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ANNEX 9

ANNEX

SPAIN

to the

EU Anti-Corruption Report

SPAIN

1. INTRODUCTION – MAIN FEATURES AND CONTEXT

Anti-corruption framework

Strategic approach. Prominent corruption cases investigated in the recent years have raised awareness of potential corruption risks and increased public authorities focus on the need to strengthen anti-corruption and integrity-related policies. The Government has acknowledged the need to address corruption as a matter of priority, along with other economic recovery measures. Moreover, anti-corruption and integrity-related policies moved to the forefront of the political debate. In February 2013, Parliament adopted a resolution on a wide range of anti-corruption measures.¹ Against this background, an ambitious programme of legislative reform is being implemented, covering a wide range of aspects, including financing of political parties, criminal law aspects, accountability of high-ranking officials and increasing the efficiency of court proceedings.² Furthermore, in September 2013, the Government approved a package of measures for the 'revival of democracy'. The package comprises: measures to improve the supervision of party funding through the strengthening of internal and external controls, including the Court of Audit's powers; clear rules on the obligations attached to exercising public office and the corresponding sanctions for breaches found, a proposal to reform criminal law and criminal procedure rules, including on the sanctioning regime applicable to corruption offences.³

First steps were taken towards implementing this package through the adoption by the Government, in December 2013, of two bills on supervision of party funding and accountability of high-ranking officials, as well as a report on plans for criminal law and criminal procedure law that would strengthen the fight against corruption. Initiatives to modernise public administration are also under way, including a draft law on local administration reform which aims to enhance control and improve coordination among the national, regional and local administrations.⁴ While it is too early to evaluate these initiatives, they represent steps in the right direction. To be fully effective, they will need to be complemented by a coherent risk-based approach which goes beyond purely legislative measures to comprehensively address corruption.

Legal framework. A review conducted in the framework of the United Nations Convention against Corruption (UNCAC) concluded in 2011 that Spain's anti-corruption criminal legal framework is largely in place.⁵ The Council of Europe Group of States against Corruption (GRECO) also noted in its second compliance report regarding the third evaluation round which was published in July 2013 that the criminalisation of bribery and trading in influence in the Spanish Penal Code is largely in line with Council of Europe standards. It also took note of the ratification by Spain of the Criminal Law Convention on Corruption and its Additional Protocol as 'an important step forward which also led to several amendments in the formulation of corruption offences in domestic legislation'.⁶ Looking beyond criminal law, legislative measures

1 Parliament's resolution refers, inter alia, to: ethical pacts among political parties; setting up of an independent commission to report on the revitalising of democracy; need for legislative measures to improve party funding regulation; Court of Audit control powers; public sector contracting; public servants' statute, reform of the criminal code; reform of criminal proceedings; needed improvements to the bill on transparency and good governance; measures for regulating lobbying; improvements in the asset disclosure system for elected officials; measures to address political turncoatism, and the modernisation of electoral campaigns, etc:

http://www.congreso.es/backoffice_doc/prensa/notas_prensa/18520_1361968355833.pdf .

2 See more detailed references to the legislative initiatives in preparation under 'Legal Framework'.

3 More details about the 'revival of democracy' package are presented below under the specific sections of issues in focus.

4 Commission Staff Working Document, Assessment of the 2013 national reform programme and stability programme for Spain, 29 May 2013: http://ec.europa.eu/europe2020/pdf/nd/swd2013_spain_en.pdf .

5 <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/7-9September2011/V1183525e.pdf> .

6 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2013\)20_Second_Spain_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2013)20_Second_Spain_EN.pdf) .

were taken in 2012 to strengthen control over public spending, including a new law on budgetary stability and financial sustainability⁷ that reinforced fiscal discipline at all levels of government and introduced amendments to increase transparency and supervision of financing of political parties.⁸ Furthermore, a law on transparency, public access to information and good governance was adopted in December 2013, representing an important step forward.⁹ These initiatives complement previous legislative measures that include a public procurement law,¹⁰ a land act¹¹ and a statute for public and civil servants.¹² Furthermore, a number of legislative amendments are currently being considered on party funding, accountability of high-ranking officials of the State General Administration, the Court of Audit, public contracts, political offices, substantive criminal law and criminal procedure law and the organisation of the judiciary with a view to increase its efficiency. Far-reaching proposals to reform the substantive criminal laws and criminal procedure laws were submitted to Parliament in late September 2013, including proposals for a strengthened sanctioning regime for corruption offences and for increasing effectiveness of procedures.¹³

Institutional framework, law enforcement and judiciary. A Specialised Prosecution Office for the Fight against Corruption and Organised Crime (FECCO) was created in 1995 within the General Public Prosecutor's Office, and its autonomy and capacity have been strengthened in the recent years. According to the 2012 activity report of the Public Prosecutor's Office, the FECCO had 40 prosecutors at its disposal in 2011 and is supported by units from tax administration, the General Intervention Board of State Administration and the national police. Its track record of judicial proceedings has constantly improved, from 88 in 2000 to 194 in 2007 and 266 in 2011.¹⁴ This positive trend also extends to the number of investigations completed. With regard to corruption allegations involving high-level officials, Spain's Prosecutor General confirmed in November 2009 that the Public Prosecutor's Office was in the process of investigating more than 800 people in over 700 political corruption cases.¹⁵ By 2012, according to research findings,¹⁶ nearly 150 additional people were under investigation.¹⁷ Preliminary results of a study on the capacity of and resources available to the judiciary presented by the president of the Spanish General Council of the Judiciary (*Consejo General del Poder Judicial*) in April 2013 showed that 1 661 cases currently in court concern mainly corruption and financial crimes.¹⁸ This illustrates a solid track record of investigations and prosecutions, including in high-level cases. As a result of this considerable workload, as highlighted by the

7 Law 2/2012 on budgetary stability and financial sustainability.

8 Law 5/2012 amending Law 8/2007 on financing of political parties.

9 <http://www.leydetransparencia.gob.es/anteproyecto/index.htm> .

