



Adoption : 21 June 2019

Publication : 13 November 2019

**Public**

GrecoRC4(2019)12

## FOURTH EVALUATION ROUND

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

### SECOND INTERIM COMPLIANCE REPORT SPAIN

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

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## **I. INTRODUCTION**

1. The [Fourth Round Evaluation Report on Spain](#) was adopted at GRECO's 62<sup>nd</sup> Plenary Meeting (2-6 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. As required by GRECO's Rules of Procedure, the authorities of Spain submitted a Situation Report on measures taken to implement the recommendations.
3. In the [Compliance Report](#), which was adopted by GRECO at its 72<sup>nd</sup> Plenary Meeting (27 June-1 July 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) by 31 July 2017.
4. In the [Interim Compliance Report](#) adopted by GRECO at its 78<sup>th</sup> Plenary Meeting (4-8 December 2017), GRECO again qualified Spain's level of compliance with the recommendations as "globally unsatisfactory" since the total number of recommendations outstanding remained unchanged. GRECO asked the head of the Spanish delegation to provide a report on the progress made in implementing the pending recommendations (i.e. all eleven recommendations) by 31 December 2018, pursuant to paragraph 2(i) of the same rule. The deadline was extended by the Secretariat at its own initiative and, therefore, the aforementioned report was submitted on 1 March 2019; it served as a basis for this Second Interim Compliance Report.
5. 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**

*Corruption prevention in respect of members of parliament*

### **Recommendations i and iv.**

6. *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 (recommendation i)*

- *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 (recommendation iv).*
7. In the absence of far-reaching improvements of the ethics and conduct regime applicable to parliamentarians, GRECO concluded, in the Interim Compliance Report, that recommendations i and iv had not been implemented.
  8. The authorities of Spain report on key developments in these areas. On the one hand, the Congress of Deputies adopted, on 28 February 2019, a Code of Conduct for its members. The Code comprises provisions on: ethical principles; conflicts of interest; ad hoc declaration; upgraded register of interests, gifts, international electoral observations; infringements and penalties; and finally, enhanced transparency requirements. The Code also establishes a dedicated implementation authority, which is entrusted with advisory and oversight capacity, i.e. the Office on Conflicts of Interest. The latter is to issue an annual report on its activity, including recommendations for improvement of the implementation framework of the Code, as necessary.
  9. Enforcement of ethical breaches is left to the channels which are articulated in the Chamber's Rules of Procedure and are separate from the Office on Conflicts of Interest. In particular, the Speaker of the House is responsible for initiating infringement procedures. The investigation of the breach is entrusted to the Committee of Members' Statute. 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 the hearing of the deputy concerned. The recommendations to be drawn up by the Committee of Members' Statute must be published. As experience with the Code evolves, it is expected that its provisions, particularly its enforcement regime, would be formalised in the Rules of Procedure of the House, which should then be amended to that end.
  10. On the other hand, the Senate set up, in 2018, a working group made up of the different factions in the House to work in three different fronts: the elaboration of a code of conduct, the review of financial disclosures, and the regulation of lobbying. Concrete proposals (including on targeted legislative amendments and new rules) were tabled to the Senate Bureau in February 2019, but new parliamentary elections were called that month, putting on hold the adoption of all drafts. The authorities are, nevertheless, of the view that the thoughtful work of the former Senate has paved the way for imminent material improvements which will help approximate GRECO's demands in this domain.
  11. GRECO is pleased to note that a Code of Conduct and a dedicated mechanism for its implementation are now in place for the Congress of Deputies, through the Office on Conflicts of Interest, including confidential counselling. They now need to be tested by the newly elected deputies; for that reason, GRECO deems it important that training activities on this upgraded ethics framework are organised in due course. Moreover, the oversight and accountability system of the recently adopted Code is yet to be tested in practice (and regulatory adjustments may be further required). GRECO looks forward to receiving further information in this respect.
  12. GRECO further notes the action taken by the Senate to adopt a Code of its own, including by amending legislation and internal rules. GRECO trusts that the resolute steps taken by the Senate in the previous legislature will lead to tangible results

and urges the authorities to do their utmost to establish a code of ethics, accompanied by a system of confidential counselling and dedicated training, as well as a mechanism for the enforcement of breaches of such a code.

