



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

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Adoption: 17 June 2022
Publication: 6 September 2022

Public
GrecoRC4(2022)20

FOURTH EVALUATION ROUND

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

SECOND COMPLIANCE REPORT PORTUGAL

Adopted by GRECO at its 91st Plenary Meeting
(13-17 June 2022)

I. INTRODUCTION

1. This Second Compliance Report assesses the measures taken by the authorities of Portugal to implement the recommendations made in the Fourth Round Evaluation Report on Portugal (see paragraph 2), which deals 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 the level of compliance remained "globally unsatisfactory" and the authorities of Portugal were requested to submit further information.
5. The [Second Interim Compliance Report](#) was adopted by GRECO at its 87th Plenary meeting (25 March 2021) and made public on 12 April 2021, following authorisation by Portugal. In that report, GRECO concluded that three of the fifteen recommendations had been implemented satisfactorily or dealt with in a satisfactory manner. Of the remaining recommendations, seven had been partly implemented and five remained not implemented. This slightly improved level of compliance with the recommendations was no longer "globally unsatisfactory" in the meaning of Rule 31 revised, paragraph 8.3 of the Rules of Procedure. GRECO therefore decided not to continue applying Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report. Pursuant to Rule 31 revised, paragraph 8.2 of the Rules of Procedure, the authorities of Portugal were requested to submit further information by 31 March 2022.
6. The Situation Report on measures taken to implement the outstanding recommendations was received on 24 March 2022. 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 Compliance report.
7. The Second Compliance Report assesses the further implementation of the outstanding recommendations (i.e. recommendations i to viii, x-xi, xiii and xv) since the adoption of the Second Interim Compliance Report and performs an overall appraisal of the level of Portugal's compliance with these recommendations.

II. ANALYSIS

8. GRECO, in its Fourth Round Evaluation Report, addressed 15 recommendations to Portugal. In the Second Interim Compliance Report, GRECO concluded that recommendations ix and xiv had been implemented satisfactorily and recommendation xii had been dealt with in a satisfactory manner, recommendations ii, iii, iv, vii, viii, x and xv had been partly implemented and recommendations i, v, vi, xi and xiii had not been implemented. Compliance with the outstanding recommendations is examined below.

Corruption prevention in respect of members of parliament

Recommendation i.

9. *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.*
10. GRECO recalls that this recommendation had not been implemented in previous compliance reports. In August 2020, the Assembly had adopted new Rules of Procedure which reportedly strengthened respect for the deadlines established for various legislative initiatives debated in the Assembly, ensured more predictability for its work/agenda and widened the opportunities for public involvement in the law-making process. The relevant rules or related statistics had however not been provided.
11. The authorities now refer to Articles 60 (5), 63, 65, 66, 96, 143, 150 and 151 of the Assembly's Rules of Procedure as revised in August 2020 (made available to GRECO). Article 63, for example, has set a new deadline of at least 30 days between the admission of a bill to the Assembly and the date of a related Plenary hearing. As per Article 150, the discussion and voting on the details of bills within a committee are to be scheduled within 60 days from the referral of the bill to the committee concerned and, in cases of complexity, another deadline can be set. The authorities add that these rules had entered into force on 1 September 2020 but the Assembly was dissolved on 5 December 2021 which means that between September 2020 and December 2021 the processing of all outstanding legislative procedures had been accelerated.
12. Regarding the second part of the recommendation, the authorities state that the existing parliamentary rules and practices already provide equal access to the law-making process for all interested parties. In addition to their previous explanations, the authorities refer to a public document updated in 2020 setting out the Assembly's mechanisms of public consultation¹.
13. GRECO notes, with respect to the first part of the recommendation, that the Assembly's Rules of Procedure have been revised to ensure a more predictable law-making process, allowing for quality debate and avoiding as much as possible last moment agenda items. GRECO understood however that during the first year of operation of the new rules it has not been possible to ensure full compliance with the new, prescribed timelines due to the acceleration of work of the soon to be dissolved Parliament. For this reason, the statistics proving compliance could not be presented. This part of the recommendation is therefore only partly fulfilled. Concerning the

¹ [Public consultation Parliamentary Legislative Process.pdf \(parlamento.pt\)](#).

second part of the recommendation, there is no new information to suggest that equal access of all interested parties to the law-making process has been ensured. Concretely, provision has not been made for introducing public consultation for all categories of bills, except those where a relevant decision is to be taken by the committee concerned. This part of the recommendation therefore remains not implemented.

14. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.

15. *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.*
16. GRECO recalls that this recommendation was partly implemented in the Second Interim compliance report. The new Code of Conduct for MPs had brought together in a single text the principles, obligations and standards that underpin the performance of parliamentary duties. However, the scope of permissible contacts between MPs and third parties had not been dealt with. Neither the Code nor the Statute for Members of Parliament had established sanctions for improper acts by MPs. Confidential counselling had not been established and training on ethical issues for MPs had not been provided.
17. The authorities now report that several legal acts define the scope of permissible contacts between MPs and third parties (e.g. the Constitution, the Statute of the Members of Parliament and the Code of Conduct) by enshrining the principles of independence, respect and dignity of the mandate, transparency, appropriate conduct, pursuit of the public interest and political liability for acts and decisions. Supervision in this area is exercised by the Committee for Transparency and the Statute of Members of Parliament (CTED), which in 2021 had created two internal sub-groups: on the implementation of the Code of Conduct (GTACC) and on the registration of interests (GTRI).
18. Regarding confidential counselling on ethical issues, the authorities state that this competence is implicitly included in the CTED's mandate as stipulated in Article 27-A of the Statute. The authorities further recall that at the beginning of each term MPs are given a Handbook which contains all of the aforementioned legal instruments, and the CTED remains at MPs' disposal to provide further clarifications. Complementing the distribution of the Handbook with dedicated integrity training for MPs is currently being considered.
19. GRECO takes note of the information provided. It recalls that the aforementioned legal framework had been examined by it at the previous stages of the compliance procedure and that no legal changes have occurred since. In so far as the scope of permissible contacts between MPs and third parties is concerned, this framework only stipulates some general principles but not concrete rules on MPs' contacts with third parties, including those who might wish to drive the law-making process toward the fulfilment of partial interests². Similarly, although Article 27-A of the Statute is quite

² As mentioned in the Evaluation Report, information on those who might be in contact with MPs formally or informally, except for consultants who officially attend committee hearings or provide written expertise to them is not available and this allegedly gives rise to suspicions of conflicts of interests, trading in influence and insider trading.

extensive, it does not envisage the provision of confidential counselling on integrity matters for MPs. As regards integrity training for MPs, its introduction is as yet only being considered. For these reasons, GRECO cannot yet accept that the recommendation has been fully complied with.

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 was partly implemented in the Second *Interim* compliance report. Although several parliamentary committees had been given the mandate to evaluate the system on conflicts of interest, an *independent* evaluation and impact assessment of the effectiveness of the conflicts of interest prevention system for MPs had not been carried out. Regarding part (ii) of the recommendation, the Authority for Transparency responsible for assessing MPs' single declarations of income, assets and interests had been established only on paper. The Authority's mandate satisfied the requirements of the recommendation, but the modalities for its composition/appointments remained to be clarified.
23. The authorities now state, with respect to part (i) of the recommendation, that the carrying out of an independent evaluation of the effectiveness of the system for the prevention, disclosure, ascertainment and sanctioning of conflicts of interest of MPs, will only be feasible once the new electronic platform for the reporting of MPs' assets is up and running. A public tender for the design, development and operation of such a platform was launched in August 2021 and a related contract awarded in the first half of 2022. The contract will enter into force in September 2022 and its duration is not to exceed 36 months.
24. As regards part (ii) of the recommendation, the authorities indicate that although the Authority for Transparency has not yet been established, necessary efforts are being deployed to ensure that this is done as soon as possible. It will be up to the Constitutional Court to determine the exact date of the Authority's entry into operation and members of its Board are to be appointed by the President of this Court when the minimum conditions for the exercise of the members' duties are met, namely: a) operation of an electronic asset declaration platform; and b) designation of premises suitable for the Authority's operation.
25. The authorities additionally report that, since the entry into force in 2019 of the so-called "transparency package" (cf. the Compliance Report on Portugal), the CTED has drafted opinions and recommendations to consolidate the application of the new rules in respect of MPs. It has also established a sub-group (GTRI) *inter alia* responsible for examining MPs' records of interests at the beginning of their mandate and when circumstances change; monitoring the receipt and registration of declarations that indicate possible conflicts of interest; publishing MPs' interest declarations online; assisting MPs in completing an electronic interests register; and drawing up an annual activity report.

