governing the General Council of the Judiciary (CGPJ) and of its effects on the real and perceived independence of this body from any undue influence, with a view to remedying any shortcomings identified.
37. In the Second Interim Compliance Report, GRECO gave credit to the efforts undertaken to strengthen internal democracy, transparency and accountability in the working methods of the CGPJ. It, however, regretted that no tangible result had been achieved regarding the composition of the CGPJ and, more particularly, its selection method, i.e. the core of recommendation v. GRECO again reiterated the need to remove the selection of the judicial shift from politicians. It therefore concluded that recommendation v had not been implemented.
38. The authorities of Spain reiterate their position as to the legitimacy and democratic nature of the selection method of the CGPJ: (i) the selection on both judicial (12) and non-judicial (8) members of the CGPJ requires a broad consensus by Parliament through a 3/5 qualified majority (which, on one hand, assures pluralism of the election, and on the other hand, avoids risks of corporativism); (ii) in any event, the judicial shift is preselected by judges themselves through a democratic system (any active judge can present his/her candidacy if relying on the support of 25 judges or a judicial association) and the resulting list of candidates is submitted to Parliament, which then narrows that list to twelve appointees⁴; and (iii) to fully dispel any concern of politicisation, the term of office of the selected members lasts five years and therefore does not coincide with the regular (four-year term) legislative term.
39. The authorities further report that parliamentary work on the renewal of the CGPJ is still under way, with a view to reaching an agreement on the renewal of this body, which constitutional mandate expired in December 2018. A number of parliamentary groups have tabled a proposal that aims to provide the Council with an *ad interim* legal regime, when its constitutional mandate has expired, similarly to other constitutional bodies (acting parliament and acting government). According to the authorities, the aim is to reduce the incentives for maintaining a blockage that affects the CGPJ's perceived independence. This reform has been promoted through the submission of a proposal to parliament (under the same procedure, which was followed in 2017 for the previous reform of Organic Law on the Judiciary 4/2018).
40. GRECO notes that the information provided by the authorities does not bring anything new to what was already analysed in the Fourth Round Evaluation Report back in 2013. Today, the situation is exactly the same, and the concerns expressed by GRECO in the light of it remain as prevalent, if not more, than before. At the time, GRECO stressed that one of the most notable aims of a judicial council, whenever established, is that of better safeguarding the independence of the judiciary, both in appearance and in practice. It further noted that the result in Spain had been the opposite, as evidenced by recurrent public disquiet in this domain. GRECO pointed at the applicable Council of Europe standards regarding the election of the judicial shift in judicial councils: when there is a mixed composition of judicial councils, for the selection of judge members, it is advised that judges are elected by their peers (following methods guaranteeing the widest representation of the judiciary at all

⁴ In the last process of selection of the CGPJ, there were 51 candidates (out of whom three withdrew their candidacy); 24 candidates did not belong to a judicial association, i.e. 47% of the total number of candidates.

levels) and that political authorities, such as the Parliament or the executive, are not involved at any stage of the selection process⁵.

41. Seven years after the adoption of the Fourth Round Evaluation Report (and the series of compliance reports that have followed thereafter), criticism of the system in the domestic arena remain strong and have also transcended to international fora. Every time that a new selection of the CGPJ has taken place, misgivings have been expressed on political bargaining and parties horse-trading for appointment to key judicial positions. More recently, a (over) two-year deadlock in the designation of the CGPJ, led a number of parliamentary groups to table a legislative proposal to unblock the system by resorting to (1) a 3/5 qualified majority voting in Parliament, but if this failed (2) lowering the threshold in a second voting by absolute majority. GRECO (along with other international key players in this domain, including the European Commission and the European Association of Judges) expressed its concerns on the aforementioned proposal⁶. The proposal was put on hold on 22 October 2020.
42. A separate proposal, already mentioned in paragraph 39, was subsequently filed in December 2020 to prevent discretionary appointments (i.e. appointment of the higher ranks of the judiciary – see also below under recommendation vi) being made by the CGPJ when it acts on an interim basis. This proposal has also met criticism within the judicial ranks, including the CGPJ itself⁷.
43. Against this background, GRECO can only regret the lack of any tangible positive development in this domain. GRECO urges the authorities to implement recommendation v without delay. In doing so, it is of outmost importance that the judiciary be consulted and have a say in key decisions regarding its functioning and the priorities involved. The necessary discussions in this respect with other State powers must be undertaken in an atmosphere of mutual respect and have particular regard to the preservation of independence and impartiality of the judiciary⁸.
44. GRECO concludes that recommendation v has not been implemented.

Recommendation vi.