13. GRECO concludes that recommendations i and iv have been partly implemented.

**Recommendation ii.**

14. *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.*
15. GRECO took note of a legislative proposal underway to regulate lobbying, including through the establishment of a lobbyists 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 Interim Compliance Report, assessed recommendation ii as partly implemented.
16. The authorities of Spain report on the draft Anticorruption and Whistleblower Protection Law, which includes specific provisions on lobbying. The draft, which was introduced in 2014, has undergone expert consultation and awaits its adoption by the newly elected Parliament.
17. Moreover, the respective Codes of Conduct of the Congress of Deputies (adopted) and the Senate (awaiting adoption) include provisions on transparency of contacts of deputies/senators with third parties<sup>1</sup> (publication of members' agendas on the "Transparency Portal" of the Congress/Senate, third party involvement in the elaboration of legislation). Furthermore, the parliamentary subcommittee on the regime and financing of political parties also touched upon the issue of contacts of parliamentary groups with third parties and recommended the establishment of a requirement for political parties to develop their own codes of ethics; concrete proposals were tabled in this respect and await further action by the newly elected legislature. Finally, both Chambers are currently working on the amendment of their Rules of Procedures in order to introduce, *inter alia*, provisions on lobbying.
18. GRECO takes note of the efforts made by the authorities to implement the recommendation. Notably, it welcomes the inclusion of specific provisions on the transparency of parliamentarians' agendas, as well as on "legislative footprint" contained in the Code of Conduct of the Congress and the draft Code of Conduct of the Senate (indicative list, attached to a legislative initiative, of interest groups who were consulted and had significant input during the preparation of the draft).
19. Whilst the drafting of specific provisions on lobbying in a framework anticorruption law is a promising development, it needs to crystallise in practice. Five years have already lapsed since the Fourth Round Evaluation Report on Spain was issued and lobbying continues to be at the heart of parliamentary legislative work, but with no concrete results yielded.
20. GRECO concludes that recommendation ii remains partly implemented.

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<sup>1</sup> The Code of Conduct of the Congress defines lobbyist or interest group as those natural or legal persons or entities without legal personality that directly or indirectly communicate with holders of elected or public office or with their staff in favour of private, public, individual or collective interests, with the intent of modifying or influencing issues related to the elaboration, development and amendment of legislative initiatives (Article 6(2), Code of Conduct of the Congress of Deputies).