26. GRECO notes that an *independent* evaluation and impact assessment of the effectiveness of the conflicts of interest prevention system for MPs has still not been carried out. Similarly, the Authority for Transparency attached to the Constitutional Court and responsible for assessing single declarations of MPs' income, assets and interests has not been established. As regards the Authority's Board, GRECO notes that it shall consist of three persons of which one is to hold a law degree, but other recruitment requirements and selection criteria are not specified in the law³. For the above reasons, this recommendation remains only partly complied with. The Authority's functions and powers vis-à-vis single declarations by MPs are dealt with under recommendation v below. Although this is not related to the substance of this recommendation, GRECO also notes that the GTRI reports made available to it indicate that the protection of the exclusivity of an MP mandate is an issue which remains high on the Assembly's agenda and that further reforms in this area, initiated by MPs themselves, are not excluded.
27. GRECO concludes that recommendation iii remains partly implemented.

Recommendation iv.

28. *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.*
29. GRECO recalls that this recommendation was partly implemented in the previous compliance report. Part (i) of the recommendation remained not implemented as adequate sanctions had not been established for minor breaches of reporting obligations, including incomplete and inaccurate reporting which was reportedly widespread. Moreover, the new sanctioning regime appeared to be too complex and ill-suited for holding MPs accountable for minor breaches of their reporting obligation. As for part (ii) of the recommendation, it had been implemented satisfactorily as asset and interest declarations of MPs had been made publicly available on-line.
30. The authorities now refer to amendments introduced in Article 18 of Law No. 52/2019⁴ which provides sanctions for irregularities and failure to comply with the asset reporting obligation, including by MPs. According to new Article 18-A failure to submit a declaration/update following notification carries a prison term of up to three years for the criminal offence of qualified disobedience. Moreover, failure to report gifts of a value exceeding EUR 150 is now a criminal offence that carries a prison term of one to five years, as per revised Article 16 of the Law.
31. GRECO notes regarding the outstanding part (i) of the recommendation that sanctions provided by Article 18 of Law No. 52/2019 still remain the same as at the time of the evaluation⁵ and that appropriate sanctions, i.e. milder than dismissal or loss of mandate, have still not been established for minor breaches of the asset reporting obligation by MPs, including incomplete and inaccurate reporting, as is required. This part of the recommendation therefore remains not implemented.
32. GRECO concludes that recommendation iv remains partly implemented.

³ Candidates suggested by the President of the Constitutional Court are to be elected by the Court sitting in plenary, by the majority of eight votes.

⁴ This law approved the legal framework for the performance of duties by holders of Political Office and Senior Public Officials. This law is part of the so-called "transparency package".

⁵ If an asset declaration and updates are not submitted or if they are incomplete and 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**.

Recommendation v.

