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Groupe d'États contre la corruption

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FOURTH EVALUATION ROUND

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

ADDENDUM TO THE SECOND COMPLIANCE REPORT

POLAND

Adopted by GRECO at its 80th Plenary Meeting
(Strasbourg, 18-22 June 2018)

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I. INTRODUCTION

1. The Addendum to the Second Compliance Report assesses the measures taken by the authorities of Poland to implement the pending recommendations issued in the Fourth Round Evaluation Report on Poland (see paragraph 2) covering "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. The Fourth Round Evaluation Report on Poland was adopted at GRECO's 57th Plenary Meeting (19 October 2012) and made public on 25 January 2013, following authorisation by Poland ([Greco Eval IV Rep \(2012\) 4E](#)). The Fourth Round Compliance Report was adopted by GRECO at its 66th Plenary Meeting (12 December 2014) and made public on 24 February 2015, following authorisation by Poland ([Greco RC-IV \(2014\) 1E](#)). The Second Compliance Report ([GrecoRC4\(2017\)2](#)) was adopted at GRECO's 75th Plenary (20-24 March 2017) and made public on 28 March 2017, following authorisation by Poland.
3. As required by GRECO's Rules of Procedure, the authorities of Poland submitted a Situation Report with additional information regarding actions taken to implement the nine recommendations that, according to the Second Compliance Report, had been partly or not implemented. This report was received on 8 January 2018 and served – together with information submitted subsequently – as a basis for this Addendum to the Second Compliance Report.
4. GRECO selected Portugal and the Czech Republic to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Daniel MARINHO PIRES on behalf of Portugal and Ms Lenka MLYNÁŘÍK HABRNÁLOVÁ on behalf of the Czech Republic. They were assisted by GRECO's Secretariat in drawing up the Second Compliance Report.

II. ANALYSIS

5. It is recalled that GRECO, in its Evaluation Report, had addressed 16 recommendations to Poland. In the subsequent Compliance Report, GRECO concluded that recommendations iv, viii and xiii had been dealt with in a satisfactory manner. The Second Compliance Report concluded that in addition recommendations vii, x, xi and xv had been implemented satisfactorily. Recommendations ix, xii, xiv and xvi had been partly implemented and recommendations i, ii, iii, v and vi not implemented. Compliance with the nine pending recommendations is dealt with below.

Corruption prevention in respect of members of parliament

Recommendations i-iii, v and vi.

6. *GRECO recommended:*
 - *that interactions by parliamentarians with lobbyists and other third parties who seek to influence the legislative process, be made more transparent, including with regard to parliamentary sub-committee meetings (recommendation i);*
 - *i) that the "Principles of Deputies' Ethics" be complemented in such a way so as to provide clear guidance to Sejm deputies with regard to conflicts of interest (e.g. definitions and/or types) and related areas (including notably the acceptance of gifts and other advantages, incompatibilities, additional activities and financial interests, misuse of information and of public resources, the obligation to submit asset declarations and on the attitude towards third parties such as lobbyists – and including elaborated examples); and ii) that such*

standards of ethics and conduct also be introduced for senators and disseminated among them (recommendation ii);

- *both in respect of Sejm deputies and senators, the development of a clearly defined mechanism to declare potential conflicts of interest of parliamentarians – also taking into account interests of close family members – with regard to concrete legislative (draft) provisions (recommendation iii);*
- *that the monitoring mechanism in respect of compliance by parliamentarians with standards of ethics and conduct - including rules on conflicts of interest and related areas - be reviewed in order to increase its effectiveness, in particular by simplifying the system of various bodies involved and by providing it with the necessary financial and personnel resources (recommendation v); and*
- *both in respect of Sejm deputies and senators, (i) the establishment of a dedicated confidential counsellor with the mandate to provide parliamentarians with advice on ethical questions and possible conflicts of interests in relation to specific situations; and (ii) the provision of specific and periodic training for all parliamentarians on ethical questions and conflicts of interests (recommendation vi).*

