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## **Third Evaluation Round**

### **Second Compliance Report on Spain**

#### **"Incriminations (ETS 173 and 191, GPC 2)"**

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#### **"Transparency of Party Funding"**

Adopted by GRECO  
at its 60<sup>th</sup> Plenary Meeting  
(Strasbourg, 17-21 June 2013)

## **I. INTRODUCTION**

1. The Second Compliance Report assesses further measures taken, by the authorities of Spain since the adoption of the Compliance Report in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on Spain. It is recalled that the Third Evaluation Round covers two distinct themes, namely
  - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
  - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
2. The Third Round Evaluation Report was adopted at GRECO's 42<sup>nd</sup> Plenary Meeting (15 May 2009) and made public on 28 May 2009, following authorisation by Spain (Greco Eval III Rep (2008) 3E, [Theme I](#) and [Theme II](#)). The subsequent Compliance Report was adopted at GRECO's 50<sup>th</sup> Plenary meeting (1 April 2011) and made public on 12 April 2011, following authorisation by Spain ([Greco RC-III \(2011\) 5E](#)).
3. As required by GRECO's Rules of Procedure, the Spanish authorities submitted their Second Situation Report with additional information regarding action taken to implement the recommendations that were partly implemented or not implemented, according to the Compliance Report. This report, which was received on 31 October 2012, served as a basis for the Second Compliance Report.
4. GRECO selected Estonia and Italy to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed for the Second Compliance Report were Mr Urvo KLOPETS (Estonia) and Mr Alessio SCARCELLA (Italy). They were assisted by GRECO's Secretariat in drawing up the Second Compliance Report.

## **II. ANALYSIS**

### **Theme I: Incriminations**

5. It is recalled that GRECO in its Evaluation Report addressed 9 recommendations to Spain in respect of Theme I. Recommendations i, ii, vii, viii and ix were considered satisfactorily implemented or dealt with in a satisfactory manner. Recommendations iii, iv, v and vi were considered as partly implemented.

#### **Recommendation iii.**

6. *GRECO recommended to (i) clarify the notion of foreign public official; (ii) enlarge the scope of Article 445 PC concerning active bribery of foreign officials and officials of international organisations beyond situations involving international business transactions; (iii) criminalise passive bribery of foreign officials and officials of international organisations; and (iv) ensure that bribery of members of foreign public assemblies, international parliamentary assemblies (other*

*than members of the European Parliament), as well as judges and officials of international courts (other than those serving in the International Criminal Court) is criminalised.*

7. GRECO recalls that in the RC-report it welcomed the amendments introduced to the Penal Code (PC) to reformulate bribery offences and the particular changes introduced with respect to the offence of bribery of foreign officials and officials or agents of public international organisations. The recommendation was assessed as partly implemented since GRECO remained dubious as to whether active bribery of foreign officials and international organisations beyond situations involving international business transactions (recommendation iii, part ii), as well as passive bribery of those categories of officials (recommendation iii, part iii), were indeed covered in legislation.
8. The authorities of Spain now report on recent efforts undertaken in this area: amendments to the PC have been drafted, pursuant to which there is a new Article 426 that includes a definition of foreign public officials and officials of international organisations – which comprises the different categories of persons covered by the Criminal Law Convention on Corruption (ETS 173), cf. paragraph 19 RC-Report – and extends the application of Articles 419 to 452 on active and passive bribery of domestic public officials to foreign officials and officials of international organisations. In addition, the aforementioned draft amendments provide for a separate autonomous offence of bribery of foreign public officials in international business transactions in Article 286quater, which is then governed by specific jurisdiction provisions in Article 286quinquies.
9. GRECO is pleased to note that the authorities have paid due consideration to the outstanding concerns raised in recommendation iii and that new amendments to the PC have been drafted to cover unequivocally all instances of active and passive bribery of foreign officials and officials or agents of public international organisations.
10. Pending adoption of the reported draft amendments to the PC, GRECO can only conclude that recommendation iii remains partly implemented.