33. *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.*
34. GRECO recalls that this recommendation was not implemented in the Second *Interim* compliance report. Information relevant for part (i) of the recommendation had not been provided. As concerns part (ii) of the recommendation, resources necessary for the operation of the Authority for Transparency had reportedly been allocated to the Constitutional Court, however suitable premises had not been provided.
35. The authorities indicate that the normative framework governing the operation of the Authority for Transparency has been adopted and entered into force and that the funding necessary for establishment and functioning of the Authority has been transferred to the Constitutional Court. The authorities also refer to the information presented under recommendation iii.
36. GRECO notes, with respect to part (i) of the recommendation, that Law 4/2019, to which the authorities refer yet again, does not deal with the issue of *frequent and substantive checks within reasonable time* of MPs' single declarations of income, assets and interests. This part of the recommendation therefore remains not implemented. Concerning part (ii) of the recommendation, GRECO notes the fulfilment of legal and financial conditions for the setting up of the Authority for Transparency. However, since the Authority has not been established, this part of the recommendations can be considered as only partly complied with.
37. GRECO concludes that recommendation v has been partly implemented.

Corruption prevention in respect of judges

Recommendation vi.

38. *GRECO recommended that i) the role of the judicial councils as guarantors of the independence of judges and of the judiciary is strengthened, in particular, by providing in law that not less than half their members are judges elected by their peers; and ii) information on the outcome of disciplinary procedures within the judicial councils is published in a timely manner.*
39. GRECO recalls that this recommendation was not implemented in the Second *Interim* compliance report due to the lack of action. Earlier plans to include a provision in the new Statute of Magistrates allowing for more information to be published regarding the High Judicial Council's disciplinary action had apparently been abandoned.
40. The authorities now report, with respect to the first part of the recommendation, that on 9 March 2021, the President of the Republic appointed two members of the High Judicial Council: a law professor and a judge of the Supreme Court of Justice. This means that in the next five years, nine of the Council's 17 members will be career judges: 7 elected by their peers, 1 appointed ex-officio (President of the Supreme Court of Justice, elected by judges of that Court) and one judge appointed by the President of the Republic.
41. Concerning the second part of the recommendation, the authorities reiterate their position as previously expressed by the High Judicial Council, namely that disciplinary

procedures are confidential until the final decision and that publicity of the outcomes of such procedures is guaranteed by the timely publication of summaries of the relevant deliberations online. Moreover, reference is made to the new communication plan of the Council, based on which it is to provide to the media public information on pending and closed disciplinary procedures in cases of public interest.

42. GRECO notes the lack of tangible developments under both elements of the recommendation. The composition of the High Judicial Council and of the High Judicial Council for Administrative and Tax Courts remains the same as at the time of the evaluation (i.e. half of their members are still not elected by their peers). Also, as before, only summary information on the outcome of disciplinary procedures within both councils is made available.
43. GRECO concludes that recommendation vi remains not implemented.

Recommendation vii.

44. *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.*
45. GRECO recalls that this recommendation had been partly implemented in the Second *Interim* compliance report. In respect of appeal court judges, the expectations of the recommendation had been met, since they were selected by a panel of which half the members were judges chosen by their peers. However, with respect to Supreme Court judges, judges were still in the minority in the panel taking decisions on their selection.
46. The authorities reiterate the same information as provided at the previous stages of the compliance procedure, namely that ensuring a more varied background of candidates to the Supreme Court justifies a deviation from the principle referred to in the recommendation.
47. GRECO notes the absence of steps to fulfil the outstanding element of this recommendation with respect to the two Supreme Courts (the Supreme Court of Justice and the Supreme Administrative Court).
48. GRECO concludes that recommendation vii remains partly implemented.

Recommendation viii.

49. *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.*
50. GRECO recalls that this recommendation was partly implemented in the Second *Interim* compliance report. The revised Statute of Magistrates had enumerated the following criteria to be taken into account for the purpose of the evaluation of a judge: 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 accepted that these criteria could be useful in the evaluation of performance, but they needed to be complemented to represent a suitable basis for ascertaining integrity. GRECO also recalled that relevant standards of conduct remained to be developed (cf. recommendation xi below) and taken into account for the purpose of assessing performance.