### **Recommendation iii.**

21. *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.*
22. GRECO gave credit, in the Interim Compliance Report, to the steps taken by Parliament to substantially increase the transparency of its activities on its web portal. It, however, considered that additional steps were needed to upgrade the existing financial declaration system and concluded that recommendation iii had been partly implemented.
23. The authorities of Spain indicate that parliamentarians have to record the holding of shares or other securities in companies. Most parliamentarians indicate the name of the company in which they participate. The financial interest and asset declaration form also obliges parliamentarians to communicate information about the loans they have received, including the date, the initial value, the amount to be returned and the creditor institution. They do also have to report on their incomes which come from activities other than parliamentary activities. In this regard, the financial interest and asset declaration expressly stipulates the need to provide information on the income received and its source.
24. In addition to those requirements, and pursuant to the adoption of the new Code of Conduct, deputies are now to disclose their so-called economic interests (economic interests declarations), i.e. activities performed in the past which have generated financial income – with specification of the employer’s name and the sector of activity, information on asset-holding companies, gifts, benefits and other advantages, which were obtained prior to taking up the post. Deputies are also required to provide their CVs and titles.
25. The Senate has worked in the same direction, but it did not manage to adopt the proposed reform; this task is to be resumed by the newly elected Senate. The proposal tabled comprises key improvements in financial declarations, including by requiring that they are submitted in reusable open formats; establishing mandatory periodic updates; including value of real estate and vehicles; detailing the names of the companies where senators hold stocks and shares, as well as the interest rates paid on loans obtained from financial institutions; and further articulating a control and penalty system for infringements.
26. GRECO welcomes the move made by the Congress of Deputies to require its members to disclose their economic interests prior to taking up the parliamentary mandate accordingly to the newly issued Code of Conduct. This is a step in the right direction for which the authorities must be commended. GRECO considers that further discussion can be taken as to additional categories of reporting, which were singled out in the Fourth Round Evaluation Report on Spain, notably, details on the market value of real states and vehicles, names of the companies to which the stocks and shares belong (whilst this is done nowadays by some parliamentarians on a voluntary basis, it is not a binding obligation), and interest rates paid for the credits obtained from financial institutions.
27. Moreover, GRECO understands that while the Senate engaged in a similar (and even more ambitious) path, it did not manage to pass the necessary changes. This is, therefore, a pending task in the incumbent legislature.
28. GRECO concludes that recommendation iii remains partly implemented.

**Recommendation v.**

29. 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.
30. In the Interim Compliance Report, GRECO regretted the lack of decisive action in this area and concluded that recommendation v had not been implemented.
31. The authorities of Spain report on the adoption, on 28 December 2018, of Organic Law 4/2018 on the Judiciary. Whilst it does not change the method by which the members of the CGPJ are appointed<sup>2</sup>, it does include important novelties to infuse greater transparency and accountability into the functioning of the CGPJ. In this respect, Organic Law 4/2018 establishes: full-time dedication of all members of the CGPJ, more prominence of the CGPJ's plenary (thereby eliminating the prior presidential management system), qualified majorities in decision-making processes, accounting to Parliament on general activity, and greater transparency in the appointment of the higher ranks of the judiciary (see also paragraph 39). Organic Law 4/2018 also establishes targeted measures for mainstreaming gender equality: equal gender representation in the CGPJ, entry tests including specific questions on equality and non-discrimination, gender equality initial (mandatory) and in-service training, etc.
32. GRECO acknowledges the efforts undertaken by the authorities in this area to strengthen internal democracy, transparency and accountability in the working methods of the CGPJ. Having said that, GRECO regrets that the important work carried out by the Subcommittee of Justice in the Congress concerning the issue of the composition of the CGPJ had failed in Parliament, in particular, the need to remove the selection of the judicial shift from politicians. GRECO considers that this has been a missed opportunity to remedy what has proven to become, in citizens' eyes, the Achilles' heel of the Spanish judiciary: its alleged politicisation.
33. Public outcry about the latter weakness was particularly acute in November 2018 as the new CGPJ was being formed. On that occasion, information leaked out about political parties horse-trading for appointment to key judicial positions. The 2019 EU Justice Scoreboard shows that the independence of justice among both the general public and companies is perceived more severely than in previous years. Judicial associations are also markedly critical in this regard.
34. Against this background, GRECO can only recall its view that the establishment of judicial councils is generally aimed at better safeguarding the independence of the judiciary – in appearance and in practice. The result in Spain continues to be, unfortunately, the opposite, as already highlighted in the Fourth Round Evaluation Report and confirmed by recent events in the country. This is not to say that the independence of individual judges is questioned; GRECO has repeatedly been clear in this respect and wishes to do so again: there is no doubt about the independence and impartiality of judges on the bench (see also paragraph 3, Fourth Round Evaluation Report on Spain; paragraph 78, Interim Compliance Report on Spain).
35. At the time of the evaluation visit, in 2013, GRECO stressed that when the governing structures of the judiciary are not perceived to be impartial and

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<sup>2</sup> The authorities explain that the proposal of the Subcommittee of Justice in the Congress, to provide for the twelve members of judicial origin of the CGPJ to be directly elected by their peers, was rejected by Parliament (by a narrow margin of 52% against 48%).

independent, this has an immediate and negative impact on the prevention of corruption and on public confidence in the fairness and effectiveness of the country's legal system. Six years later the situation is the same and, therefore, recommendation v cannot be considered implemented. GRECO reiterates its view that political authorities shall not be involved, at any stage, in the selection process of the judicial shift.