10 Law No. 30/2007 – Public Sector Procurement Act.

11 Law No. 8/2007 – Land Act. Royal Legislative Decree 2/2008 approved the consolidated text of this law.

12 Law No. 7/2007 on the statute of public employees and civil servants.

13 Such proposals refer, among others, to: higher level of penalties for a number of corruption offences; expanding the scope of trading in influence; revising fraud offences and illicit enrichment; amending the offence of false accounting; including new offences related to funding and management of political parties; introducing new measures against concealment of assets and return of assets to the State; streamlining procedures concerning corruption cases; addressing backlog issues, including measures that would ensure speedier procedures and avoid unjustified delays, etc.

14 Also, the number of initiated investigations increased from 17 in 2007 to 133 in 2011.

http://www.fiscal.es/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobheadername1=Content-disposition&blobheadervalue1=attachment%3B+filename%3D%27memoria2012_vol2_secc_06.pdf%27&blobkey=id&blobtable=MungoBlobs&blobwhere=1246969527252&ssbinary=true

15 Candido Conde-Pumpido (2009) Hearing of the Public Prosecutor in front of the Parliamentary Committee on Justice on the activities of 2008. Congreso de los Diputados, Sala Cánovas, 18 November 2009.

16 Jiménez, F. and Villoria, M. (2012) Political finance, urban development and political corruption in Spain. In: Mendilow, J. Public Funding of Political Competition and the Future of Democracy. Lexington Books.

17 In January 2013, the Spanish press published a list of 300 politicians currently under investigation for alleged corruption offences.

18 http://www.poderjudicial.es/cgpj/es/Poder_Judicial/Sala_de_Prensa/Archivo_de_notas_de_prensa/Estudio_sobre_las_necesidades_de_los_juzgados_y_tribunales_en_casos_de_especial_complejidad

General Council of the Judiciary, the pace of court proceedings is however rather slow.¹⁹ In response to concerns regarding lengthy criminal proceedings, the Spanish Government is currently considering a reform of the criminal procedure rules, as well as an overall reorganisation of the judiciary. A GRECO report adopted in December 2013, while praising the high quality of the Spanish judiciary and prosecution services, stressed a number of concerns related to the efficient functioning of the justice system with overburdened courts which do not always have sufficient capacity to handle the cases at high speed.²⁰ Moreover, GRECO highlights the existing controversy regarding the structural independence of the governing bodies of the judiciary and prosecution services and the 'appearance that partisan interests could penetrate judicial decision-making processes' which is seen by GRECO as a particularly concerning aspect 'at a time when political corruption cases are on the rise'.

Opinion polling

Perception surveys. According to the 2013 Special Eurobarometer on Corruption 63% of respondents (highest percentage in the EU) feel personally affected by corruption in their daily lives (EU average: 26%), while 95% say that corruption is a widespread problem in the country (EU average: 76%) and 91% state that corruption exists in local and regional institutions (EU average: 77%). Regular national surveys carried out by the Spanish Centre for Sociological Research (CIS) currently also show negative trends.²¹

Experience of corruption. The 2013 Special Eurobarometer on Corruption shows that Spain scores better than the EU average on petty corruption: only 2% of Spanish respondents were asked or expected to pay a bribe in the past year (EU average: 4%).²²

Business surveys. 52% of the Spanish respondents to a 2013 Flash Eurobarometer survey on businesses think that the only way to succeed in business is to have political connections (EU average: 47%).²³ 97% of Spanish businesses (second highest percentage in the EU) said that corruption is widespread in their country (EU average: 75%), while 88% (second highest percentage in the EU) consider that bribery and abuse of power is widespread among politicians, party representatives or senior officials at regional or local level (EU average: 70%). 93% of Spanish respondents (second highest percentage in the EU) to the same survey say that favouritism and corruption hamper business competition in their country (EU average: 73%).

Background issues

Economic context. After almost two decades of consistent economic growth, Spain went into recession at the end of 2008. The financial crisis was preceded by the collapse of the property market, which had previously known a booming period. Regions had invested large amounts in infrastructure and public works.²⁴ In this context, corruption allegations in the urban development sector, and in some instances involving illegal financing of political parties and embezzlement of large amounts of public money, have been regularly investigated in Spain in recent years.²⁵ Recent studies estimated that the shadow economy reached 19.2% of the GDP in

19 The President of the General Council of the Judiciary suggested that the Spanish judiciary would need another 64 judges, 18 secretaries and 150 civil servants to support 798 courts that currently are working on 2173 highly complex cases.

20 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2013\)5_Spain_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2013)5_Spain_EN.pdf).

21 In 2011, 46.8% of respondents considered that corruption is very extensive and 39.8% that is quite extensive. Only 0.4% believed there is no corruption among Spanish politicians. In 2012, the CIS survey placed corruption on fourth place of national problems, following economic crisis, unemployment, governing class and political parties. More recent surveys in February and April 2013 placed corruption second in the range of public problems identified by Spanish respondents, while unemployment was the most problematic issue mentioned. <http://www.cis.es/cis/opencms/ES/busqueda.jsp>.

22 2013 Special Eurobarometer 397.

23 2013 Flash Eurobarometer 374.

24 See also the Financial Sector Adjustment Programme for Spain:

http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp118_en.pdf.

25 See examples of such cases and references to statistics under the section on 'Issues in focus'.

2012.²⁶ In the aftermath of the economic crisis, anti-corruption policies have been given more prominence in the public agenda, complementing measures targeting economic adjustment.