51. The authorities now refer to the legal framework governing the evaluation/inspection of second instance court judges as carried out by the High Judicial Council (Law on the High Judicial Council). The authorities submit that neither this law nor the Regulation on Judicial Inspections expressly provide that the criteria to be taken into account for the purposes of assessing a judge's performance and verifying his/her integrity need to be complemented by standards (e.g. on conduct) other than those provided for in the aforementioned regulations. In the authorities' view, the current evaluation system is underpinned by sufficiently objective criteria and the evaluation of merit is objective and rigorous. A similar approach is being pursued in respect of administrative and tax court judges by the High Judicial Council for Administrative and Tax Courts.
52. Regarding the establishment of codes of conduct for both categories of judges, the authorities refer to the information provided under recommendation xi below.
53. GRECO notes the absence of concrete action regarding this recommendation.
54. GRECO concludes that recommendation viii remains partly implemented.

Recommendation x.

55. *GRECO recommended that final first instance court judgments are made easily accessible and searchable by the public.*
56. GRECO recalls that this recommendation had been partly implemented in the Second *Interim* compliance report. Projects aimed *inter alia* at integrating first instance court decisions into an easily accessible and searchable ECLI database had been completed. However, the criteria for the selection, processing and filing of judgments to be included in the database had required the approval of the High Judicial Council. Furthermore, it was not clear whether sufficient resources had been secured for the maintenance of the ECLI database, which was a pre-condition for its smooth operation and the timely integration of all final first instance court judgments.
57. The authorities now report that the aforementioned criteria were approved by the High Judicial Council on 23 March 2021. On the same day, an action plan for the maintenance of the ECLI database was also approved which foresees *inter alia*: 1) the transfer of this database from the Ministry of Justice's IT Department to the High Judicial Council's servers; 2) the signing of protocols with the courts of appeal for the publication of their decisions on the ECLI platform (as already done with the Supreme Court of Justice); 3) the development of a technical project for anonymising court decisions using AI tools which would allow for scaling up and speeding up the availability of first instance court judgments. The implementation of technical solutions and anonymisation process is underway.
58. Regarding the availability of resources for the maintenance of the ECLI database, the authorities inform that following the approval of the Portuguese Recovery and Resilience Plan (PRR) on 23 September 2021 by the European Commission, the High Judicial Council and the Task Force responsible for the PRR's implementation signed an investment financing contract entitled "Economic Justice and Business Environment/JHC", which foresees, among other initiatives, the allocation of financial resources to restructure the ECLI database and to develop a tool for the anonymisation of judicial decisions to be published.
59. GRECO notes that the legal framework has been put in place and the necessary resources seem to have been earmarked to secure the restructuring and maintenance of the ECLI database which is now to serve also as a repository of all final first instance court judgments. However, the part of the database covering all final first

instance court judgments is not as yet operational, which means these decisions have not yet been made public.

60. GRECO concludes that recommendation x remains partly implemented.

Recommendation xi.

