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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 ADDENDUM TO THE SECOND COMPLIANCE REPORT SPAIN

Adopted by GRECO at its 97th Plenary Meeting
(Strasbourg, 17-21 June 2024)

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I. INTRODUCTION

1. The Second Addendum to the Second Compliance Report assesses the measures taken by the authorities of Spain to implement the recommendations issued in the Fourth Round Evaluation Report on Spain (see paragraph 2) covering "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. 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.
3. 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 outstanding recommendations (i.e. all recommendations).
4. 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 remaining recommendations (i.e. all recommendations).
5. 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.
6. In the [Second Compliance Report](#) adopted by GRECO at its 87th Plenary Meeting (25 March 2021) and made public on 30 September 2021, it was concluded that Spain had implemented satisfactorily or dealt with in a satisfactory manner six of the eleven recommendations contained in the Fourth Round Evaluation Report.
7. The [Addendum to the Second Compliance Report](#) was adopted at GRECO's 92nd Plenary Meeting (2 December 2022) and made public on 5 December 2022, following the authorisation by Spain. GRECO concluded that some progress had been made in implementing the outstanding recommendations. Seven of the eleven recommendations contained in the Fourth Round Evaluation Report had been implemented satisfactorily or dealt with in a satisfactory manner, three recommendations had been partly implemented and one recommendation remained not implemented.

8. As required by GRECO's Rules of Procedure, Spain submitted a Situation Report with additional information regarding actions taken to implement the four pending recommendations. The Situation Report was received on 21 December 2023 and served as a basis for this Second Addendum to the Second Compliance Report.
9. 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 Addendum to the Second Compliance Report were Mr. Kjartan ÓLAFSSON 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

10. The Spanish authorities indicate that in 2023 the various initiatives mentioned in the Addendum to the Second Compliance Report were halted due to the call for elections which were held on 23 July 2023. Until the new Government was formed (November 2023), the acting government could neither table legislative initiatives nor take decisions that might compromise the policy of the new Government.

Corruption prevention in respect of members of parliament

Recommendation ii

11. *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.*
12. GRECO assessed this recommendation as partly implemented in the Addendum to the Second Compliance Report. GRECO acknowledged the positive measures taken along the years to improve legislative transparency in Parliament. However, the adoption of lobbying legislation is still a pending matter in Spain. Moreover, although the Code of Conduct of Parliament establishes enhanced transparency requirements for MPs, including an obligation for parliamentarians to publish their institutional agendas, practice was at great divergence.
13. The authorities of Spain have not reported any new development.
14. GRECO notes the successive delays that have occurred regarding the adoption of lobbying legislation. Moreover, the 2023 [Report of the Office on Conflicts of Interest of Parliament](#) flagged that less than 10% of MPs publish contacts with lobbyists and other third parties who seek to influence the legislative process in their institutional agendas (even though the Code of Conduct of Parliament establishes the obligation to do so). The 2024 [Report](#) of the Office reminds parliamentarians their obligation to publish in their agendas the meetings they have held with representatives of interest groups. This situation is unsatisfactory; thus, GRECO urges the authorities to take more resolute action in this domain.
15. GRECO concludes that recommendation ii remains partly implemented.

Corruption prevention in respect of judges

Recommendation v

16. *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.*

17. GRECO concluded in the Addendum to the Second Compliance Report that this recommendation was not implemented. GRECO again reiterated the need to remove the selection of the judicial shift from politicians.
18. The authorities of Spain have not reported any new development.
19. GRECO regrets the lack of any positive outcome to implement this recommendation. GRECO refers again to the standards of the Council of Europe 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, the standards provide that judges are to be elected by their peers (following methods guaranteeing the widest representation of the judiciary at all levels) and that political authorities, such as Parliament or the executive, are not involved at any stage of the selection process¹. The long-running deadlock in the designation of the CGPJ (for more than five years now²) is a matter of critical concern, which needs to be addressed as a matter of priority.
20. GRECO concludes that recommendation v has not been implemented.

