



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

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Adoption: 2 December 2022
Publication: 5 December 2022

Public
GrecoRC4(2022)16

FOURTH EVALUATION ROUND

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

ADDENDUM TO THE SECOND COMPLIANCE REPORT SPAIN

Adopted by GRECO at its 92nd Plenary Meeting
(Strasbourg, 28 November- 2 December 2022)

I. INTRODUCTION

1. This 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 by 30 June 2020. The reporting deadline was extended by the Secretariat at its own initiative and the aforementioned report was submitted on 30 September 2020; it served as a basis for this Second Compliance Report.
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. Spain was asked to submit additional information on the five outstanding recommendations, namely recommendations ii, v, vi, ix and xi. The information was received on 31 March 2022 and served as the basis for this Addendum.
7. 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 Ms Ásthildur VALTYSDÓTTIR 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

Recommendation ii

8. *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.*
9. GRECO assessed this recommendation as partly implemented in the Second Compliance Report. GRECO acknowledged the positive measures taken along the years to improve legislative transparency in Parliament. It further took note of the reported intention of the authorities to regulate lobbying and considered this a welcome initiative, which had to effectively materialise. GRECO reiterated the need to provide guidance to parliamentarians, for not only transparency, but also integrity and accountability purposes, on "do's and don'ts" in their relations with lobbyists, inside or outside Parliament.
10. The authorities of Spain indicate that two different proposals on lobbying have been tabled in Parliament (one by the government party and the other from the opposition)¹. Their discussion is ongoing.
11. GRECO notes the successive delays that have occurred regarding the adoption of lobbying legislation, a long-awaited reform, which nevertheless continues lingering in Parliament. GRECO also notes that the Code of Conduct of Parliament introduces enhanced transparency requirements, particularly as it establishes an obligation for parliamentarians to publish their institutional agendas, including contacts with lobbyists and other third parties. However, practice is at great divergence in this respect, as evidenced on the website of Parliament: more than half of parliamentarians have not posted their institutional agendas and the content of those published online are at significant variance and do not systematically show contacts with lobbyists or third parties who seek to influence the legislative process. A recent [Report of the Office on Conflicts of Interest of Parliament](#), which was issued in July 2022 (the first report of the Office since it started its operation), also flags this unsatisfactory situation. This confirms the need to take more determined action in this domain.
12. GRECO concludes that recommendation ii remains partly implemented.

Corruption prevention in respect of judges

Recommendation v

13. *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.*
14. GRECO concluded in the Second Compliance Report that this recommendation was

¹ See https://www.congreso.es/public_oficiales/L14/CONG/BOCG/B/BOCG-14-B-165-1.PDF and https://www.congreso.es/public_oficiales/L14/CONG/BOCG/B/BOCG-14-B-166-1.PDF.

not implemented. GRECO again reiterated the need to remove the selection of the judicial shift from politicians.

15. The authorities of Spain indicate that negotiations on the renewal of the General Council of the Judiciary (CGPJ) were resumed in October 2022; they were nevertheless halted at the end of that very same month.
16. 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 process². Last but not least, the four-year deadlock in the designation of the CGPJ is a matter of critical concern, which needs to be addressed as a matter of priority (for some of the consequences of this situation, see below under recommendation vi).
17. GRECO concludes that recommendation v has not been implemented.

Recommendation vi

18. *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.*
19. GRECO assessed this recommendation as partly implemented in the Second Compliance Report. While GRECO acknowledged the steps taken to increase transparency in the appointment system of the highest ranks of the judiciary, 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 have proven challenging in practice.
20. The authorities of Spain indicate that, since the renewal of the General Council of the Judiciary (CGPJ) has not taken place, there is nothing new to report in this area.
21. GRECO regrets the lack of any new development in this domain. It further notes that, following a reform in March 2021 specifying the *ad interim* regime for the General Council for the Judiciary (Organic Law 4/2021), the acting Council cannot proceed to make appointments for top judicial positions³. This is a most troubling situation.
22. GRECO concludes that recommendation vi remains partly implemented.

Corruption prevention in respect of prosecutors

Recommendation ix

² 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](#).