61. *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.*
62. GRECO recalls that this recommendation was not implemented in the Second *Interim* compliance report. The revised Statute of Magistrates had not amounted to a fully-fledged clear and enforceable code of conduct covering e.g. gifts and conflicts of interest. Also, various other texts on ethics had been maintained within the judiciary, their relevance and conformity with each other being unclear. Furthermore, in connection with counselling available to judges, assurance had not been given that rules were in place to preclude members of the judicial councils who provide advice on ethical dilemmas to judges from participating in eventual disciplinary procedures with respect to the same judges.
63. The authorities now report that, on 12 January 2021, the Plenary of the High Judicial Council had reviewed the final version of the Code of Conduct presented to it by a specifically designated internal drafting commission. The document had then been split into two parts: the Code of Conduct and the Code of Ethics. The Council had unanimously approved the first part and given it a new title: "Regulation of Declaratory Obligations" (published on 15 March 2021 as Regulation 226/2021). The assessment of the second part, which, according to the authorities, also envisaged the establishment of an advisory body for judges, had been unanimously postponed until a later stage.
64. Thereafter, the Portuguese Judges Union had brought an administrative action before the Supreme Court of Justice for suspension of Regulation 226/2021. On 14 July 2021, the Court partly granted the application and ordered the Council to remedy the illegalities found. To this end a new draft regulation had been prepared, underwent public consultation and was adopted by the Council on 8 February 2022 and entered into force on 7 April 2022.
65. As regards tax and administrative court judges, on 2 February 2021, following a public consultation procedure, a "Regulation on the reporting obligations of magistrates in matters of income, assets, interests, incompatibilities and impediments, as well as related procedures, including supervision" was adopted by the High Council for Administrative and Tax Courts (made available to GRECO). The Code of Conduct for administrative and tax court judges is being prepared too and is expected to define a framework for ethical standards, principles and duties regarding the exercise of the judicial function and the observance of obligations on declaring income, conflicts of interest, gifts and hospitality. Moreover, the review of the Regulation of judicial inspections of the High Council for Administrative and Tax Courts is underway.
66. With respect to training, the authorities refer to a course on "Ethics and Deontology – Disciplinary Law", included in the 2021-2022 annual plan of continuous training for all categories of judges elaborated by the Centre for Judicial Studies (CEJ). Ethics

and deontology are also part of the syllabus of *initial* training provided by the CEJ to judges of administrative and tax courts.

67. GRECO takes note of the steps taken in the furtherance of this recommendation which however fall short of even partly meeting its prerequisites. The text of the draft code of ethics prepared by the High Judicial Council has not been provided. The new regulation which is to replace Regulation 226/221 appears to only contain instructions pertaining to the implementation of law 52/2019 on the declaration of income and assets by judges. The code of conduct for tax and administrative court judges is still being prepared, and the implementation of the second part of the recommendation remains contingent on compliance with its first part.
68. GRECO concludes that recommendation xi remains not implemented.

Corruption prevention in respect of prosecutors

Recommendation xiii.

69. *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.*
70. GRECO recalls that this recommendation was not implemented in the Second *Interim* compliance report due to the lack of norms governing prosecutorial conduct (cf. recommendation xv below) and the insufficient criteria underpinning current evaluations/appraisals. Moreover, substantial delays in carrying out evaluations had not been dealt with.
71. The authorities reiterate the same information regarding the substantive element of the recommendation. Regarding delays in periodic inspections/evaluations, they indicate that, on 30 November 2021, the High Council of the Public Prosecution appointed three more prosecutors as inspectors of the Public Prosecution Service specifically to tackle existing delays. Moreover, all prosecutors who have not been inspected in the last eight years or more have been included in the 2021/2022 inspection/evaluation plan. A process of catching up on the most overdue inspections/evaluations is therefore under way. Between September 2021 and May 2022, 161 inspections/evaluations of public prosecutors were carried out.
72. GRECO notes the adoption, publication and entry into force of a Code of conduct for public prosecutors (cf. recommendation xv below). However, whether this Code and the integrity standards it contains can also be used as a basis/criteria for promotion and evaluation of public prosecutors remains to be clarified. That said, steps are being taken to address and overcome substantial delays in carrying out evaluations, in light of which GRECO can accept that the recommendation has now been partly complied with.
73. GRECO concludes that recommendation xiii has been partly implemented.

Recommendation xv.