Private sector. Spain criminalised private sector corruption offences through amendments to its criminal code in 2010.²⁷ On foreign bribery, the OECD Working Group on Bribery raised serious concerns as to Spain's commitment given that, almost 13 years after the entry into force of foreign bribery provisions, no individual or company had been prosecuted or convicted.²⁸ It also recommended harmonising the sanctions regime applicable to natural and legal persons to ensure that the sanctions imposed are effective, proportionate and dissuasive.²⁹

Whistleblowing. Spain does not have dedicated legislation protecting whistleblowers, and the planned legislative reforms do not yet extend to establishing effective protection mechanisms. General labour law provisions are also applicable to whistleblowers in so far as unfair dismissal and discriminatory treatment of employees are concerned. The UNCAC review stressed the need for a regulatory framework focused on protection of whistleblowers.³⁰

Transparency of lobbying. Lobbying is not regulated in Spain; there is no mandatory registration or obligation of public servants to report contacts with lobbyists. While there is little research on the risks associated with lobbying in Spain, recent corruption cases suggest the potential influence of certain development and construction interest groups on local and regional decision-making. A Parliamentary majority has committed to making lobbying more transparent.³¹ This initiative would deserve to be followed closely.

2. ISSUES IN FOCUS

Financing of political parties

More than three quarters of party expenses are funded by the state. A 2007 law on party funding³² confirmed the right of political parties to use commercial bank loans for their funding. While restrictions applicable to donations were not extended to loans, parties had to specify the conditions of loans in their financial reports.³³ The law also extended the supervisory powers of the Court of Audit in this area to cover private funding; before this legislative change, its powers were limited to public funds only. Anonymous donations were banned, and parties were obliged to submit a list of donors to the Court of Audit, which is however not made public.

During the economic prosperity, political parties made extensive use of bank loans to cover their expenses. The Court of Audit reported in 2012 that the total debt of political parties (national and regional) to financial institutions amounted to EUR 227 million in 2007.³⁴ Over the same period, the composition of boards of directors of savings banks (*cajas de ahorros*) became increasingly influenced by political parties. At the same time, controls over the loans granted to parties were not comprehensive, given the limited capacity of the Court of Audit at the time to perform such checks. This created vulnerabilities in the integrity of the system for financing political parties and electoral campaigns. As a result, some loans were granted at very favourable conditions, and

26 http://ec.europa.eu/europe2020/pdf/themes/06_shadow_economy.pdf .

27 Law 5/2010 – amendments to the criminal code.

28 In the last decade seven investigations on alleged foreign bribery offences were opened; all were eventually closed. The OECD also raised concerns about the regime of criminal liability of legal persons in state-owned and state-controlled companies. <http://www.oecd.org/daf/briberyininternationalbusiness/SpainPhase3ReportEn.pdf>.

29 This is without prejudice to the Commission's currently ongoing analysis of the transposition by Spain of Framework Decision 2003/568/JHA on combating corruption in the private sector

30 <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/7-9September2011/V1183525e.pdf>.

31 http://www.congreso.es/backoffice_doc/prensa/notas_prensa/18520_1361968355833.pdf.

32 Law 8/2007 on financing of political parties.

33 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2011\)5_Spain_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2011)5_Spain_EN.pdf).

34 Tribunal de Cuentas, Informe de fiscalización de los estados contables de los partidos políticos y de las donaciones percibidas por las fundaciones vinculadas orgánicamente, Ejercicio 2007, Informe aprobado el 29.3.2012.

at times forgiven altogether.³⁵ The Memorandum of Understanding, signed in the context of the adjustment programme of July 2012,³⁶ highlighted the need to strengthen the governance structure of savings banks and of the commercial banks they controlled, including through introducing incompatibility requirements limiting the role of political appointees in such governing bodies.

GRECO also voiced concerns in mid-2011 as to the indebtedness of political parties and the correlating risk of parties' dependence on credit institutions, and asked for a reinforcement of the regulation of loans.³⁷ In order to address this problem, the Court of Audit recommended that political parties better manage their resources in order to limit their debts and financial dependence on commercial banks. Despite the measures taken in 2007 to expand the Court of Audit's supervisory powers, GRECO noted that the Court's capacity to carry out efficient checks needed to be further strengthened. This was reiterated in July 2013.³⁸ In its compliance report of April 2011, GRECO also raised concerns as regards foundations and associations linked to political parties, which are not required to report on their expenditure, but could potentially indirectly shoulder expenditure of political parties.³⁹ In July 2013, it further stressed the need 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'.⁴⁰

Large-scale investigations involving a former treasurer of a political party and nearly 90 other prominent politicians, business persons and bankers are ongoing on charges of corrupt practices related to public contracts and illegal party funding. Public contracts granted to these companies, business groups and their branches are also assessed in the investigations. As a result, the accounts of one of the largest political parties for the last four years were made public, as were the income tax declarations of a number of party leaders.

Following GRECO's recommendations and the ongoing cases regarding allegations of illegal party funding, the rules for financing of political parties were strengthened⁴¹ in 2012. Access to loans to finance party expenses was restricted;⁴² transparency and independence were increased;⁴³ an internal audit framework was created and the sanctioning regime was strengthened⁴⁴, including by granting additional powers to the Court of Audit.⁴⁵ A ban was introduced on all donations from private foundations, associations or entities funded by public money. The new provisions also reduced public funding for associations and foundations linked

35 Some former governors of saving banks faced criminal investigations into allegations of granting illegal loans and alleged unfair administration– e.g. criminal proceedings against two former presidents of Caja Madrid.

36 http://ec.europa.eu/economy_finance/eu_borrower/mou/2012-07-20-spain-mou_en.pdf .

37 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2011\)5_Spain_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2011)5_Spain_EN.pdf) .

38 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2013\)20_Second_Spain_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2013)20_Second_Spain_EN.pdf).

39 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2011\)5_Spain_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2011)5_Spain_EN.pdf)

40 Idem.

41 Law 5/2012 amending Law 8/2007 on financing of political parties.

42 Provisions were included on maximum value of loans, rules on lenders, terms of repayment, etc.

43 The list of entities banned from financing parties was expanded to include legal persons having contracts with the State.