³ The law prevents the acting Council 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. Subsequently, Organic Law 8/2022 allows the Council for the Judiciary to proceed with the appointment of members of the Constitutional Court.

23. 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.
24. 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 called for additional action to fully meet components ii – transparency of communication with the Government, and iii – autonomy of management (staff allocation in the different prosecutor's offices).
25. In the context, of the planned reform of the Criminal Procedure Act (*Ley de Enjuiciamiento Criminal*), aimed at establishing the leading role of prosecutors at the pre-trial stage (*fase de instrucción*), GRECO reiterated the need for further reflection on the additional safeguards that could be introduced in the Spanish prosecution system to shield it from undue interference and encouraged the authorities to think expansively in this respect.
26. The authorities of Spain now indicate that the Regulation of the Prosecution Service ([Royal Decree 305/2022](#)), which was adopted on 3 May 2022, establishes rules regarding the internal autonomy of the prosecution service, as indicated in the third component of recommendation ix. Its adoption is of particular relevance given that the previous one dated from 1969, prior to the enactment of the Spanish Constitution and the Organic Statute of the Prosecution Service (OSPS). This Regulation includes a reference to the definition, the constitutional nature, the guiding principles of the institution and the determination of the legal framework, the classification of the various categories that make up the prosecutorial career, and the regulation of the acquisition and loss of the status of member of the prosecution service. Also, the administrative situations, leaves, duties and rights, reassignment measures and substitutions, incompatibilities, prohibitions, and responsibilities of the members of the prosecution service. In particular, it provides for more flexibility for staff allocation – in this sense, Title III refers to the process for filling positions, including temporary assignments, relocations, and substitutions.
27. Moreover, Article 7 of the aforementioned Regulation enshrines the principle of impartiality, pursuant to which, the prosecution service is not subject to orders, instructions, or indications. In addition, the Regulation establishes the principle of publicity, in the Official Journal (or through other publication means), of the resolutions of the Prosecutor General regarding appointments, removals and detachments, as well as the summonses or notices that according to the applicable regulations must be published.
28. The authorities further report on the adoption of [Royal Decree 147/2022](#), which regulates the system of substitutions and support or reinforcement measures within the prosecution service and establishes possible ways to replace positions within the service, as well as the procedure to follow in order to reinforce its human resources. Accordingly, [Royal Decree 306/2022](#) provides for the enhancement of personnel of the prosecution service.
29. GRECO takes note of the new measures reported and the increase of staff in the prosecution service, a welcome development in the context of the criminal justice reform. That said, GRECO understood from previous compliance reports that the authorities intended to amend the Organic Statute of the Prosecution Service (OSPS). Such amendments targeted, *inter alia*, some of the key issues raised in

recommendation ix, including the system of appointment of the Prosecutor General and the autonomy of the prosecution service. The [2021 Annual Report of the Prosecution Service](#) calls for a new OSPS and 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). 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. GRECO notes, however, that the envisaged wider reform of the OSPS has not yet happened. GRECO calls on the authorities to pursue their action in this domain, including through an inclusive consultation.

31. GRECO concludes that recommendation ix remains partly implemented.

Recommendation xi

32. *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.*

33. GRECO assessed this recommendation as partly implemented in the Second Compliance Report: it took note of draft regulation which would, *inter alia*, deal with the disciplinary system of the prosecution service, but which adoption was still pending.

34. The authorities of Spain now indicate that the Regulation of the Prosecution Service ([Royal Decree 305/2022](#)), which was adopted on 3 May 2022, includes *inter alia* specific rules on discipline (Title IX)⁴. Based on the provisions of the Organic Statute of the Prosecution Service (OSPS), the Regulation sets the procedure to determine the disciplinary responsibility that members of the prosecution service may incur in for actions or omissions considered as misconduct, according to their different seriousness, and the corresponding sanctions. The authorities further stress that in cases of sexual harassment, discriminatory harassment or sex or violence-based harassment at work, the Regulation specifically establishes that disciplinary action must particularly safeguard the requirements of objectivity, confidentiality, swiftness, and security.