74. *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.*

75. GRECO recalls that this recommendation was partly implemented in the Second Interim compliance report. GRECO had noted the development of a code of conduct for prosecutors by the High Council of the Public Prosecution and looked forward to examining its text in due time. Part (i) of the recommendation had thus been partly implemented. Part (ii) of the recommendation had remained not implemented as it largely depended on progress under the recommendation's part (i).
76. The authorities now inform that, in 2020 and in early 2021, the Code of Conduct for public prosecutors had been the object of several hearings in the High Council of the Public Prosecution and also open for public consultation. Its text (made available to GRECO) was formally adopted on 8 March 2022 and published on 14 April 2022. The Code entered into force on the day following its publication.
77. GRECO welcomes the adoption and publication of the Code of Conduct for public prosecutors as a repository of rules and guidelines on ethical conduct befitting prosecutors' status. The Code addresses conflicts of interest, gifts, invitations and hospitality as well as on-going mandatory training and professional development. The Ethics and Deontology Unit within the High Council of Public Prosecution is responsible for monitoring the implementation of the Code and issuing opinions and recommendations on prosecutors' compliance with it. However, whether breaches of the Code carry sanctions and whether the Code can be used as a basis for promotion and evaluation, as recommended, is not clear. Confidential counselling is not foreseen. For these reasons, GRECO cannot as yet accept that all the elements of the first part of the recommendation have been duly complied with. As for the second part of the recommendation, it can only be assessed once the Code serves as a basis for initial and on-going integrity training for all prosecutors. For the time being, no information in this regard has been provided. For this reason, the second part of the recommendation remains not implemented.
78. GRECO concludes that recommendation xv remains partly implemented.

III. CONCLUSIONS

79. **In view of the foregoing, GRECO concludes that Portugal has made only minor progress in connection with the fulfilment of recommendations found to be not implemented or partly implemented in the Fourth Round Second Interim Compliance Report; only three of the fifteen recommendations have been implemented satisfactorily or dealt with in a satisfactory manner.** Of the remaining recommendations, ten have now been partly implemented and two remain not implemented.
80. More specifically, recommendations ix and xiv have been implemented satisfactorily and recommendation xii has been dealt with in a satisfactory manner. Recommendations i, ii, iii, iv, v, vii, viii, x, xiii and xv have been partly implemented and recommendations vi and xi remain not implemented.
81. With respect to members of parliament, the Assembly's Rules of Procedure have been revised to provide for a more predictable law-making process, avoiding as much as possible use of unexpected and last minute agenda items. However, compliance with the new procedural timelines scheduled for various legislative procedures has not been achieved and equal access to the law-making process for all interested parties has not been provided in the Rules. Similarly, the existing normative framework for MPs has not yet properly tackled the scope of permissible contacts between MPs and third parties or established sanctions for improper acts. Although MPs' declarations of income, assets and interests are accessible online, the independent Authority for Transparency, 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 and an independent evaluation and impact assessment of the effectiveness of the conflicts of interest prevention system for MPs remains to be carried out.

82. As far as judges are concerned, further steps have only been taken in relation to the development and future maintenance of the new part of the ECLI database which is to provide easy access to final first instance court judgments online. Otherwise, the composition of judicial councils as guarantors of judicial independence has not been enhanced. The method of selection of Supreme Court judges has not been altered. A fully-fledged clear and enforceable code of conduct for judges, covering issues such as gifts and conflicts of interest has not been developed. Periodic evaluation of judges still need attention and to be in compliance with the standards of conduct.
83. Regarding the Public Prosecution Service, the adoption and publication of the Code of Conduct for prosecutors is a positive step. The Code addresses *inter alia* conflicts of interest, gifts, invitations and hospitality. However, whether breaches of the Code carry sanctions and whether the Code can be used as a basis for promotion and evaluation is not clear. Confidential counselling is not foreseen and integrity training for prosecutors based on the Code is yet to be developed and provided to all prosecutors.
84. Portugal must substantially step up its response to GRECO's outstanding recommendations. Since the vast majority of recommendations (twelve out of fifteen) remain partly implemented, GRECO has no choice but to conclude that the current level of compliance with the recommendations is "globally unsatisfactory" within the meaning of Rule 31 paragraph 8.3 of the Rules of Procedure. GRECO therefore decides to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report and asks the Head of the delegation of Portugal to provide a report on the progress made in implementing recommendations i, ii, iii, iv, v, vi, vii, viii, x, xi, xiii and xv by 30 June 2023.
85. 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.