#### **Recommendation iv.**

11. *GRECO recommended to (i) review Article 422 (bribery of jurors and arbitrators) of the Penal Code to ensure that the criminalisation of bribery of jurors and arbitrators is in line with the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191); and (ii) criminalise bribery of foreign arbitrators and jurors.*
12. GRECO welcomed in the RC-report the new wording of the Penal Code (PC) which, in Article 423, specifically criminalised bribery of domestic jurors and arbitrators. GRECO noted the intention of the authorities to introduce further legislative changes to criminalise bribery of foreign jurors and arbitrators.
13. The authorities of Spain reiterate their plans to introduce amendments to the Penal Code in order to provide for the criminalisation of bribery of foreign jurors and arbitrators.
14. GRECO urges the authorities to criminalise bribery of foreign jurors and arbitrators; until this is done, GRECO can only conclude that recommendation iv remains partly implemented.

### **Recommendation v.**

15. *GRECO recommended to criminalise bribery in the private sector in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173).*
16. GRECO positively assessed in the RC-Report the amendments introduced in legislation to criminalise bribery in the private sector (an area where specific provisions were lacking in the past), pursuant to Article 286bis PC. GRECO, however, remained dubious as to whether the aforementioned offence of bribery in the private sector covered the request, receipt or acceptance of the promise of an undue advantage. Consequently, GRECO assessed recommendation v as partly implemented.
17. The authorities of Spain refer to Article 286bis PC and the way in which the offence of passive bribery (Article 286bis, paragraph 2) has been crafted to mirror the active side which clearly criminalises the promising, offering or giving of an undue advantage (Article 286bis, paragraph 1). Therefore, according to the authorities, there is no doubt that the offence of bribery in the private sector covered the request, receipt or acceptance of the promise of an undue advantage. Moreover, the authorities indicate that the draft amendments to the PC which criminalise the offence of abuse of position in the private sector (Article 252) should suffice, since the perpetrator of the offence would cover anyone who has management powers in the company concerned.
18. GRECO takes note of the clarification of the Spanish authorities re-stating that the provision on passive bribery in the private sector (Article 286bis(2)) mirrors that of active bribery in the private sector (Article 286bis(1)) and thereby covers the request, receipt or acceptance of the promise of an undue advantage. However, as this conclusion diverges from the clear letter of the law, which describes the conducts of active and passive bribery in autonomous provisions, it remains to be seen whether jurisprudence will endorse this interpretation by analogy. As to the information provided by the authorities concerning the offence of abuse of authority in the private sector and its pertinence to address recommendation v, GRECO notes that the Criminal Law Convention on Corruption (ETS 173) is clear as to the coverage of the perpetrators of the offence of bribery in the private sector, i.e. “any persons, who direct or work for, in any capacity, private sector entities”; therefore, not restricting its scope to just those who are entrusted with management positions.
19. GRECO concludes that recommendation v remains partly implemented.

### **Recommendation vi.**

20. *GRECO recommended to (i) criminalise active trading in influence as a principal offence; (ii) criminalise trading in influence in relation to foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies and judges and officials of international courts; and (iii) clarify beyond doubt that immaterial advantages are covered by the relevant trading in influence provisions in the Penal Code.*
21. GRECO gave credit in the RC-Report to the efforts made by the authorities to align the offence of trading in influence in Articles 428 and 429 PC with the Criminal Law Convention on Corruption (ETS 173). It remained dubious, however, as to the criminalisation of active trading in influence and the coverage of the relevant trading in influence provisions with respect to foreign and international officials. In the absence of additional clarifications on the aforementioned misgivings,

referring to parts (i) and (ii) of recommendation vi, GRECO considered the recommendation as partly implemented.