7. GRECO recalls that in the Second Compliance Report it had concluded that these recommendations had not been implemented. Initially, in the Compliance Report, various measures had been reported, including a draft law on lobbying (regarding recommendation i), draft amendments to the Rules of Procedure for the *Senate* (recommendation i, iii and vi), a draft resolution on ethical rules for senators (recommendation ii) and a draft law on asset declarations of officials performing public functions (recommendation v). However, given the very early stages of those measures, GRECO had concluded that recommendations i-iii, v and vi had not been complied with. In the Second Compliance Report, it concluded that these recommendations remained non-implemented, due to the fact that the abovementioned measures had been largely discontinued, in spite of the attempts made (e.g. the joint organisation with the Council of Europe of a specific conference and the establishment of a parliamentary sub-committee) to draw the attention of relevant stakeholders to the need and importance of implementing GRECO's recommendations.
8. The authorities now report on various exchanges which have taken place between the Ministry of Justice and various stakeholders in the *Sejm* and *Senate*, which so far have not led to tangible progress in the implementation of the recommendations. At the same time however a draft law on the transparency of public administration has been prepared (and is currently in a consultation process before being sent to the Council of Ministers), which reportedly will also be applicable to members of parliament (as well as judges and prosecutors, on which further below). If adopted as foreseen, the law will provide that officials are to avoid conflicts of interest when exercising public functions and prescribes that the head of an organisational unit (for the *Sejm* and *Senate* this is their respective *Marshal*) can determine which activities could potentially entail a conflict of interests. The draft law furthermore foresees a number of incompatibilities (*inter alia* membership of a body which manages or controls certain legal entities, employment or carrying out any remunerated tasks for a commercial company, holding more than 10% shares in a commercial company) and also provides for a three-year cooling off period after leaving certain public functions.
9. GRECO takes note of the information provided, in particular as regards the elaboration of a draft law on transparency of public administration, which may eventually have a bearing on some parts of the abovementioned recommendations

(even though it does not seem that the draft law deals with lobbying, the provision of specific guidance on conflicts of interest, declarations of potential conflicts of interest in the legislative process, confidential counselling or training). More specifically as regards members of parliament, GRECO can only reiterate its disappointment, as already expressed in its Second Compliance Report, that no further progress towards implementing the recommendations has been made in what is now almost six years since the adoption of the Evaluation Report. GRECO strongly emphasises once again the importance of these recommendations for the prevention of corruption among parliamentarians and calls upon all relevant stakeholders to renew efforts to have these recommendations implemented.

10. GRECO concludes that recommendations i-iii, v and vi remain not implemented.

Corruption prevention in respect of judges

Recommendation ix.

11. *GRECO recommended that appropriate legal, institutional and/or operational measures be put in place or strengthened to ensure a more in-depth scrutiny of judges' asset declarations and to enhance the preventive dimension of asset declarations. This should include greater co-ordination of all relevant control bodies.*
12. GRECO recalls that this recommendation was considered partly implemented at the stage of the Compliance Report and remained partly implemented at the stage the Second Compliance Report. In the Compliance Report, it was reported that several measures had been taken to reform the monitoring system with respect to asset declarations to be submitted by judges. They were aimed at strengthening co-operation among the bodies involved rather than entrusting this task to one leading body. It appeared that the rules on review of asset declarations by fiscal authorities, developed by the Ministry of Finance, provided several tools for significantly strengthening in-depth control of the declarations – *inter alia*, by defining a wide range of sources of information to be taken into account – and for co-operation with other bodies concerned. Moreover, draft legislation on asset declarations had been prepared by the Ministry of Justice. However, by the stage of the Second Compliance Report, the work on the aforementioned draft law had stopped. In light of the fact that the rules on the review of asset declarations developed by the Ministry of Finance nevertheless remained in force, GRECO concluded at that stage that the recommendation remained partly implemented.
13. The authorities now indicate that the draft law on transparency of public administration has been prepared (as referred to already above under members of parliament) and is being circulated among ministries, before its submission to the Council of Ministers. The draft law provides a common form for all entities obliged to submit an asset declaration (including judges) and *inter alia* outlines the scope of information on assets to be provided, deadlines for submission of data, consequences of non-submission of the declaration and which data will be made public (following the 2017 amendments to the Law on the Organisation of Common Courts which stipulated that asset declarations of judges would be made public), as well as situations in which it is necessary to submit declarations to the tax authorities and/or the Central Anti-Corruption Bureau. According to the authorities, the new law aims to provide for a uniform system for reviewing asset declarations and clear rules for cooperation between the authorities obliged to review them. As regards the verification of the declarations, the draft stipulates that the entities authorised to receive them (i.e. for judges this remains the board of the court of appeals or – for the president of the courts of appeal – the National Council of the Judiciary) will compare the content of the declarations with previous declarations and other available information on income, property and obligations (i.e. loans,