Recommendation vi

21. *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.*
22. GRECO assessed this recommendation as partly implemented in the Addendum to the Second Compliance Report. GRECO had acknowledged in some of its previous reports the steps taken to increase transparency in the appointment system of the highest ranks of the judiciary. However, it considered that more could be done to streamline the applicable requirements and procedures in this domain via further legislative/regulatory action, including by addressing areas which had proven challenging in practice. GRECO was most concerned about the stalemate reached over the appointment of top judicial positions³.
23. The authorities of Spain have not reported any new development.
24. GRECO regrets the lack of any new development in this domain. The situation is pressing. The deadlock of the CGPJ has translated into a substantial delay in the appointment of high ranks of the judiciary across the country. This is certainly a troubling situation requiring prompt and effective action.
25. GRECO concludes that recommendation vi remains partly implemented.

¹ 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](#), as well as [Opinion No. 24 \(2021\) of the Consultative Council of European Judges \(CCJE\) on Evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems](#).

² The composition of the CGPJ was due for renewal in December 2018.

³ As an interim measure until the CGPJ is renewed, Law 4/2021 prevents the acting CGPJ to appoint the president of the Supreme Court, presidents of Provincial Courts and High Courts of Justice, president of the National High Court, and presidents of Chambers and Supreme Court judges. Organic Law 8/2022 allows the Council for the Judiciary to proceed with the appointment of members of the Constitutional Court.

Recommendation ix

26. 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.
27. GRECO considered this recommendation as partly implemented in previous compliance reports. It acknowledged that component i of the recommendation had been addressed – 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 was encouraged to see that the authorities were revisiting the system of appointment of the Prosecutor General and the autonomy of the prosecution service, notably, through amendments to the Organic Statute of the Prosecution Service (OSPS). This was work in progress. GRECO also awaited additional developments regarding components ii – transparency of communication with the Government, and iii – autonomy of management (staff allocation in the different prosecutor’s offices) of recommendation ix.
28. The authorities of Spain have not reported any new development.
29. GRECO notes that the Organic Statute of the Prosecution Service (OSPS) has not yet been amended. It is recalled that the envisaged reform would encompass, *inter alia*, targeted changes in five fronts: (i) budgetary autonomy; (ii) normative autonomy; (iii) training autonomy; (iv) transparent regulation of the communications between the government and the Prosecutor General, and (v) term of tenure of the Prosecutor General (so that it does not coincide with the term of office of the Government)⁴. The aforementioned issues correspond indeed to the different components of recommendation ix and substantiate the need of further assurances of reinforced independence, transparency and autonomy of the prosecution service.
30. Given the priorities identified in the proposed reform, GRECO calls on the authorities to take determined action in this domain, including an inclusive consultation of the profession itself, in so far as any change proposed relates to the functioning of the prosecution service.
31. GRECO concludes that recommendation ix remains partly implemented.

III. CONCLUSIONS

32. **In view of the above, GRECO concludes that Spain has implemented satisfactorily or dealt with in a satisfactory manner seven of the eleven recommendations contained in the Fourth Round Evaluation Report.** Of the remaining recommendations, three have been partly implemented and one remains not implemented.
33. More specifically, recommendations i, iv, vii, viii, x and xi have been implemented satisfactorily. Recommendation iii has been dealt with in a satisfactory manner. Recommendations ii, vi and ix have been partly implemented. Recommendation v has not been implemented.

⁴ See [2021 Annual Report of the Prosecution Service](#).

34. Regarding members of parliament, specific regulation concerning lobbying still needs to be developed. Moreover, practice shows that in spite of the increased transparency requirements established by the Code of Conduct, there is much opacity regarding contacts of parliamentarians with lobbyists and other third parties who seek to influence the legislative process.
35. Concerning judges, 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 which has been halted for the time being and until the CGPJ is renewed. In this connection, it is noted that the renewal of the CGPJ has been blocked for over five years now. This is a most troubling situation; the authorities are urged to take determined action in this key area.
36. The relationship between the Prosecutor General and the executive is a topic that continues to meet public concern (as regards its perceived independence). The authorities are urged to proceed with the wider reform of the statute of the Prosecutor General, which was anticipated to review, *inter alia*, the system of appointment of the Prosecutor General and the autonomy of the prosecution service.
37. The adoption of this Second Addendum to the Second Compliance Report terminates the Fourth Round compliance procedure in respect of Spain. The authorities of Spain may, however, wish to inform GRECO of further developments with regard to the implementation of the outstanding recommendations.
38. 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.