22. The authorities of Spain explain that it is possible to punish a trader in influence by virtue of Article 428 PC (which criminalises the exertion of influence “*the public official or authority that influences another public official or authority*”) and Articles 28 and 65(3) PC (general rules on participation which would allow the punishment of any individual who promises, gives or offers an undue advantage, as an instigator of the offence). As to whether trading in influence of foreign and international officials is criminalised, the authorities sustain that this is possible by reference to the provisions and jurisprudence on domestic public officials; they add that, pursuant to the draft amendments to the PC, in particular Article 426 (see also paragraph xx), it would be possible to apply the provisions of trading in influence of domestic public officials to foreign and international officials.
23. With respect to recommendation vi (i), GRECO takes note of the arguments presented by the authorities, but notes that they do not differ from those submitted on the occasion of the First Compliance Report and do not sufficiently address the question of the punishment of the active trader in influence who is not a public official and who does not effectively exert his/her influence. With respect to recommendation vi (ii), i.e. the criminalisation of trading in influence of foreign and international officials, GRECO is not fully convinced yet. As explained before (see also paragraph 9), GRECO has difficulties in accepting the interpretation of the authorities that the provisions on domestic public officials would be applicable to foreign and international officials. No case/court decision has been cited to corroborate the argumentation of the authorities in this regard. Moreover, GRECO notes that the reported draft amendments to the PC – extending the applicability of the provisions on domestic public officials to foreign and international officials – only refer to the offences of bribery (Articles 419 to 425 PC), and therefore, leave out of their scope the offence of trading in influence (which is regulated later in Articles 428 and 429 PC).
24. GRECO concludes that recommendation vi remains partly implemented.

## **Theme II: Transparency of Party Funding**

25. It is recalled that GRECO in its Evaluation Report addressed 6 recommendations to Spain in respect of Theme II. Recommendations iii, v and vi were considered as partly implemented. Recommendations i, ii and iv were not implemented.
26. The main legislative instrument governing political finance, i.e. Law 8/2007 on Political Parties Funding, was amended by Law 5/2012 of 22 October 2012. This amendment reduces, in the context of the current economic and financial crisis affecting Spain, the amount of public funding allocated for party funding. It also introduces changes enhancing the transparency of political accounts (e.g. obligation to report donations over 50,000 EUR and donations of real estate to the Court of Audit within three months of reception of the donation) and requiring political parties to publish relevant information on their accounts online. Furthermore, Law 5/2012 places additional restrictions on private funding (i.e. ban on donations from companies, including subsidiaries, that have signed contracts with public authorities; ban on donations from foundations, associations and other entities receiving public funds) and loans (i.e. establishing a maximum permissible amount of 100,000 EUR per year for debt cancellation). Finally, it further develops the procedure by which the Court of Audit decides on serious infringements of the law.

### **Recommendation i.**

27. *GRECO recommended to take appropriate measures to ensure that loans granted to political parties are not used to circumvent political financing regulations.*
28. GRECO concluded, in the absence of any concrete improvement to better regulate loans, that recommendation i was not implemented.
29. The authorities of Spain now report that the recently adopted Law 5/2012 abolishes the provision of Law 8/2007 under which loans were exempted from the applicable thresholds on private donations. According to the amendments introduced (Article 4), the conditions under which loans are granted can be negotiated among the contractors (credit institution-political party) in accordance with law. The main novelty introduced by Law 5/2012 is that debt cancellation by a credit institution cannot exceed 100,000 EUR (principal amount and interests) per year. Finally, political parties are under a clear obligation to report to the Court of Audit (and the Bank of Spain, as applicable) the terms and conditions under which loans have been granted; these cannot deviate from the general market conditions on loans that are otherwise provided by law. If a political party does not reimburse the loan within the stipulated timeframe, it can renegotiate its debt with the credit institution, but only in accordance with the applicable general market conditions; any renegotiation of the loan must be duly communicated to the Court of Audit. If the Court of Audit spots any irregularity in this area, it will document it in its annual reports and raise it before Parliament, as adequate. Moreover, the sanction established in Article 17 of Law 8/2007 applies whenever infringements of limits and restrictions on donations occur, i.e. a fine equalling twice the contribution received may be deducted from future public subsidies. Political parties must publish on their website, following the adoption of the relevant Court of Audit monitoring report on a given fiscal exercise, details on the value of loans, the identity of the lender and forgiveness of the loan, as applicable.
30. GRECO takes note of the action initiated by the authorities to further regulate on loans, which is a step forward in infusing transparency into the system. It is recalled that the situation of political parties being in debt, and the potential that such a situation could have on the vulnerability of political parties vis-à-vis credit institutions, is an important source of concern in Spain. GRECO notes that, pursuant to the new Law 5/2012, loans are considered a source of private funding which are no longer exempted from the thresholds on contributions from individual donors. In particular, the current limit on written-off loans (100,000 EUR) equals the cap on donations from individual donors per year. Furthermore, GRECO welcomes the measures taken to improve transparency on the terms and conditions of contracted loans: in addition to the requirement for political parties to disclose loan conditions to the Court of Audit and the Bank of Spain (Banco de España), political parties must publish on their websites, details on the value of the loan and the identity of the lender, as well as information on written-off loans. GRECO nevertheless regrets that the law has failed to ensure more certainty as regards the publication obligation of political parties, including clear deadlines and sanctions for failure to publish. Furthermore, the latest report of the Court of Audit on party funding, including details on contracted loans by political parties, dates from 2008; clearly, more needs to be done to provide better information to the public on this sensitive matter. GRECO has dealt with these two pending problems in recommendations iii and vi addressing publicity and sanctioning requirements, respectively.
31. GRECO concludes that recommendation i has been partly implemented.