debts, etc.) including from public registers and can request additional explanations and documentation (e.g. tax returns) from the person concerned. As regards cooperation with other control bodies, the draft provides that if there are doubts regarding the credibility of the information contained in an asset declaration, the declaration is to be submitted to the Central Anti-Corruption Bureau. Similarly, if there are doubts about the sources of income or origin of the assets of a person, this declaration is to be submitted to the tax authorities. A novelty in the draft law is the power of the Anti-Corruption Bureau to require any person performing a public function to submit an ad-hoc asset declaration (for example, in light of a media report or other information).

14. GRECO notes that after the concerns it expressed in the Second Compliance Report about the discontinuation of the work on the then draft law, a new law is now being prepared with the potential to address the deficiencies in the asset declaration system. It takes note of the proposed features of this law, including the rules on cooperation between different control bodies, publication of certain information in asset declarations and the powers of the Central Anti-Corruption Bureau to require the submission of an ad-hoc declaration. As the draft law is still at an early stage of the legislative process, GRECO concludes that recommendation ix remains partly implemented.

Corruption prevention in respect of prosecutors

Recommendation xii.

15. *GRECO recommended that the "Collection of Ethical Principles governing the Prosecutors' Profession" (i) be disseminated among all prosecutors and made easily accessible to the general public; and (ii) that they be complemented in such a way so as to offer proper guidance specifically with regard to conflicts of interest (e.g. definitions and/or types) and related areas (including in particular the acceptance of gifts and other advantages, incompatibilities and additional activities).*
16. GRECO recalls that in the Compliance Report it had concluded that the recommendation had been partly implemented and it remained so in the Second Compliance Report. More specifically, at the stage of the Compliance Report, GRECO had considered that the first part of the recommendation had been implemented satisfactorily with the distribution of the "Collection of Ethical Principles governing the Prosecutors' Profession" among prosecutors and the information on this provided to the general public. As regards the second part of the recommendation, the National Prosecution Council (NPC) had examined the issue of supplementing aforementioned principles with a definition and types of conflicts of interest, and guidance for prosecutors on questions of conduct. It had come to the conclusion that such measures were not advisable. In contrast, GRECO was of the firm opinion that further guidance, referring to practical examples – as existed in other countries – would be beneficial to raising prosecutors' awareness of corruption risks and offering solutions for resolving conflicts of interest. For the Second Compliance Report, the authorities reported that the Minister of Justice was continuing its discussion with the NPC on possible ways to implement the second part of the recommendation.
17. The authorities now report as regards the pending second part of the recommendation that on 12 December 2017 a new "Collection of Ethical Principles governing the Prosecutors' Profession" was adopted and published on the internet (and will soon be distributed among prosecutors).¹ Unlike the previous edition, the aforementioned Collection now contains specific regulations regarding conflicts of

¹ Please see <http://pk.gov.pl/zzezpKRP/zbior-zasad-etyki-zawodowej-prokuratorow.html#.WjzJseb2aAg>

interest and gifts. It *inter alia* prescribes that prosecutors are not to use their position for their own interests (or that of others), are to avoid conduct which could undermine trust in their impartiality, avoid personal contacts and economic relations which could lead to a conflict of interest and not to accept any advantages that could give the impression that an attempt was being made to influence him/her in connection with the office held.

18. GRECO welcomes that some steps towards implementing the second part of the recommendation have now been taken. Having said that, it considers that the relevant provisions in the new "Collection of the Ethical Principles governing the Prosecutors' Office" remain rather general and cannot be said to offer much guidance as regards conflicts of interest and related areas (including gifts and other advantages, incompatibilities and additional activities), as required by the recommendation. In this respect, inspiration could be drawn from the work carried out by the National Council for the Judiciary in respect of the guidance provided to judges on these issues, as described in the Second Compliance Report.
19. GRECO concludes that recommendation xii remains partly implemented.