44 In the cases of failure to present accounts without just cause, or in cases of poor presentation of accounts for the last financial year, the Court of Audit could withhold the annual subsidies until the obligations are fully met. If election expenses limits are exceeded, the Court of Audit could impose a penalty equal to the excess. The Court of Audit will ensure that all fines are paid before public money is allocated by the State to the parties. Also the law clarifies the statute of limitations for these offenses, improves regulation of the process by introducing the possibility for the Court of First Instance to open a previous reporting period before making the final decision on the infringements, and establishes the supplemental application in its handling of the general administrative procedures. New sanctions are introduced if parties accept illegal donations. In these cases, the Court of Audit could impose a penalty equivalent to twice the amount illegally obtained.

45 The Spanish Constitution stipulates that the members of the Court of Audit shall enjoy the same guarantees of independence as judges. The members of the Court are selected by Congress and by the Senate in accordance with strict professional criteria. The selection of the rest of the Court's staff should be based as a rule on merit and capacity as established by the Constitution for all civil servants. Some of the Court's officials are appointed by the plenary of the Court. A decision of the Supreme Court in December 2012 emphasised the need to ensure a better balance between officials of the Court appointed by the Court's plenary and those selected like any civil servant, given that the former now make up the majority of staff.

to political parties by 20%. Parties must now notify the Court of Audit of all donations above EUR 50 000 or involving real estate, as well as of all agreements with banks relating to loans. These loan agreements also have to be disclosed to the Bank of Spain. Moreover, a cancellation of loans is considered as a donation. Cancellations of loans to political parties exceeding EUR 100 000 per year are now prohibited. All entities related to political parties must notify all donations and contributions received from legal persons to the Court of Audit and the Ministry of Finance and Public Administration. They must also undergo an annual external audit and publish their income statement online, including all details related to loans. However, there are no limits on the donations received. Attention needs to be paid to monitoring the risks associated with donations from companies that have contracts with the State.

In December 2012, amendments to the criminal code were adopted to also include provisions on criminal liability of political parties and new forms of criminal sanctions for concealment and falsification of public accounts.⁴⁶

In its second compliance report, published in July 2013, GRECO recognised the progress made through the adoption of the 2012 amendments with regard to transparency, oversight and enforcement, noting at the same time that it is still too early to assess the actual impact of this recent legislation in 'an area which is acknowledged to constitute a major source of citizens' concern in Spain.' GRECO also encouraged more efforts within political parties to make internal control mechanisms more efficient and ensure transparency of financial operations at local level. It also pointed again to the importance of providing meaningful information to the public on the identity of donors to political parties, their branches and related entities in order to effectively address any corruption risks relating to 'questionable financial ties'. Moreover, it called for a significant strengthening of the sanctioning regime for breaches of party funding rules.⁴⁷

The 2012 legislative reform represents therefore a step in the right direction. No data is available yet, however, on its practical impact on the level of political parties' indebtedness towards credit institutions, or on the implementation of rules on incompatibilities and merit-based appointments to the boards of saving banks.

Following the above-mentioned legislative amendments and investigations into allegations of illegal financing of political parties, the Court of Audit has prioritised the supervision of party funding and electoral campaigns and taken measures to improve the speed with which it carries out verifications, including by considerably increasing the number of staff dedicated to this task. Its capacity and powers remain, however, limited when compared to the extent of verifications and inspections required. The investigative tools at its disposal are not yet sufficient, and its access to certain sources of verification, such as social security and internal revenue system data, is limited. GRECO also stressed in July 2013 that while the Court of Audit continues to have a key role in the supervision of party accounts, it must also be provided with sufficient capacity and powers to perform these tasks properly.⁴⁸

At the beginning of 2013, the Government announced additional work on new legislative amendments aiming to further strengthen the transparency of party funding and the supervisory powers of the Court of Audit. Moreover, the Spanish Parliament, with the majority support, presented an anti-corruption resolution in early 2013 which also included legislative measures to improve supervision of party funding.⁴⁹

In September 2013, the Government approved a package of measures for the 'revival of democracy' that also included measures to reinforce the accountability and supervision of party

46 Ley orgánica por la que se modifica la Ley orgánica 10/1995, de 23 de noviembre, del Código penal en materia de transparencia y lucha contra el fraude fiscal y en la seguridad social, 18 de diciembre de 2012.

47 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2013\)20_Second_Spain_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2013)20_Second_Spain_EN.pdf).

48 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2013\)20_Second_Spain_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2013)20_Second_Spain_EN.pdf)

49 http://www.congreso.es/backoffice_doc/prensa/notas_prensa/18520_1361968355833.pdf

funding through strengthening internal and external controls, including the strengthening of the powers of the Court of Audit. The envisaged measures concern, *inter alia*, the following: regulating the obligations of the treasurers or financial managers of political parties, including the obligation to report annually to Parliament and the Court of Audit on the state of the political parties' accounts; requiring all political parties to report their accounts to the Court of Audit irrespective of whether they receive subsidies or not; further consolidation of accounting entries; strengthening accountancy requirements and procedures within political parties, increasing the transparency and supervision on the foundations and associations linked to political parties and clarifying the criteria that determine such links, strengthening the cooperation between the Court of Audit and other relevant public institutions, as well as credit institutions, further increasing the level of sanctions for offences related to the activity of political parties and further clarifying the sanctioning procedures. In December 2013, the Government took steps to implement the above-mentioned package and approved a bill on the control of economic-financial activities of political parties, which aims to achieve the above-mentioned objectives. The bill also proposes prohibiting donations by legal persons to political parties and prohibiting banks from forgiving debts of political parties. Moreover, the bill approved by Government for the reform of criminal law includes new offences related to the financing of political parties, including the new separate offence of illegal party funding.