45. *GRECO recommended that objective criteria and evaluation requirements be laid down in law for the appointment of the higher ranks of the judiciary, i.e. Presidents of Provincial Courts, High Courts of Justice, the National Court and Supreme Court judges, in order to ensure that these appointments do not cast any doubt on the independence, impartiality and transparency of this process.*
46. In the Second Interim Compliance Report, GRECO welcomed the steps taken by the authorities to strengthen transparency and accountability in the appointment system of the highest ranks of the judiciary. But, given that the new requirements had yet to take off in practice and prove their effectiveness, GRECO asked for additional information on the experience gathered. GRECO concluded that recommendation vi had been partly implemented.
47. At the start, the authorities of Spain stress that, while appointments by the CGPJ to the highest functions of the judiciary are “discretionary”, they are nevertheless subject to the principles of good administration and transparency, as enshrined in

⁵ For European standards on councils of the judiciary, see [Opinion No. 10 \(2007\) of the Consultative Council of European Judges \(CCJE\) on Council for the Judiciary in the Service of Society](#).

⁶ [Letter of GRECO’s President to the Head of Delegation of Spain, 14 October 2020](#).

⁷ See [Communication from the CGPJ on urgent legislative proposals concerning the judiciary](#). Five (out of 15 + the President) members of the CGPJ voted against this agreement and announced the issuance of a dissenting opinion.

⁸ [Opinion No. 18 \(2015\) of the Consultative Council of European Judges \(CCJE\) on the Position of the Judiciary and its Relation with Other Powers of the State](#)<https://rm.coe.int/16807481a1> in a Modern Society.

the Spanish Constitution, as well as to judicial control. In this regard, some jurisprudence of the Supreme Court has consolidated over the years, reaffirming the principle of discretion (which is different from arbitrariness) of the CGPJ but, at the same time, stressing the need to motivate all appointment decisions.

48. The authorities further report on the experience gathered since the latest legislative amendments to the Organic Law on the Judiciary (LOPJ), in 2018, which comprised, *inter alia*, a provision on the appointment procedure for the highest ranks of the judiciary (Article 326(2), LOPJ), which is to be read in conjunction with Regulation 1/2010. More particularly, the selection process of Presidents of Provincial Courts, High Courts of Justice, the National Court and Supreme Court judges consists of the following phases: (1) an open call is published in the Official Gazette for each specific position to be covered (whether jurisdictional or managerial), the terms of which, approved by the plenary of the CGPJ, shall clearly and separately establish each of the merits to be taken into consideration and the corresponding weighting criteria which are based on the principles of equality, merit, ability and suitability; (2) pre-screening of candidates records, including on integrity-related matters; (3) regulated interview of candidates with specified phases and strict timing. The participation of the relevant candidates in the selection process shall be made in terms that guarantee equality and shall take place in a public hearing (unless for extraordinary reasons – in which case, the interview, whilst not public, is still open to the rest of the candidates applying to that same post. Extraordinary reasons must be recorded and documented in the minutes of the interview session; (4) a shortlist follows thereafter and is submitted to the plenary for final vote; any proposal to be submitted to the plenary shall be reasoned and shall specify the weighting of each of the merits of the call. In any case, an overall evaluation of the merits, capacity and suitability of the candidates shall be made, as well as their order of priority. Likewise, the nomination proposal shall contain an assessment of its conformity with Organic Law 3/2007 on Effective Gender Equality. It is possible that candidates, who have not passed the regular pre-selection process by the Qualification Board, are added by other CGPJ members to the shortlist that is submitted to the plenary for an appointment vote; (5) consensual agreement on appointment following a voting (requirement of absolute/qualified majority) by the plenary of the CGPJ; (6) publication of appointment; and (7) appeal channels.
49. In order to improve transparency, and publicity, of this type of appointments, it is now possible for the public to get details on the website of the CGPJ on: the call for candidatures, the list of applicants, the shortlisted candidates, the final appointee (and the quorum reached by the plenary for his/her appointment), his/her CV and a video of his/her personal interview for the post. Specific examples were provided regarding the number of appointments made by the CGPJ during its term of office and the broad consensus reached in their respect. Moreover, there are internal Guidelines on Discretionary Appointments to ensure coherence of application calls for similar positions in terms of requirements and their weighting. The elaboration process of these guidelines followed consultation with judicial associations. The incumbent CGPJ does not foresee any further regulatory action on this front during its term but does not rule out new developments in the future (e.g. publication of the Guidelines which are the moment are an internal working document, issuance of additional regulation).
50. Finally, the authorities underline that, although not specifically related to the appointment of the top ranks of the judiciary but still relevant for transparency and integrity purposes, the 2018 reform introduced the requirement for Presidents of Provincial Courts, High Courts of Justice and the National Court, as well as the Presidents of the Chambers and other Supreme Court judges, to file financial declarations (Article 326(4), LOPJ) - as other top government officials, and also the members of the CGPJ, are required to do in Spain.