36. GRECO concludes that recommendation v has not been implemented.

**Recommendation vi.**

37. *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.*
38. GRECO noted the lack of any legislative development to lay down objective criteria and evaluation requirements for the higher ranks of the judiciary and, therefore, concluded that recommendation vi had not been implemented.
39. The authorities of Spain explain that the new Organic Law 4/2018 on the Judiciary introduces substantial novelties aimed at infusing greater transparency and accountability vis-à-vis top ranks (Article 326(2) of Organic Law 4/2018). More particularly, the appointment system of Chamber Presidents and judges of the Supreme Court (*Tribunal Supremo*), President of the National Court (*Audiencia Nacional*), Presidents of Provincial Courts (*Audiencias Provinciales*) and Presidents of the High Courts of Justice (*Tribunales Superiores de Justicia*), has been updated and modernised according to the following main features:
- Obligation to include in the public call for candidatures the relevant selection criteria and evaluation requirements of the post, conduct of public hearing, and written justification of the appointment decision, including a reasoned report on gender mainstreaming
  - Appointment decision of the CGPJ requires a qualified majority of three fifths
  - Review of period of tenure which is now capped at five years, renewable once
  - Financial disclosure obligations (same content and format as those required for top executive officials)
  - Strengthened conflict of interest regime, notably, regarding recusal and revolving-door requirements.
40. Furthermore, in order to comply with the provisions of Article 326 (2) of the Organic Law 4/2018 on the Judiciary, on 31 January 2019, the CGPJ's plenary adopted an agreement to set up a working group, which would analyse and formulate recommendations on the content of future calls for candidatures. At its meeting on 9 May 2019, the plenary took note of the conclusions of that working group, which set out the criteria for drawing up the relevant selection rules, including both the merits to consider and the weighting of each of the merits in the overall assessment of each candidate. These criteria have already been included in the calls for candidatures of five Presidents of Provincial Courts (Albacete, Lleida, Toledo and Zamora) and of the President of a Chamber for Social Affairs of a High Court of Justice (Aragón), which were advertised in the Official Gazette on 14 May 2019.
41. GRECO welcomes the steps taken by the authorities to strengthen transparency and accountability in the appointment system of the highest ranks of the judiciary. The

combination of the triple requirement of (i) a public call for candidatures specifying the requirements and criteria of the post advertised; (ii) a public hearing; and (iii) a reasoned written motivation of the appointment decision, has the potential to meet recommendation vi.

42. Having said that, GRECO is not fully convinced as to the procedure that the CGPJ has now followed to define criteria and evaluation requirements for the highest functions of the judiciary. Firstly, they are being fixed for each individual call for applications, rather than - on a more general basis - per type of court (i.e. Supreme Court, National Court, Provincial Court, and High Court of Justice). In theory (since practice with the new system is yet to be developed), this could entail the risk that requirements for each call be tailored with a specific outcome (candidate) in mind. Secondly, GRECO's recommendation specifically expressed a preference for objective criteria to be laid down in law/regulation. This would presuppose (in accordance with Article 560(2) of the Law on the Judiciary) that judicial associations are consulted in such a process; GRECO has further been made aware of the discomfort felt by the profession in this connection.
43. It is recalled that, while seniority is the main criterion for promotion or transfer of all other posts in the judiciary, this is not the case for the highest functions of the judiciary where other factors play a role. For GRECO, when promotions are not based on seniority, but on qualities and merits, it is pivotal that they are clearly defined and objectively assessed. GRECO notes that, in the Spanish case, experience with these key appointments has triggered criticism, not only from the public, but also from the profession itself, because of the alleged opacity and discretion of the relevant procedures and decisions of the CGPJ. Whilst Regulation 1/2010 on High Appointments in the Judiciary (and several Supreme Court decisions) already outlined some criteria on which the CGPJ should base these appointments, the reality proved different. The concerns already expressed in relation to recommendation v (perception of politicisation of CGPJ) add to all this. In the light of this, practice with the new framework will be crucial. GRECO looks forward to receiving further information in this respect.
44. GRECO concludes that recommendation vi has been partly implemented.