Parliament resolved that integrity issues and enforcement of ethical norms within political parties needed to be prioritised.⁵⁰ Currently, no ethical codes exist for elected officials at central, regional and local level, nor are there sanctions for breaches of integrity – beyond those of a criminal nature – that would support high integrity standards. Such codes of conduct for elected officials, accompanied by regulatory provisions on sanctions applicable in case of breaches of ethical rules, including in relation to conflict of interests and incompatibilities, would enhance integrity and accountability standards and would ensure a wider range of non-criminal sanctions for unethical behaviour to the detriment of the public interest. It would also ensure more effective implementation of integrity rules through self-regulatory solutions, given the particularities of non-criminal sanctions applicable to elected officials as compared to other categories of public officials (i.e. appointed officials, civil servants, etc). In a report adopted in December 2013, GRECO recommended additional steps to 'instill, maintain and promote a strong culture of integrity among parliamentarians'.⁵¹

Corruption at regional and local level

Spain has 17 autonomous regions (*comunidades autónomas*), 2 autonomous cities in Africa (Ceuta and Melilla), 8 117 municipalities and 50 provincial governments. It is characterised by strong decentralisation with wide powers for elected officials at local level. The autonomous regions account for around 35% of total general government expenditure and have legislative power in the areas set out in their statutory legislation, such as health and social policies. Local governments are responsible for some 13% of expenditure.⁵² As far as good governance performance is concerned, Spain is among the five EU Member States with the biggest intra-country variation, according to research carried out by the Quality of Government Institute, University of Gothenburg.⁵³

50 http://www.congreso.es/backoffice_doc/prensa/notas_prensa/18520_1361968355833.pdf

51 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2013\)5_Spain_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2013)5_Spain_EN.pdf) .

52 Commission Staff Working Document, Assessment of the 2013 national reform programme and stability programme for Spain, 29 May 2013: http://ec.europa.eu/europe2020/pdf/nd/swd2013_spain_en.pdf.

53 Some regions score among the best in the EU on quality of governance, while others are among the worst. *Measuring the Quality of Government and Subnational Variation, Report for the European Commission, University of Gothenburg*, December 2010. The 2013 European Quality of Governance Index, which considered an increased number of European countries, regions and respondents, confirmed these findings: <http://nicholascharron.wordpress.com/european-quality-of-government-index-eqi>

As emphasised in the European Commission assessment of the 2013 national reform and stability programme for Spain (i.e. in the context of the European Semester), in order to facilitate the background for business operations and help fiscal sustainability, the decentralised setting needs to be complemented by enhanced coordination between the various layers of public administration and strengthened financial and budgetary supervision of local entities.⁵⁴ A bill on local administration reform was submitted to Parliament in early 2013.⁵⁵

The overall effectiveness of checks and balances in relation to public spending at regional and local level appears to be insufficient as the wide powers are not matched in a balanced way by accountability. The Court of Audit assessments confirm this impression.⁵⁶ Numerous past and ongoing criminal proceedings into allegations of corruption concern regional and local elected officials, including involvement of 'cliente' networks. A database built on open sources includes approximately 600 municipalities and 5 144 alleged corruption cases reported in the media between 1996 and 2009.⁵⁷ The cases often involve charges or allegations of illegal party funding, illicit personal enrichment, diversion of national or EU funds, favouritism and conflicts of interest. Some of the most well-known investigations at regional and local levels concern alleged misuse of public funds by former high-ranking regional officials to award early-retirement packages and abuse of labour force downsizing plans or alleged corrupt practices with regard to vehicle inspection system public contracts, or awards of public contracts in the healthcare sector. Such cases illustrate the need for a targeted strategic approach focused on prevention and combating of corruption at regional and local levels, prioritising vulnerable sectors and ensuring increased transparency of regional and local public administration.

In 2009, the Spanish Federation of Municipalities and Provinces approved a code on good local governance and more recently took steps towards the establishment of an observatory to monitor the quality of governance at local level.⁵⁸ At regional level, efforts have also been made to combat corruption more effectively. For example, in 2008, the Catalonia Anti-Fraud Office was set up as an autonomous legal entity specialising in prevention and investigation of corruption and fraud offences at regional level.⁵⁹ The Anti-Fraud Office also provides guidance to other bodies. It is the only multidisciplinary anti-corruption agency of this nature in Spain.

In spite of the high number of investigations into allegations of corruption and the shortcomings mentioned above, no comprehensive approach has been developed centrally as a basis for addressing particular risks and vulnerabilities at regional and local levels.

Conflicts of interest and asset disclosure

Rules on conflicts of interest and asset disclosure vary between and within services, depending on the level of the public officials, the branch of power they belong to and the nature of the official's position (i.e. elected, appointed or career civil servant). Members of national government, Parliament, as well as high-ranking central and local elected and appointed officials

54 Commission Staff Working Document, Assessment of the 2013 national reform programme and stability programme for Spain, 29 May 2013: http://ec.europa.eu/europe2020/pdf/nd/swd2013_spain_en.pdf.

55 Proyecto de Ley de racionalización y sostenibilidad de la Administración Local, http://www.congreso.es/public_oficiales/L10/CONG/BOCG/A/BOCG-10-A-58-1.PDF

56 <http://www.tcu.es/uploads/1940.pdf>.

57 Costas-Pérez, E., Solé-Ollé, A., Sorribas-Navarro, P. (2011) Corruption Scandals, Press Reporting, and Accountability. Evidence from Spanish Mayors. IEB Working Paper 2011/9.

58 http://www.femp.es/CartaLocal/Front/Noticias/CL_ContentidoDetalle/_sYcniRvuy5ly-yy6MEsAr2xlyOH4RgvsLsMsOhPI4uc

59 <http://www.antifrau.cat/es.html>

are obliged to disclose their assets and interests.⁶⁰ By contrast, at regional level only a few regions impose an asset disclosure obligation on their officials.

At central level, high-level appointed officials must submit a declaration of assets when they take up and when they leave public office. These declarations are stored in a Registry of Assets. The officials must also provide information on the main activities of the companies in which both they and their families have interests and must submit a copy of their income tax and capital gains tax returns every year. Spouses may voluntarily provide information on their income and assets. These legal obligations are supplemented by rules that establish the public nature of the Registry of Assets of high level officials and provide for the publication of the asset declarations by members of the government and state secretaries in the Official State Bulletin.