## **Recommendation ii.**

32. *GRECO recommended to take measures to increase the transparency of income and expenditure of (i) political parties at local level; (ii) entities, related directly or indirectly, to political parties or otherwise under their control.*
33. GRECO recalls that, in the RC-Report, no evidence had been supplied showing that the transparency of the accounts of political parties at (i) local level and (ii) entities, related directly or indirectly, to political parties or otherwise under their control, had been increased in any meaningful manner. Consequently, recommendation ii was assessed as not implemented.
34. The authorities of Spain report on a series of new developments in this domain. In particular, Law 5/2012, in its Additional Provision No. 7, specifically refers to foundations and associations linked to political parties. They are subject to the same oversight mechanisms as those applied to political parties.
35. The law states that they are also subject to the limits on private donations placed on political parties, with some exceptions: (i) they are not subject to the applicable cap on the value of donations (and debt cancellation) that political parties are entitled to receive per donor and per year; and (ii) they are not subject to the ban on donations from private companies that have signed contracts with public authorities. Any donation received from a legal person is (i) to be approved by the governing body of the donor; and (ii) certified in a notarised document, if exceeding 120,000 EUR and if with a monetary nature (donations below 120,000 EUR or in-kind must nevertheless be documented with a concrete reference to the identity of the donor and the irrevocable nature of the donation made). Donations are subsequently defined as any contribution, whether monetary or in kind, which is intended to “generically” finance general expenditure of the political foundation or association. Assets or monetary donations, which are given to finance a specific project or activity of the political foundation or association, when the said project or activity responds to a “common objective” of both the donor and the recipient (as specified in their respective governing statutes), fall out of the scope of the aforementioned definition.
36. Furthermore, political foundations and associations must keep their accounts in due form and undergo annual audit of their income and expenditure. They are required to publish their accounts online (on their respective websites), once the Court of Audit has issued its annual report on political accounts. They must also inform the Ministry of Finance and Public Administrations of the donations received. The Court of Audit is now empowered with full inspection capacity as regards income (any income and not only donations received) of connected entities. Moreover, any donation from a legal person must be reported to the Court of Audit within three months following their receipt.
37. With respect to local branches, the Court of Audit has recommended, in its latest annual report corresponding to the 2007 fiscal exercise, that political parties provide consolidated reports including local branches. This recommendation was also extensible to related entities.
38. GRECO takes note of the information provided. It welcomes the steps taken to subject political foundations and associations to tighter accounting and reporting obligations of both their income and their expenditure. GRECO has however misgivings as to the possibilities that the law opens up, by virtue of the applicable exceptions, to funnel “interested” money to political foundations or associations. GRECO notes that the exceptions provided by Law 5/2012 with respect to the

permissible sources of income, which a political association/foundation may receive, are much broader than those available under the former law.