51. GRECO takes note of the new developments reported regarding the experience gathered in the appointment of top ranks of the judiciary since the last legislative amendments introduced in 2018. GRECO particularly values the provision of greater information on the website of the CGPJ regarding the carrying out and final outcome of these appointments. While GRECO acknowledges the different steps taken by the authorities in this domain, it believes that additional action can take place to fully meet the aim of recommendation vi, i.e. to ensure that the appointments of the top ranks of the judiciary do not cast any doubt on their independence, impartiality and transparency. In this connection, GRECO observes that this matter continues to be in the spotlight in Spain.
52. More particularly, GRECO points at the bulk of hard law, soft law and jurisprudence that have been issued along the years concerning this type of appointments. The framework law of the judiciary (LOPJ) was amended in 2018. Regulation 1/2010 continues to be the basis for carrying out the relevant procedures. Additionally, the jurisprudence of the Third Chamber of the Supreme Court has also shaped policy in this area, notably by reconciling the principle of technical discretion of the CGPJ for these appointments with that of objectivity, the need to motivate decisions and the exclusion of arbitrariness. Moreover, GRECO notes that the CGPJ has also developed some internal Guidelines on Discretionary Appointments to ensure coherence of decisions; however, these Guidelines, which are used as an internal document, have not been published. GRECO can certainly see merit in their publication for transparency purposes.
53. GRECO believes that the time is right to streamline the applicable requirements and procedures in this domain via further legislative/regulatory action. GRECO notes that the authorities have not ruled out the possibility of further regulating on this front. For GRECO, this is decidedly an action to be pursued. The 2018 amendments of the LOPJ, and the practice which has emerged in recent years regarding the appointment of the highest functions of the judiciary, may well justify the review of Regulation 1/2010. For example, the possibility provided by the latter regulation to add candidates, who were not shortlisted following the interviews, should be reconsidered. In GRECO's view, this sort of second chance (*repechage*) for some candidates to qualify for appointment represents a deviation from the standard selection process which is difficult to reconcile with the constitutional principle of equality. Likewise, further attention can be paid to gender equality matters, and the necessary related targeted measures, for the effective appointment of women to the highest seats of Spanish courts, although some limited progress appears to have been made in recent years.
54. Lastly, GRECO notes that, regrettably, the criticism on the perceived politicisation of the CGPJ has a negative impact on appointment decisions made by the latter. Even if the procedures for the appointment of the higher ranks of the judiciary have been further articulated and upgraded over time, as described above, a shadow of doubt on their fairness and objectivity persists in citizens' eyes. Given the broad margin of discretion with which the CGPJ is vested for the appointment of the top ranks of the judiciary, the issue of the composition of the CGPJ itself seems indeed of prime relevance. This is yet another reason that proves the criticalness of duly implementing recommendation v.
55. GRECO concludes that recommendation vi remains partly implemented.

Corruption prevention in respect of prosecutors

Recommendation ix.

56. *GRECO recommended (i) reconsidering the method of selection and the term of tenure of the Prosecutor General; (ii) establishing clear requirements and procedures*

in law to increase transparency of communication between the Prosecutor General and the Government; (iii) exploring further ways to provide for greater autonomy in the management of the means of the prosecution services.