The Registry of Assets is managed by the Office for Conflicts of Interest within the Ministry of Finance and Public Administration. The Office monitors the implementation of legal provisions on asset disclosure, detects possible breaches, opens disciplinary proceedings and proposes sanctions to be applied by the institutions where the official in question is employed; however, its own sanctioning powers are weak. The Office can detect non-compliance and investigate, but can only do the latter when there is a formal accusation and only after authorisation by the Ministry of Finance and Public Administrations. It is not entirely clear what verification methodologies are applied. As it is part of a Ministry, the Office is not independent and does not have budgetary autonomy. Independence is a key element to ensure the necessary safeguards for an impartial verification of assets and interests of public officials.

At the local level, elected and high-ranking officials similarly must submit an asset declaration when they start and when they conclude their mandate, as well as provide information on the main activities of the companies in which both they and their families have interests. Their asset declarations are public.

Parliamentary committees at central and regional level that are in charge of monitoring asset disclosure obligations of elected officials have a limited supervisory role. They are under no obligation to check the accuracy of asset declarations of elected officials and there are no records of sanctions applied by these committees. As far as appointed officials at regional and local level are concerned, there is currently no verification mechanism for their mandatory asset declarations. A number of examples of potential revolving door situations involving former members of regional cabinets in charge of healthcare (former 'Consejeros de Sanidad') would further illustrate the need for improved verification mechanisms of assets and interests.

According to current legislation, the applicable sanctions for breach of asset disclosure requirements range from publication of the decision that takes note of the breach and loss of compensatory benefits to an obligation to return the amounts received and dismissal from office. As a rule, these fall within the authority of disciplinary committees within public administration bodies. A recent law on transparency, access to public information and good governance also includes provisions on the sanctioning regime for breaching rules of conflicts of interest⁶¹, including an obligation to pay compensation to the public treasury and disqualification from holding public office.

The Government plan for the 'revival of democracy', approved in September 2013, includes legislative measures with a specific focus on prevention and sanctioning of misbehaviour in exercising public office in the central public administration.⁶² In this context, a bill on regulating the tasks of high-ranking officials of the State General Administration was passed by the

60 Law 5/2006 regulating the conflict of interests of members of the government and senior civil servants in the General State Administration.

61 Ley 19/2013, de 9 de Diciembre, de transparencia, acceso a la información pública y buen gobierno.

62 Aprobado el Informe del Plan de Regeneración Democrática, 20.09.2013

http://www.lamoncloa.gob.es/ConsejodeMinistros/Enlaces/200913Enlace_Regeneraci%C3%B3nDemocr%C3%A1tica

Government in December 2013. It included, inter alia, provisions to: clarify the concept of high-ranking officials at the level of State General Administration, strengthen accountability standards, define rules on revolving door practices, strengthen the transparency and publicity of asset declarations, and reinforce the powers and tools at the disposal of the Office for Conflicts of Interest.

Urban development

The rapid development of public infrastructure and extensive public works prior to 2008 led to many changes in urban planning and land classification.⁶³ City councils and mayors act autonomously and have broad discretionary powers in urban planning, including the change of land classification and public procurement procedures, when applied. Regional governments exercise only limited control, having in some cases to apply to a court to repeal a municipality decision.⁶⁴ This contributes to the vulnerability to corruption of the urban planning and construction sectors.⁶⁵ Further risk factors include the considerable difference between the value of arable land and land for development, insufficient control mechanisms, the complexity of rules on urban development resulting in a large degree of discretion in decision-making, limited use of precautionary measures during prolonged court procedures to halt construction of works suspected of illegality, and a limited rate of real compliance with demolition rulings.⁶⁶ Amendments to the Land Act adopted in 2007 represented a step in the right direction, introducing a reinforced and more objective land classification system.⁶⁷ Decisions are no longer taken by mayors alone, but by municipal councils.

While high public spending on construction and urban development cannot be directly attributed to corruption, it contributes to an overall context which, jointly with weak supervision of decision-making at regional and local levels, increases the vulnerability of this sector to fraud and corruption. Correspondingly, the number of corruption and other criminal cases investigated and adjudicated in the area of urban planning is high and led to the creation of specialised prosecution services and of a specialised unit on land-planning crimes at the Operative Central Unit of the *Guardia Civil*.⁶⁸ In 2011, 1 754 judicial proceedings were opened in cases relating to alleged illegal acts in land use and urban planning, and convictions were issued in 408 cases. While these figures include other crimes related to urban planning, in addition to corruption offences, they give an indication of the exposure to illegal activities. In addition, the specialised prosecution service for the fight against organised crime and corruption increasingly focused on such cases.⁶⁹

63 Since 2000, 30% of the residential constructions in the EU were built in Spain. In 2007, the investment in the construction sector accounted for 15.7% of GDP compared to 9% in the US, Germany, France, the UK and Italy. "Approaching a geography of urban corruption in Spain" by Luis M. Perez Darias, Victor O. Martin and Ramón Pérez González, University of La Laguna.

64 'Identifying and Reducing Corruption in Public Procurement in the EU – Development of a methodology to estimate the direct costs of corruption and other elements for an EU-evaluation mechanism in the area of anti-corruption', 30 June 2013, PricewaterhouseCoopers and ECORYS

65 Fundación Alternativas (2007) *Urbanismo y democracia. Alternativas para evitar la corrupción*: <http://www.falternativas.org/la-fundacion/documentos/libros-e-informes/informe-urbanismo-y-democracia-alternativas-para-evitar-la-corrupcion-vol-i>

66 'Identifying and Reducing Corruption in Public Procurement in the EU – Development of a methodology to estimate the direct costs of corruption and other elements for an EU-evaluation mechanism in the area of anti-corruption', 30 June 2013, PricewaterhouseCoopers and ECORYS.