39. Moreover, GRECO recalls that Article 11 of Recommendation Rec(2003)4 requires party accounts to be consolidated so as to include the accounts of entities related, directly or indirectly, to political parties, or otherwise under their control. GRECO notes that the Court of Audit has recommended political parties to consolidate their accounts in line with the above, but it does not appear that such a practice has developed so far. Further, while political foundations and associations are required to publish their accounts online, no sanction is provided by law for failure to do so.
40. GRECO also notes that much more needs to be done to ensure the transparency of party accounts at local level. It is recalled that the accounts presented by political parties to the Court of Audit are only consolidated up to the provincial level, but have not included to-date any information on local branches. The Third Evaluation Report (paragraph 75) reflected on the corruption risks at local level, where an important volume of economic operations are performed (e.g. with respect to procurement and licensing procedures).
41. In GRECO's view, it is important that citizens are provided with meaningful information on the identity of the donations made to political parties, their branches and related entities, to better help identify questionable financial ties and possible corruption in the party funding system.
42. GRECO concludes that recommendation ii has been partly implemented.

### **Recommendation iii.**

43. *GRECO recommended to establish a common format for parties' accounts and returns (at both head office and local level) with a view to ensuring that the information made available to the public is consistent and comparable to the greatest extent possible, and that it is disclosed in a timely manner within the deadlines prescribed in Law 8/2007 on Political Parties Funding, thus allowing a meaningful comparison both over time and between parties.*
44. GRECO assessed this recommendation as partly implemented since, although there were plans in the pipeline to establish a common accounting plan for political parties, these plans had yet to materialise in practice. Moreover, no information had been provided concerning the timeliness of financial reports.
45. The authorities of Spain explain that the Court of Audit has made endeavours to improve both the comparability and the timeliness of financial reports. In particular, the Court of Audit has been working, since 2011, with the Accountancy and Auditing Institute on the elaboration of an accounting plan for political parties. It is expected that the said plan will be adopted in 2013 and already applicable to the 2014 fiscal exercise. Likewise, the Court of Audit issued, on 24 June 2010, guidance for political parties on their accounting obligations and the way in which political finances must be presented. Moreover, Law 5/2012 imposes an obligation on political parties to publish financial information (balance sheet, amount of loans received, details on the credit institution which has granted the loan and details on written-off loans, as applicable), following the adoption of the annual report of the Court of Audit on party finances.
46. GRECO takes note of the on-going efforts of the authorities to provide for uniform accounting formats for parties' accounts and returns. GRECO understands that guidance and models have

been issued to this end, but that the enforceability of a common format would only take effect once the accounting plan is adopted by the end of 2013. GRECO trusts that the authorities will proceed with their reported plans in an expeditious manner.

47. GRECO welcomes the obligation placed on political parties to publish on their respective websites, information on their finances. This was a weakness of the system specifically highlighted in the Third Round Evaluation Report (paragraph 76) which has now been specifically regulated by law. GRECO however notes that this obligation is not coupled with effective deadlines, nor with any sanction in case of non-compliance. These gaps still need to be addressed.
48. GRECO notes that, pursuant to the new Law 5/2012, the obligation for political parties to publish their accounts comes into play after the adoption by the Court of Audit of its annual reports on party funding. GRECO recalls its concern that the Court of Audit monitoring reports were not being released in a timely manner. Although a reporting deadline for the Court of Audit is provided by law (within six months of the submission of financial reports by political parties), the Court of Audit reports were generally being released several years after the actual financial reporting from political parties took place. The latest report issued by the Court of Audit dates from 2008, although the Court of Audit has indicated to GRECO that it expects to be publishing the reports from 2009 to 2011 in the coming months. GRECO is hopeful that the current reinforcement of the personnel of the Court of Audit (see paragraph 60) will significantly ameliorate this unsatisfactory situation.
49. As reiterated by GRECO throughout the Third Round Evaluation process, timely disclosure (financial reports and monitoring results being published as close as possible to the fiscal/election exercise) is key to helping identify questionable financial ties and possible corruption in the party funding system. GRECO encourages the authorities to keep the practical application of the legislative provisions on transparency under close review in order to maximise the level of information which can be acquired by the citizen in this sensitive domain.
50. GRECO concludes that recommendation iii remains partly implemented.