57. GRECO acknowledged that component i of the recommendation had been considered – although it resulted in no change in the method of selection and the term of tenure of the Prosecutor General, a long-standing concern tainting the perception of autonomy of the prosecution service in Spain. GRECO called for additional action to fully meet components ii – transparency of communication with the Government, and iii – autonomy of management (staff allocation in the different prosecutor’s offices). GRECO considered this recommendation as partly implemented.
58. The authorities of Spain state that the draft Regulation on the Prosecution Service, which is in an advanced stage and currently awaits some consultative reports prior to it being sent to the Council of State and then the Council of Ministers for adoption, further articulates rules on internal autonomy. Notably, in matters of internal autonomy of the service, it includes rules on the functioning of the Public Prosecutor’s Board and the Coordination Boards. It further sets out the regime for issuing orders in the Prosecutor’s Office, so that the orders from the superiors are documented in writing when the prosecutor in charge of the case requests it, as well as in those cases when the orders are contrary to his/her opinion or previous assessment. It also includes the regulations for settling discrepancies between the prosecutor responsible for the case and his/her immediate superior, in order to guarantee and regulate the prosecutors’ right to dissent, having the discrepancy to be settled through a written reasoned statement. It is expected that the draft Regulation will be adopted in the first quarter of 2021.
59. GRECO notes that the draft Regulation on the Prosecution Service, which is to further articulate, *inter alia*, internal autonomy and communication within the service, has (advanced but) not yet been adopted. No new development has been reported regarding the specific aspects of external autonomy targeted by the second and third component of recommendation ix, which implementation remains pending.
60. With particular reference to the second component of the recommendation, it is recalled that the law foresees the possibility for the Government to report back on specific cases being prosecuted (Article 9, Law 50/1981). While the law determines that all communication between the executive and the prosecution services should be conducted between the Minister of Justice and the Prosecutor General (Article 8(2), Law 50/1981), it does not require this communication to be made public, nor the obligation to register such communications in writing. Given that the relationship between the Prosecutor General and the executive is an issue that continues to meet public criticism in Spain, as regards its perceived independence (see also paragraph 126, Fourth Evaluation Round Report on Spain), transparency of communication between the Prosecutor General and the Government proves key.
61. As to the third component of the recommendation, GRECO reiterates its misgivings concerning the fact that the Ministry of Justice decides on staff allocation in the different prosecutor’s office, including that specialised in the fight against corruption and organised crime, since autonomy of management is an important guarantee of the independence and efficiency of the prosecution service⁹.
62. In the context of the planned reform of the Criminal Procedure Act (*Ley de Enjuiciamiento Criminal*), aimed at establishing the leading role of prosecutors at the pre-trial stage (*fase de instrucción*), the need to provide for guarantees of non-interference from outside pressures acquires - even more - primordial significance. While GRECO acknowledges that there is no uniform model on prosecution across its

⁹ See also [Opinion no.7 of the Consultative Council of European Prosecutors](#)

members, it is also true that, irrespectively of the model, it is crucial for public confidence, and also for peers' trust, that prosecution is, and appears to be, impartial, objective and free from any undue improper influence, particularly of a political nature, when carrying out its functions.

63. For this reason, GRECO can only reiterate the need for further reflection on the additional safeguards that can be introduced in the Spanish prosecution system to shield it from undue interference. GRECO encourages the authorities to think expansively in this respect, including by keeping in mind the considerations already flagged in the Fourth Round Evaluation Report regarding the issue of revolving doors, in particular, regarding political activity (see paragraph 153, in connection to paragraph 102, of the aforementioned report). It would appear that the incumbent Prosecutor General intends to further advance in all three areas covered by recommendation ix through amendments to the Statute of the Prosecution Service. Such a project needs to effectively materialise while there are plans for the reform of the Statute of the Prosecution Service, work has not yet started.
64. GRECO concludes that recommendation ix remains partly implemented.

Recommendation x.

65. *GRECO recommended that (i) a code of conduct for prosecutors be adopted and made easily accessible to the public; and (ii) that it be complemented by dedicated guidance on conflicts of interest and other integrity-related matters.*
66. GRECO, in the Second Interim Compliance Report, took note of the on-going drafting of a code of conduct for prosecutors and assessed this recommendation as partly implemented.
67. The authorities of Spain indicate that the Code of Conduct for prosecutors was adopted on 22 October 2020. It is the result of a participatory process, starting in 2015 and which followed a bottom-up approach, where prosecutorial ranks and professional associations were consulted (the process entailed targeted research, surveys, consultations, committee meetings, etc.)¹⁰. The Code is a principle-based document (matters of discipline are dealt with in separate regulation – see further below under paragraph 75), which reflects on duties and virtues of prosecutors, such as legality, impartiality, objectivity, efficiency, integrity, honesty, responsibility, equal treatment, confidentiality, transparency, etc. It also includes provisions relating to, *inter alia*, internal and external relations, conflicts of interest, use of public resources, training rights and responsibilities, etc.
68. The Code is coupled with an advisory channel: the Ethics Commission, which will consist of prosecutors chosen by their peers and at least one external expert (not a prosecutor). In addition to its counselling functions, the Ethics Commission is also entrusted with assessing and updating the Code, as necessary.
69. In order to make the Code known and easily accessible to the public, it is available on a dedicated section on transparency on the prosecution service [website](#). This transparency portal also provides information on prosecutors in high-ranking positions, institutional agenda, economic, budgetary and statistical data, institutional and organisational information, etc.
70. A paper copy of the Code of Conduct was distributed to all prosecutors. Training on integrity-related matters started already in April 2019 and has continued in time.

¹⁰ For example, a series of questionnaires was distributed among prosecutors and a total of 900 responded to the call. These (5) questionnaires referred to key matters on ethics and its results were used as an outline for the draft Code.