67 Ley 8/2007, de 28 de mayo, de suelo: <http://www.boe.es/buscar/doc.php?id=BOE-A-2007-10701>.

68 http://www.fiscal.es/cs/Satellite?c=FG_Actualidad_FA&cid=1247140274984&pagename=PFiscal%2FFG_Actualidad_FA%2FFGE_pintarActualidad

69 In 2009 it launched 257 proceedings, as compared to the previous four years which counted 127 such cases: http://www.fiscal.es/cs/Satellite?c=Page&cid=1242052134611&language=es&pagename=PFiscal%2FFPage%2FFGE_memo_rias&selAnio=2012.

An unofficial database on corruption in urban planning⁷⁰ indicates that close to 700 municipalities were affected by such cases between 2000 and 2010.⁷¹ The cases concerned practices related to illicit sales of public lands, illegal changes of land classification, embezzlement regarding construction of public facilities, etc. Numerous ongoing investigations concern similar types of alleged practices. In the last three years, 19 mayors from across the political spectrum were arrested on allegations of corruption. Some cases, in which strict prison sentences were handed down for former mayors and local councillors, revealed complex networks of local-level politicians and businesses that carried out illegal urban planning-related activities, misused public contracts and laundered money.

Public procurement

Public works, goods and services constituted 15.5% of the GDP in Spain in 2011. The value of calls for tender published in the Official Journal as a percentage of total expenditure on public works, goods and services was 15.2% in 2011.⁷² In the 2013 Eurobarometer business survey on corruption, 83% of the Spanish business respondents (highest percentage in the EU) thought corruption was widespread in public procurement managed by national authorities (EU average: 56%) and 90% (second highest percentage in the EU) in that managed by local authorities (EU average: 60%). In particular, Spanish business respondents stated that the following practices were the most widespread in public procurement procedures: specifications tailor-made for particular companies (80%); abuse of negotiated procedures (72%); conflicts of interest in the evaluation of the bids (79%); collusive bidding (71%); unclear selection or evaluation criteria (72%); and amendments of contractual terms after conclusion of contract (69%). These are among the highest percentages in the EU. While these perception indicators, which need to be read in the context of the current economic crisis that affects Spain, are not necessarily directly related to corruption, they illustrate risk factors that increase vulnerabilities to corruption in public procurement procedures.

The number of investigations for alleged corrupt practices in public procurement procedures is particularly high in the construction and waste collection sectors, pointing to a high risk of corruption in these sectors.⁷³

In 2012, a report by the central Court of Audit provided an overview of the main risk areas in public procurement at regional and local level.⁷⁴ The Court warned of mismanagement and insufficient control at regional level, highlighting the increasing number of corruption cases under investigation. The Court of Audit assessed 2 500 contracts awarded between 2006 and 2007 with a total value of EUR 10 billion. The most frequent irregularities found, not necessarily based on corruption schemes, but revealing a number of vulnerabilities, included: breaking down of large contracts into smaller tenders to avoid public procurement requirements; unjustified use of emergency grounds to circumvent more stringent procurement requirements; unjustified choice of certain exceptional categories of procurement procedures; a lack of selection criteria; poor reasoning of award decision; unjustified exceptions from publication of bids, and insufficient justifications for amendments to public contracts. These practices and irregularities also revealed uneven thoroughness of monitoring through regional control mechanisms as compared to the central Court of Audit. Given the large number of public

70 Jerez Darias, L; Martín Martín, V; Pérez González, R (2012). Aproximación a una geografía de la corrupción urbanística en España. *Ería: Revista cuatrimestral de geografía*: <http://www.unioviado.es/reunido/index.php/RCG/article/view/9654>

71 Number of municipalities within the regions affected by corruption cases in the area of urban development and construction between 2000 and 2010 ranges from 8 in Aragon, 12 in Rioja, to 66 in Galicia, 94 in Valencia and 154 in Andalucía.

72 http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/public-procurement-indicators-2011_en.pdf.

73 E.g: cases in relation to: alleged links between party funding and construction business; contracts for garbage collection; charges against mayors of municipalities accused of corrupt practices in the procurement of cleaning services; various construction works for buildings of public interest, etc.

74 <http://www.tcu.es/uploads/I935.pdf>.

contracts and the wide range of tasks covered by the Court of Audit,⁷⁵ its capacity does not allow for more timely checks on recently concluded public contracts.

A study commissioned by OLAF on corruption in public procurement affecting EU funds confirmed many of the findings of the Court of Audit mentioned above.⁷⁶

The Registry of Public Sector Contracts is the official centralised database of public procurement, including information on public contracts and statistics.⁷⁷ The contracting authorities of all public administrations and other bodies subject to the legislation on public contracts must report contracts to the Registry of Public Sector Contracts, within three months from their signature, in order for them to be recorded, including any modifications, extensions, changes in deadline or prices, final value and normal or abnormal termination. Amendments in 2011 to the public contracts law strengthened contracting prohibitions and included provisions on conflict of interest and annulment of contracts in cases when conflicts of interests are found.⁷⁸ One of the novelties of the law is the appointment of a natural or legal person 'responsible for the contract' who is charged with monitoring the entire life of the contract to ensure that deviations from its initial conditions are minimised. This person cannot belong to the contracting commission or body, or be linked to it in a contractual arrangement.

Good practices in public procurement at local level

Some good practices have been developed at regional and local level which could be further considered when planning future initiatives. For example, setting up the Office for the Monitoring and Evaluation of Public Procurement in Catalonia or the Advisory Committee of Transparency in the Balears functioning within the regional governor's office has set higher transparency standards, centralised data collection and enhanced oversight of public procurement procedures. The autonomous regions of Valencia and Catalonia have also developed a good practice in the framework of negotiated contracts, allowed under certain conditions by EU public procurement rules, making it compulsory to publicise the tender and allowing all companies to participate without having been formally invited beforehand.

There are a large number of public procurement platforms from different regional and local administrations. The central administration is currently building a database bringing together all information on public procurement at national level.⁷⁹ Most regions now have a single platform where the relevant documentation for the tenders in different regional departments is uploaded and procedures are followed, offering additional safeguards in terms of preventing and detecting corrupt practices by increasing transparency and better implementation of standardised procedures. These represent steps in the right direction and contribute to further enhancing transparency in public procurement procedures.