#### **Recommendation iv.**

51. *GRECO recommended to take measures to enhance the system of internal audit of political parties in order to ensure the independence of this type of control.*
52. GRECO noted in the RC-Report that very limited action had taken place to enhance the system of internal audit of political parties. The Court of Audit had contacted political parties to encourage them to set in place internal control mechanisms, but no indication was provided as to the effect of such an initiative. GRECO assessed recommendation iv as not implemented.
53. The authorities of Spain now report that Law 5/2012 requires political parties to subject their accounts to audit and to submit the corresponding auditing report to the Court of Audit (Article 5). Furthermore, the authorities refer to plans underway to draft a law on the control of the economic activity of political parties which should subject the latter to tighter internal discipline and accountability rules.
54. GRECO welcomes the legislative amendments geared towards reinforcing the financial discipline of political parties, in particular, by specifically requiring audits of their accounts. This goes in the

direction of GRECO's considerations (as outlined in paragraph 77 of the Third Evaluation Round Report) and could well serve to facilitate the oversight task of the Court of Audit further down the line. That said, GRECO recalls that the law not only requires submission of the relevant audit reports on party accounts to the Court of Audit, but also an obligation on political parties to put in place internal control mechanisms. Therefore, it remains essential that the aforementioned reporting obligation on the audits performed over political finances is coupled with a genuine system to share information with the public on all other measures taken by political parties themselves to strengthen internal control and increase accountability.

55. Moreover, Law 5/2012 does not establish any penalty for failure to comply with the requirement of political parties to develop a system of internal control. This was a loophole in former regulation which GRECO also criticised. GRECO regrets that nothing has been done to address this concern.
56. Given the series of scandals that have emerged in recent years in connection with the irregular financing of political activity and that have led to fierce public outcry, GRECO considers the implementation of this recommendation as crucial to the credibility of the system and its effectiveness in practice. GRECO welcomes the fact that some additional reflection on the matter has been initiated and that further legislation is anticipated to tighten the rules concerning internal discipline and accountability of political parties; GRECO urges the authorities to take prompt action in this respect.
57. GRECO concludes that recommendation iv has been partly implemented.

#### **Recommendation v.**

58. *GRECO recommended to increase the financial and personnel resources dedicated to the Court of Audit so that it is better equipped to perform effectively its monitoring and enforcement tasks concerning political financing, including by ensuring a more substantial supervision of political parties' financial reports.*
59. GRECO recalls that this recommendation was assessed as partly implemented since it considered that more could be done to increase the resources of the Court of Audit devoted to the monitoring of party finances. Furthermore, the authorities refer to plans underway to devote additional resources to the Court of Audit for monitoring party finances, as well as to better articulate its cooperation and information exchange with other authorities with related competencies in this area (e.g. fiscal authorities, social security officials, the Office of Conflicts of Interest, etc.)
60. The authorities of Spain refer to new developments concerning the allocation of personnel in the Court of Audit which has been increased by 150%: there are currently 36 financial analysts and 6 persons working to support tasks in relation to party funding oversight.
61. GRECO welcomes the efforts made by the Spanish authorities, in the current context of budgetary austerity, to deploy additional resources to the Court of Audit so that it can better cope with its important monitoring and enforcement attributions concerning political financing. GRECO trusts that the temporary allocation of personnel will be confirmed in the long run given the key priority that the citizens in Spain attach to the issue of political corruption and the need to better address it. GRECO is also trustful that the Court of Audit is adequately empowered, not only in terms of staff resources, but also tools, to assure a substantial supervision of political parties'

financial reports, including through swift mechanisms to exchange data with other institutions (e.g. tax authorities, police, etc.), as needed.