Recommendation xiv.

20. *GRECO recommended (i) that the competences of the National Prosecution Council for supervising compliance with ethical principles for prosecutors be clearly defined by law and that the Council be provided with adequate tools and powers for effectively performing this function; and (ii) that appropriate legal, institutional and/or operational measures be put in place or strengthened to ensure a more in-depth scrutiny of prosecutors' asset declarations and to enhance the preventive dimension of asset declarations. This should include greater co-ordination of all relevant control bodies.*
21. GRECO recalls that this recommendation had been partly implemented in the Compliance Report and remained partly implemented in the Second Compliance report. As required by the first part of the recommendation, draft legislation entrusting the NPC with clear powers to supervise prosecutors' compliance with ethical principles had been elaborated. Regarding the second part of the recommendation, various measures had been initiated in order to reform the system for monitoring asset declarations to be submitted by prosecutors (and other categories of persons concerned), including the adoption of rules by the Ministry of Finance (providing for more in-depth scrutiny of asset declarations), guidelines by the General Prosecutor and the preparation of a draft law on asset declarations. At the stage of the Second Compliance Report, both aforementioned pieces of draft legislation had however been abandoned.
22. The authorities now report, as regards the first part of the recommendation, that on 12 July 2017 the 2016 Law on the Prosecution Service was amended to provide the NPC with the power to enact the "Collection of Principles of Professional Ethics for Prosecutors" and to verify that they are being observed.² In December 2017, in the resolution on the aforementioned "Collection of the Principles of Professional Ethics for Prosecutors", the NPC was provided with the power to interpret the provisions of this Collection. In accordance with this resolution, the NPC can adopt resolutions interpreting provisions of the collection, at the request of a public prosecutor who has concerns about a potential conflict of interest. In addition, the NPC is to periodically analyse instances of violations of provisions of the Collection, with particular attention to be given to conflicts of interest. In this connection, the

² Article 43, para. 6 of the Law on the Prosecution Service now provides that "The National Prosecutorial Council shall enact the Collection of Principles of Professional Ethics for Prosecutors and supervise that it is obeyed".

authorities also point out that the nature of the activities of the NPC has changed and that now it no longer has the power to adopt resolutions obliging disciplinary commissioners to request the initiation of disciplinary proceedings. As regards the second part of the recommendation, the authorities refer to the draft law on the transparency of public administration, as already reported on above with respect to members of parliament and judges, as well as the abovementioned rules of the Ministry of Finance and guidelines of the Prosecutor General, which remain in force.

23. GRECO welcomes the steps taken to provide the NPC with the power to enact the "Collection of Principles of Professional Ethics for Prosecutors" and to interpret these principles when so requested, which will undoubtedly contribute to a better understanding and a more uniform application of these principles (thereby going to some extent in the direction intended by recommendation xvi, see on this further below). However, on the basis of the information provided it cannot say that the NPC has now been provided with the adequate tools and powers to supervise compliance with ethical principles, as required by the first part of the recommendation, as it still does not seem to have the power to take any sort of action in response to violations of these principles. As regards the second part of the recommendation, concerning asset declarations, these notable developments are still at an early stage.
24. GRECO concludes that recommendation xiv remains partly implemented.

Recommendation xvi.

25. *GRECO recommended (i) the provision of on-going training to all prosecutors on conflicts of interest, rules concerning gifts, prohibition or restriction of certain activities and declaration of assets and private interests, by way of dedicated courses referring to practical examples; and (ii) the provision of proper dedicated counselling in prosecutors' offices, in order to raise prosecutors' awareness and to provide them with confidential advice on questions of ethics and conduct – particularly with regard to the areas mentioned under (i) – in relation to specific facts, taking into account the need for common, nationwide solutions.*
26. GRECO recalls that in the Second Compliance Report it concluded that this recommendation had been partly implemented. As regards the first part of the recommendation, it had been satisfied with the information provided with regard to the training activities on ethical matters provided to prosecutors, which will continue in the future. As regards the second part of the recommendation, it recalls that the Prosecutor General's Office had examined the feasibility of introducing a solution similar to that adopted by the National Council of the Judiciary in respect of judges, but had not yet found a proper way of implementation.
27. The authorities now report that the National Prosecutor's Office is considering ways for implementing the second part of the recommendation, but that so far no solutions have been adopted.
28. GRECO regrets that in more than a year since the adoption of the Second Compliance Report and almost six years since the adoption of the Evaluation Report no further steps have been taken to implement the second part of the recommendation, given the clear need identified in the Evaluation Report. In this respect, it considers that, given that the NPC now has the authority to interpret the "Collection of the Principles of Professional Ethics for Prosecutors" (as reported under recommendation xiv) and is not involved in disciplinary proceedings, it could be appropriate to supplement this task of the NPC with the possibility to provide confidential counselling on questions of ethics and conduct.