Particular attention has been paid in integrating and streamlining ethics in the Initial and In-service Training Plan for Prosecutors (2021), as adopted on 11 December 2020. Finally, a Director of Training has been appointed, in line with the remark made by GRECO for the prosecution service to manage its own training, as an aspect of the autonomy called for by recommendation ix(iii).

71. GRECO welcomes the adoption of a Code of Conduct for prosecutors and the action taken to make it publicly available online on the prosecution service website. GRECO is also pleased to note the establishment of an Ethics Commission which is to provide general guidance and dedicated advice on ethical matters, as well as the practical operational arrangements made to intensify training in this domain.
72. Consequently, GRECO concludes that recommendation x has been implemented satisfactorily.

Recommendation xi.

73. *GRECO recommended developing a specific regulatory framework for disciplinary matters in the prosecution service, which is vested with appropriate guarantees of fairness and effectiveness and subject to independent and impartial review.*
74. GRECO took note, in the Second Interim Compliance Report, of the legislative amendments proposed to further articulate the disciplinary system of the prosecution service. Pending adoption of those, GRECO concluded that recommendation xi remained partly implemented.
75. The authorities of Spain refer to the draft Regulation on the Prosecution Service, which includes a specific section (Title IX) dealing with the disciplinary regime of prosecutors. It lays down a procedure based on the principles of *actus reus*, non-retroactivity of unfavourable penalty provisions, adversarial process, proportionality and culpability, ensuring the notification to the party affected by all the resolutions to be taken during the procedure and of the relevant actions taken, providing information about the rights and the possibility of appearing in court personally or with a lawyer. It also includes causes of abstention and disqualification, as well as the obligation to notify the agreement of filing to the person having submitted the claim or complaint. It further introduces the institution of Prosecutor for Disciplinary Action (*Fiscal Promotor de la Acción Disciplinaria*). The draft is in an advanced stage and currently awaits some consultative reports prior to it being sent to the Council of State and then the Council of Ministers for adoption. It is expected that the draft Regulation will be adopted in the first quarter of 2021.
76. GRECO recalls that the disciplinary regime of prosecutors is due for a profound overhaul, as also recognised by the Spanish authorities during the evaluation/compliance process. GRECO regrets that the plans to reform the regulatory framework of the prosecution service, although progressing, have not yet yielded tangible results.
77. GRECO concludes that recommendation xi remains partly implemented.

III. CONCLUSIONS

78. **In view of the above, GRECO concludes that Spain has made some further progress as regards the implementation of the recommendations found to be partly or not implemented in the Fourth Round Compliance Report. Six of the eleven recommendations contained in the Fourth Round Evaluation Report have been implemented.** In addition, four recommendations have been partly implemented. One recommendation remains not implemented.

79. More specifically, recommendations i, iv, vii, viii and x have been implemented satisfactorily. Recommendation iii has been dealt with in a satisfactory manner. Recommendations ii, vi, ix and xi have been partly implemented. Recommendation v has not been implemented.
80. GRECO is pleased to note that a Code of Conduct for Parliament (Congress and Senate) has been adopted. It is coupled with a dedicated body for its implementation, i.e. the Office on Conflicts of Interest. The Code introduces *inter alia* reinforced transparency obligations (including information regarding contacts of deputies/senators with third parties), as well as additional disclosure requirements. Specific regulation concerning lobbying still needs to be developed.. Further work has also proceeded to enhance the transparency and objectivity of appointment procedures for the highest functions of the judiciary, but more can be done to streamline the applicable requirements in this domain. Moreover, a critical issue revolves around the selection system of the General Council of the Judiciary (CGPJ) and its perceived politicisation. This is no minor concern since the CGPJ is responsible for some crucial decisions in the judiciary, including the designation of top rank judges and discipline matters. Likewise, the relationship between the Prosecutor General and the executive is a topic that continues to meet public criticism (as regards its perceived independence), more efforts are still needed to increase autonomy and transparency in this regard. This is particularly important in the context of the proposed reform of the Criminal Procedure Act. A Code of Conduct for prosecutors has been issued and coupled with advisory and awareness-raising channels, which is a welcome development. However, the reform of the disciplinary regime of prosecutors still awaits adoption.
81. Since five (out of eleven) recommendations are yet to be implemented, GRECO in accordance with Rule 31 rev, paragraph 9 of its Rules of Procedure, asks the Head of the delegation of Spain to submit additional information regarding the implementation of recommendations ii, v, vi, ix and xi by 31 March 2022.
82. Finally, GRECO invites the authorities of Spain 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.