62. GRECO concludes that recommendation v has been dealt with in a satisfactory manner.

#### **Recommendation vi.**

63. *GRECO recommended to clearly define infringements of political finance rules and to introduce effective, proportionate and dissuasive sanctions for these infringements, in particular, by extending the range of penalties available and by enlarging the scope of the sanctioning provisions to cover all persons/entities (including individual donors) upon which Organic Law 8/2007 imposes obligations.*
64. GRECO acknowledged the improvements made to strengthen the sanctioning regime for violations of campaign rules under Law 5/1985. That said, GRECO assessed this recommendation as partly implemented and called for additional steps to extend the range of penalties and enlarge the scope of the penalty provisions to cover all persons/entities subject to obligations under Law 8/2007.
65. The authorities of Spain indicate that Law 5/2012 further articulates the procedure under which the Court of Audit may impose sanctions, including by putting in place due safeguards in the process (e.g. hearing of infringer, right of appeal). The law refers back to the general administrative sanctioning regime in this respect. In addition, the provisions quoted in the RC-Report (paragraph 78) as regards infringements to campaign funding regulations apply.
66. GRECO takes note of the information provided and the steps taken to regulate in detail enforcement proceedings. However, GRECO can only recall the misgivings it raised in the Third Evaluation Round Report as all of them remain pertinent under the reviewed legislative framework: there are no sanctions on donors, the sanctions are exclusively financial in nature and not all possible infringements are coupled with sanctions.
67. GRECO concludes that recommendation vi remains partly implemented.

### **III. CONCLUSIONS**

68. **In view of the conclusions contained in the Third Round Compliance Report and in light of the analysis contained in the present report, GRECO concludes that Spain has implemented satisfactorily or dealt with in a satisfactory manner in total six of the fifteen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendations i, ii, vii, viii and ix have been implemented satisfactorily; recommendations iii, iv, v and vi remain partly implemented. Regarding Theme II – Transparency of Party Funding, recommendation v has been dealt with in a satisfactory manner; recommendations i, ii, iii, iv and vi remain partly implemented.
69. Concerning incriminations, following the adoption of the Third Round Evaluation Report, Spain ratified the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191). This was an important step forward which also led to several amendments in the formulation of corruption offences in domestic legislation. At present, the criminalisation of bribery and trading in influence in the Spanish Penal Code is largely in line with the Council of Europe standards. The authorities are encouraged to pay further attention to the international dimension

of corruption, notably, with respect to bribery and trading in influence of foreign and international officials, foreign jurors and arbitrators, and to the particular coverage of passive bribery in the private sector.

70. In so far as the transparency of political funding is concerned, Law 5/2012 introduces a series of amendments aimed at improving transparency, oversight and enforcement in this domain. It includes additional bans on the sources of funding to political parties and further regulates loans. It also lays out certain publication requirements for political parties and related associations/foundations. It is too early to assess whether the recent legislative changes effectively result in improvements in an area which is acknowledged to constitute a major source of citizens' concern in Spain. In particular, it would be essential to ensure that political foundations and associations are not used as a parallel avenue for funding routine and campaign activities of political parties in spite of the applicable restrictions and thresholds set by law for the latter. Moreover, steps must be taken by political parties themselves to put in place efficient mechanisms for internal control and to improve the transparency of the financial operations performed at local level. It is important that citizens are provided with meaningful information on the identity of the donations made to political parties, their branches and related entities, to better help identify questionable financial ties and possible corruption in the party funding system. The Court of Audit continues to have a key role to play in performing substantial supervision of party accounts and in making its findings available for public scrutiny in a timely manner; it must be provided with sufficient resources and powers to do so. The sanctioning regime for irregular financing of political parties needs to be strengthened significantly. It is crucial for the credibility of the system that the law does not remain dead letter but that it is properly monitored and enforced; GRECO urges the Spanish authorities to take all possible steps in this respect.
71. In view of the fact that still nine out of fifteen recommendations concerning both themes are yet to be implemented, GRECO in accordance with Rule 31, paragraph 9 of its Rules of Procedure requests the Head of the delegation of Spain to submit additional information, namely information regarding the implementation of recommendations iii, iv, v and vi (Theme I – Incriminations) and recommendations i, ii, iii, iv and vi (Theme II – Transparency of Party Funding) by 31 March 2014.
72. GRECO invites the authorities of Spain to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.