35. The new institution of the Prosecutor for Disciplinary Action (*Fiscal Promotor de la Acción Disciplinaria*) is endowed with the task of initiating and carrying disciplinary proceedings, without prejudice to the power of the Chief Prosecutors to sanction, through prior warning, the commission of minor disciplinary infringements. The Public Prosecution Inspectorate (*Inspección fiscal*) is in charge of preliminary actions, which can urge the Prosecutor Promoting Disciplinary Action to initiate disciplinary proceedings or can decide to open informative proceedings in order to check the actions essential to verify the credibility of the reported facts. Additionally, the Prosecutor for Disciplinary Action may specify that the mentioned facts contain indications of, or may constitute, a disciplinary infringement and s/he identifies their

⁴ The Regulation of the Prosecution Service also refer to the definition, the constitutional nature, the guiding principles and the legal framework of the prosecution service, followed by the classification of the various categories that make up the prosecutorial career, the regulation of the acquisition and loss of the status of member of the prosecution service, as well as other different aspects of professional career, i.e. duties and rights, prohibitions and responsibilities, provision of assignments and substitutions, periods of leave, incompatibilities, etc.

alleged author or authors; or he/she may decide the direct submission to the competent Chief Prosecutor, in the event of a minor infringement.

36. The disciplinary file is under the jurisdiction of the Prosecutor for Disciplinary Action, who will carry out all the proceedings *ex officio*. S/he may request the precautionary measure of provisional suspension of functions of the likely sanctioned prosecutor, when there are reasonable indications of the commission of a very serious disciplinary offence, for a period that may not exceed six months. S/he will close the file with a proposed resolution that will be submitted to the Prosecutor General and onwards to the competent authority for the imposition of sanctions, as per the provisions of Article 67 of the OSPS. The investigative phase of the disciplinary file shall not last more than one year, with the possibility of extension for another three months.
37. The Regulation further elaborates on the disciplinary proceedings and its guarantees, including, non-retroactivity of unfavourable penalty provisions, adversarial process, proportionality, and culpability. It also foresees cases of recusal for the Prosecutor for Disciplinary Action and establishes counterbalance mechanisms (e.g. actions may be returned if there is a need for other evidence, which was not admitted, and was not assessed and practiced in due time) and means of appeals (internal before the Prosecutorial Council and external before the administrative court). Finally, detailed provisions are in place regarding the statute of the Prosecutor for Disciplinary Action, notably, in terms of his/her competence and powers, appointment and dismissal, and material and personal means.
38. GRECO welcomes the additional rules on discipline introduced by the Regulation of the Prosecution Service. The system is similar to the one applicable to judges. GRECO recalls that the Organic Statute of the Prosecution Service (OSPS) defines specific disciplinary offences (petty, serious and very serious offences) and lays down a range of sanctions starting from warning and censure and culminating with the most serious measure of dismissal from office (see paragraphs 162-163, Fourth Round Evaluation Report on Spain). The recently issued Regulation further articulates disciplinary proceedings, including through the creation of the so-called Prosecutor for Disciplinary Action (*Fiscal Promotor de la Acción Disciplinaria*) who is responsible for initiating and carrying out disciplinary proceedings. The right to be heard of the prosecutor concerned, in adversarial proceedings, is preserved at all times. Appeal channels are also available.
39. GRECO concludes that recommendation xi has been implemented satisfactorily.

III. CONCLUSIONS

40. **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.
41. 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.
42. 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.

43. 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, there is now a four-year deadlock in the designation of the CGPJ. This is a highly unsatisfactory situation; the authorities are urged to take determined action in this key area.
44. With respect to prosecutors, a new Public Prosecutor's Regulation has been adopted. This is a welcome development which regulates, *inter alia*, the discipline regime for prosecutors. That said, 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. It will be important to ensure that this reform process includes a consultation phase with the profession itself, in so far, any change proposed is related to the functioning of the prosecution service and as the priorities involved.
45. Since four (out of eleven) recommendations are yet to be implemented, GRECO in accordance with Rule 31 rev, paragraph 9 of its Rules of Procedure, asks the Head of the delegation of Spain to submit additional information regarding the implementation of recommendations ii, v, vi and ix by 31 December 2023.
46. 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.