29. GRECO concludes that recommendation xvi remains partly implemented.

III. CONCLUSIONS

30. **In view of the conclusions contained in the Fourth Round Compliance Reports on Poland and in view of the above, GRECO concludes that Poland has implemented seven of the sixteen recommendations in the Fourth Round Evaluation Report, remaining at the same level of implementation as in the Second Compliance Report.** Of the remaining recommendations, four have been partly implemented and five have not been implemented.
31. More specifically, recommendations iv, vii, viii, x, xi, xiii and xv had been considered implemented satisfactorily or dealt with in a satisfactory manner in the Second Fourth Round Compliance Report on Poland ([Greco RC4 \(2017\) 2E](#)). Recommendations ix, xii, xiv and xvi remain partly implemented and recommendations i, ii, iii, v and vi remain not implemented.
32. In this report, GRECO has taken note of the preparation by the authorities of a draft law on transparency of public administration by the authorities, which would be applicable to members of parliament, judges and prosecutors alike, dealing with such issues as conflicts of interest, incompatibilities and post-employment restrictions, and which has the potential of addressing some of the issues targeted by the recommendations of the Fourth Round Evaluation Report, in particularly as regards asset declarations.
33. More specifically, with respect to members of parliament, in the Second Compliance Report, GRECO had already expressed serious concern about the lack of tangible progress when legislative and other work presented in the Compliance Report had not been pursued. While at least this time no such steps backwards have been taken, it is clear that no tangible progress has been made in more than a year since the adoption of the Second Compliance Report. Given the importance of these recommendations to the prevention of corruption among parliamentarians and the clear need for further measures to prevent corruption among parliamentarians identified in the Evaluation Report in 2012, GRECO urges that more determined action be taken to address these remaining five recommendations in respect of members of parliament.
34. With respect to judges, the draft law (as mentioned in paragraph 32 above) may eventually also address the deficiencies in the asset declaration system, which is the subject of the one pending recommendation in respect of judges. It should be noted in this context that the situation as regards judges has changed in such a critical way and to such an extent, that GRECO concluded at its 79th Plenary Meeting (19-23 March 2018) that the assessment made in GRECO's Fourth Round Evaluation Report regarding corruption prevention in respect of judges was no longer pertinent in crucial parts and would be reassessed. The [reassessment report](#) forms an addendum to the Fourth Round Evaluation Report.
35. With respect to prosecutors, GRECO has taken note of the measures taken but considers that that these fall short of offering proper guidance on conflicts of interest and related areas to prosecutors (as required by recommendation xii) and cannot be regarded as giving the NPC adequate tools and powers to supervise compliance with ethical principles for prosecutors. In this context, GRECO regrets that almost six years after the adoption of the Fourth Round Evaluation Report, the National Prosecutor's Office is still considering ways to implement the recommendation on dedicated counselling on questions of ethics and conduct. Given that since the reforms of 2016, the Minister of Justice heads the National Prosecutor's office, GRECO would have expected more progress in this area.

36. In conclusion, in view of the fact that nine out of sixteen recommendations are yet to be implemented GRECO, in accordance with Rule 31, paragraph 9 of its Rules of Procedure, asks the Head of delegation of Poland to submit additional information on the pending recommendations, namely regarding the implementation of recommendations i, ii, iii, v, vi, ix, xii, xiv and xvi by 31 March 2019 at the latest.
37. Finally, GRECO invites the authorities of Poland to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make the translation public.