#### **Recommendation vii.**

45. *GRECO recommended that (i) a code of conduct for judges be adopted and made easily accessible to the public; and (ii) that it be complemented by dedicated advisory services on conflicts of interest and other integrity-related matters.*
46. GRECO, in the Interim Compliance Report, welcomed the adoption of a Code of Conduct for judges in 2016, in line with the first component of recommendation vii. The second component of this recommendation was put on hold pending operability of the Commission of Judicial Ethics, which appointment process was underway. Therefore, GRECO assessed recommendation vii as partly implemented.
47. The authorities of Spain highlight that the members of the Commission on Judicial Ethics were proclaimed by agreement of the CGPJ's Standing Committee on 26 April 2018. Since its establishment, the Commission has been fulfilling its advisory tasks and has issued several [reports and opinions](#) on integrity-related matters which are available online (e.g. on the use of social networks, on impartiality and neutrality, on mediation and incompatibility, on conflicts of interest and nepotism, etc.).
48. GRECO welcomes the efforts displayed in this area which confirm the commitment of the Spanish judiciary to uphold to strict ethical standards - the proactive advisory



work of the Commission of Judicial Ethics since its very inception is commendable - and concludes that recommendation vii has been implemented satisfactorily.

**Recommendation viii.**

49. *GRECO recommended extending the limitation period for disciplinary procedures.*
50. In the absence of any concrete result in this domain, GRECO, in its Interim Compliance Report, assessed recommendation viii as not implemented.
51. The authorities of Spain submit that, pursuant to the new Organic Law 4/2018 on the Judiciary (Article 425), the limitation period for disciplinary procedures against judges has been extended from six months to one year, and thereby brought in line with the applicable deadline for proceedings against judicial secretaries and civil servants working in the judicial administration.
52. GRECO welcomes the extension of the limitation period for disciplinary procedures involving judges, as recommended, and concludes that recommendation viii has been implemented satisfactorily.

*Corruption prevention in respect of prosecutors*

**Recommendation ix.**

53. *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.*
54. GRECO acknowledged that the first component of the recommendation had been duly considered, but urged the authorities, in the Interim Compliance Report, to take more substantiated improvements to provide for greater autonomy of the prosecution service, in particular, with respect to components ii – transparency of communication with the Government, and iii – greater financial autonomy. GRECO considered this recommendation as partly implemented.
55. The authorities of Spain state that a draft Regulation on the Prosecution Service, which is currently in the hands of the Prosecution Council for consultation, further articulates rules on internal autonomy. Notably, it sets out the regime for issuing orders in the Prosecutor's Office, so that the orders from the superiors are to be 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. Further, some good practice has emerged in this domain with the Government putting all its communications with the Prosecutor General in writing and making them available at the website of the Ministry of Justice.
56. On the other hand, from October 2018, the General State Prosecutor's Office has for the first time its own header in the Official Journal, entitled "Public Prosecutor". So far, the publications appeared under the general heading "Administration of Justice". Likewise, greater autonomy is now in place regarding training of prosecutors: creation of the position of Director of Training for the prosecution service (who is appointed at the proposal of the Prosecutor General among

prosecutors), exclusive responsibility of the prosecution service regarding training plans, specific budgetary heading for the training of prosecutors<sup>3</sup>. The authorities consider that such moves go in the direction of improving the perception of financial autonomy of the Public Prosecutor's Office.