The Government's plan for 'revival of democracy' includes amendments to public sector contract law to exclude from public tenders those convicted of a wider range of corruption-related offences, including illegal party funding.

75 See also the section on financing of political parties.

76 'Identifying and Reducing Corruption in Public Procurement in the EU – Development of a methodology to estimate the direct costs of corruption and other elements for an EU-evaluation mechanism in the area of anti-corruption', 30 June 2013, PricewaterhouseCoopers and ECORYS. Additional risk factors identified at regional and local level include the acquisition of technical specifications from competing bidders, a lack of effective and independent ex-ante controls, lack of a single platform for large numbers of contractors' profiles, and a high threshold for low-value contracts for services and works.

77 <http://www.minhap.gob.es/es-ES/Servicios/Contratacion/Junta%20Consultiva%20de%20Contratacion%20Administrativa/Paginas/Registro%20publico%20de%20contratos.aspx>

78 Ley de Contratos del Sector Público (Real Decreto Legislativo 3/2011, de 14 de noviembre).

79 <http://www.minhap.gob.es/es-ES/Servicios/Contratacion/Paginas/default.aspx>.

Transparency and access to information

A new law on transparency, access to public information and good governance was adopted in December 2013 after a lengthy process of public and political debates.⁸⁰ The law represents a significant step forward. It has a three-fold purpose: to expand and strengthen transparency of public activities, to recognise and safeguard the right to access to information, and to establish good governance obligations for public officials, including corresponding sanctions. It provides for compulsory quarterly publication of budgetary execution, allowing for irregularities to be identified and investigated. The law also provides for the creation of a transparency portal which will act as a single entry point to public information for citizens. It sets up a control mechanism through the Transparency and Good Government Committee whose chair is appointed by the Government and needs to be endorsed by a simple parliamentary majority. However, the new law has not ensured sufficient guarantees for the independence of its control mechanism, and further consideration could have been given to an enhanced sanctioning system and a narrower scope of exceptions from the principle of access to information. Moreover, its entry into force is postponed for two years in a number of administrations, particularly regional and local ones.

Good practices in promoting transparency

The indices on transparency in municipalities (ITA)⁸¹ and on autonomous regions (INCAU)⁸², managed by Transparency International monitor the level of transparency and accessibility of public information at regional and municipal level on the basis of 80 indicators. Each regional institution obtains an individual score, creating an index of transparency level across the 17 regions. Over the past four years, these indicators show an overall improvement in transparency standards at regional level. INCAU 2012 shows that Pais Vasco and La Rioja promote the highest levels of transparency in the country. An increasing number of regions have adopted or are about to adopt transparency laws (e.g. Galicia, Pais Vasco, Catalonia, Balears) and some are already implementing strong transparency policies.⁸³

3. FUTURE STEPS

The anti-corruption legal framework is largely in place in Spain and law enforcement has shown good results in investigation of alleged corrupt practices, including at high levels. Yet, recent large-scale corruption cases have revealed a number of alleged corrupt practices affecting public funds and financing of political parties. Political corruption and deficient checks and balances between discretion and accountability, notably in public spending, decision-making and control mechanisms at regional and local level, have been particularly challenging. Public procurement and urban development appear to be among the most vulnerable areas. To address these concerns, legislative reforms have been promoted, including with regard to financing of political parties, and the efficiency of court proceedings, the strengthening of control mechanisms in relation to public spending and freedom of information. Moreover, anti-corruption and integrity-related policies moved to the forefront of public and political debates.

80 Ley 19/2013, de 9 de Diciembre, de transparencia, acceso a la información pública y buen gobierno.

81 <http://www.transparencia.org.es/ITA%20AÑOS%20ANTERIORES/ITA%20AÑOS%20ANTERIORES.htm>

82 http://www.transparencia.org.es/INCAU_AÑOS_ANTERIORES.htm.

83 E.g. the Government of Catalonia implemented an anti-corruption package which also included obligations to render certain public-sector operations more transparent. The Balearic Regional Government required all *Consellerias* to publish information on the Transparency International indicators on their websites.

The following points require further attention:

- Pursuing the ongoing reforms and ensuring effective implementation of the new rules on **party funding** focusing on supervision of loans, consolidation of party accounts (including regional and local branches and other entities linked to political parties), enhanced internal financial controls, thorough, timely checks carried out by the Court of Audit, and a reinforced sanctioning regime.
- Developing tailor-made strategies for **regional and local administrations**, preceded by corruption risk assessments. Strengthening control mechanisms, increasing transparency of decision-making and ensuring consistent monitoring of the quality of local and regional governance.
- Developing comprehensive codes of conduct for **elected officials at central, regional and local levels** with adequate accountability and sanctioning tools for potential violations of such codes. Consider developing ethical codes within political parties or establishing ethics pacts between parties, as recommended by the resolution of the Spanish Parliament in February 2013. Strengthening the coherence of rules on asset disclosure and conflicts of interests for elected and appointed officials at central, regional and local levels backed by an effective verification mechanism and a dissuasive sanctioning system. Strengthening the ability of the Office of Conflicts of Interests to carry out verifications in an independent and effective way and to apply dissuasive sanctions. Ensuring the necessary implementation framework for the new law on **transparency, access to public information and good governance**, including an independent supervisory mechanism matched with a dissuasive sanctioning system.
- Addressing the findings of the central Court of Audit and similar bodies at regional level regarding the irregularities in **public procurement** procedures at regional and local level. Carrying out an independent assessment of large public construction work contracts and urban planning decisions concluded over a recent period of reference at regional and municipal levels in order to identify corruption risk factors. Disseminating standardised good practices on public procurement at regional and local levels. Increasing the capacity of the central Court of Audit and of similar bodies at regional level to carry out systematic and timely checks of public contracts at regional and local level.