57. GRECO takes note of the draft amendments to the Regulation on the Prosecution Service. The reported developments shed more light on how communication in the service is to take place, but they do not specifically tackle the issue of communication between the Prosecutor General and the Government. While GRECO welcomes the practice developed by the Government of putting all its communications with the Prosecutor General in writing and making them available online, this needs to be further formalised. The authorities are therefore yet to galvanise this good practice into clear requirements and procedures in law, as recommended. Thus, the second component of recommendation ix cannot be considered fulfilled.
58. With regard to the third component of recommendation ix, GRECO welcomes the measures taken to provide for greater autonomy in the management of the means of the prosecution services. Two outstanding matters highlighted in the Fourth Round Evaluation Report have now been addressed, i.e. a separate budgetary heading for the prosecution service and control of the latter over its training planning. However, GRECO expressed criticism 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 a key guarantee of the independence and efficiency of the prosecution service<sup>4</sup>. No new details have been provided in this respect and, hence, this third part of recommendation ix cannot be assessed as fully met.
59. GRECO concludes that recommendation ix remains partly implemented.

#### **Recommendation x.**

60. *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.*
61. GRECO, in the Interim Compliance Report, took note of the on-going drafting of a code of conduct for prosecutors and assessed this recommendation as partly implemented.
62. The authorities of Spain provide an update on the drafting of the code of conduct for prosecutors: the work of drafting the Code of Ethics for the Prosecutor's career carried out by the Ethics Commission of the Prosecutors Council materialised into a Report on the Ethical and Deontological Commitment of Spanish Prosecutors, which was unanimously adopted by agreement of the Prosecutor's Council in its plenary meeting of 12 December 2018. It outlines the principles, duties and virtues that constitute the basis for reflection and debate (e.g. legality, impartiality, objectivity, efficiency, integrity, honesty, responsibility, equal treatment, confidentiality, transparency, etc.). As a code of conduct, it also sets out the commitments related, *inter alia*, to internal and external relations, conflicts of interest, use of public resources, training rights and duties, etc.
63. The drafting process of the code reportedly follows a bottom-up approach with consultation of the prosecutorial ranks. Accordingly, on 9 January 2019, the

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<sup>3</sup> [Royal Decree 312/2019 on the Statute of the Centre of Judicial Studies](#)

<sup>4</sup> See also [Opinion no.7 of the Consultative Council of European Prosecutors](#)

Prosecutor General sent to all prosecutors a formal presentation letter of the aforementioned commitment, underlying the participatory nature of the preparation of the Code of Ethics, and announcing the launching of a dedicated transparency portal on the prosecution service's website. Subsequently, five questionnaires were distributed to prosecutors and one to media representatives. Based on the comments obtained (participation rate has reportedly been high), the Ethics and Deontology Prosecutor's Commission will prepare the final text of the Code of Ethics, which is expected to be adopted by the Prosecutor's Council in 2019. In addition, on 1 and 2 April 2019, a face-to-face training activity was organised by the Prosecutor's Council on the premises of the General Prosecutor's Office to encourage the dissemination of the principles of professional ethics.

64. The Ethics and Deontology Prosecutor's Commission is granted advisory functions, as well as the task of assessing and updating the text and managing the portal on professional ethics and deontology.
65. Finally, it is foreseen that, as a default rule and whenever applicable, the texts on ethics and deontology of Spanish judges and magistrates, and failing that, the principles and rules of public employees apply.
66. GRECO wishes to stress the importance to establish a code of ethics particularly devoted to prosecutors and urges the authorities to take more resolute action in finalising this process. While GRECO values positively the consultation process upon which the prosecution service has embarked, it also considers that, five years after the adoption of the Fourth Round Evaluation Report on Spain, concrete outcomes are overdue.
67. GRECO concludes that recommendation x remains partly implemented.

#### **Recommendation xi.**

68. *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.*
69. GRECO took note, in the Interim Compliance Report, of the steps underway to further articulate the disciplinary system of the prosecution service. However, pending adoption of the anticipated rules (draft Statute of the Prosecution Service), GRECO concluded that recommendation xi had been partly implemented.
70. The authorities of Spain now indicate that, rather than amending the 1981 Statute of the Prosecution Service, they would amend the 1969 Regulation on the Prosecution Service. In their view, the latter is the most appropriate instrument for dealing with the disciplinary proceedings of Prosecutors. While the Statute of the Prosecution Service provides for the basis and general principles, it is for its regulatory development to establish a detailed procedure with all due guarantees. Nevertheless, the reform of the Statute of the Prosecution Service is foreseen in the present legislature.
71. In the framework of such amendments, a specific section (Title IX) deals with the disciplinary regime. 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. The proposed draft has recently been passed over for consultation to the Prosecution Council.

72. 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 have not yet yielded tangible results. The consultation process at the Prosecution Council is on-going and a draft text is not available. GRECO expects both coordinated and resolute action in this field.
73. GRECO concludes that recommendation xi remains partly implemented.

### **III. CONCLUSIONS**

74. **In view of the above, GRECO concludes that Spain has now made some progress as regards the implementation of the recommendations found to be partly or not implemented in the Fourth Round Compliance Report. Two of the eleven recommendations contained in the Fourth Round Evaluation Report have been implemented.** In addition, eight recommendations have been partly implemented. One recommendation remains not implemented.
75. More specifically, recommendations vii and viii have been implemented satisfactorily. Recommendations i, ii, iii, iv, vi, ix, x and xi have been partly implemented. Recommendation v has not been implemented.
76. GRECO is pleased to note the consensus reached in the former legislature as to the enhancement of the integrity framework of the Congress of Deputies, which ultimately lead to the adoption of a Code of Conduct and a dedicated body for its implementation. The Code introduces inter alia additional disclosure requirements for deputies (now extending to economic interests held prior to taking up parliamentary duties, as well as gifts and invitations), as well as reinforced transparency obligations (e.g. publication of deputies agendas, including contacts with third parties). GRECO also welcomes the steps made by the Senate to strengthen its integrity regime; it is important that the concrete proposals tabled before the April 2019 elections are taken over by new members and the different legislative/regulatory proposals are effectively enacted. Further, specific provisions on lobbying are included in a framework Anticorruption Bill which was prepared under the former legislature and was subject to broad consultation; it now needs to materialise in practice.
77. Some steps have also been taken to advance implementation of the recommendations issued in relation to the judiciary. Factual developments are tracked regarding the adoption of ethical standards and the establishment of a dedicated advisory body in their respect, i.e. the Commission of Judicial Ethics. Likewise, Organic Law 4/2018 on the Judiciary was adopted in December 2018; it introduces several novelties aimed at infusing greater transparency and accountability into the highest bodies of the profession.
78. In spite of some of the positive features introduced by the law (which effective implementation is to be tested in practice), the public debate on the perceived politicisation of justice remains topical; critically it revolves around the appointment system of the General Council of the Judiciary (CGPJ) and top ranks of the judiciary. Further improvements are still required in this regard and practice is yet to prove the effectiveness of the newly introduced rules and procedures. Additionally, the prosecution service needs to take more decisive action regarding

implementation of the outstanding recommendations, which call for targeted improvements on the autonomy, integrity and accountability fronts.

79. In view of the abovementioned positive on-going developments, GRECO concludes that the current level of compliance with the recommendations is no longer "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. It therefore decides not to continue applying Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.
80. Pursuant to paragraph 8.2 of Rule 31 of the Rules of Procedure, GRECO requests the Head of the Spanish delegation to provide a report regarding the action taken to implement the pending recommendations (i.e. recommendations i, ii, iii, iv, v, vi, ix, x and xi) by 30 June 2020.
81. 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.