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FIFTH EVALUATION ROUND

Preventing corruption and promoting integrity in
central governments (top executive functions) and
law enforcement agencies

COMPLIANCE REPORT

Poland



Adopted by GRECO
at its 87th Plenary Meeting (Strasbourg, 22-25 March 2021)



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

COUNCIL OF EUROPE



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I. INTRODUCTION

1. GRECO's Fifth Evaluation Round deals with "Preventing corruption and promoting integrity in central governments (persons entrusted with top executive functions or PTEFs) and law enforcement agencies (LEAs)".
2. This Compliance Report assesses the measures taken by the authorities of Poland to implement the recommendations issued in the Fifth Round Evaluation Report on Poland which was adopted at GRECO's 81st Plenary Meeting (7 December 2018) and made public on 28 January 2019, following authorisation by Poland ([GrecoEval5Rep\(2018\)1](#)).
3. As required by GRECO's Rules of Procedure¹, the authorities of Poland submitted a Situation Report on measures taken to implement the recommendations. This report was received on 26 November 2020 and served, together with additional information subsequently provided, as a basis for the Compliance Report.
4. GRECO selected The United Kingdom with respect to top executive functions in central governments) and Estonia (with respect to law enforcement agencies) to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr David MEYER on behalf of The United Kingdom, and Ms Kätlin-Chris KRUUSMAA on behalf of Estonia. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. The Compliance Report examines the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any pending recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

II. ANALYSIS

6. GRECO addressed 21 recommendations to Poland in its Evaluation Report. Compliance with these recommendations is dealt with below.

Preventing corruption and promoting integrity in central governments (top executive functions)

7. The authorities of Poland report that the vast majority of the recommendations concerning PTEFs are implemented within the framework of the Government Programme for Counteracting Corruption for the years 2018-2020 (which also addresses recommendations of the European Union and any follow-up to be given to the review of the implementation of the United Nations Convention against Corruption). The main aim of this Programme is to reduce corruption crimes in Poland and to raise public awareness of the need to counteract corrupt behaviour. For this, three specific

¹ The Compliance procedure of GRECO's Fifth Evaluation Round is governed by its Rules of Procedure, as amended: Rule 31 revised bis and Rule 32 revised bis.

objectives have been defined, namely 1) strengthening preventive and educational activities, 2) improving mechanisms for monitoring corruption threats and monitoring legal regulations in the field of preventing corruption and 3) intensifying cooperation and coordination of activities between law enforcement agencies.

Recommendation i.

8. *GRECO recommended that a general integrity plan be elaborated in respect of all duly identified groups of persons exercising top executive functions, as an overarching structure to the integrity arrangements existing in some ministries, aiming at preventing and managing risks of corruption including through responsive advisory, monitoring and compliance measures*
9. The Polish authorities indicate that this recommendation is being dealt with in the framework of the Government Programme for Counteracting Corruption for the years 2018-2020 (Hereafter: the Anti-Corruption Programme).² In accordance with measure 4.2 of this programme, guidelines have been developed for the creation and implementation of effective compliance programmes in the public sector (which were published on 26 September 2020, on the occasion of National Compliance Officer Day). These guidelines have been complemented by guidelines for the uniform organisational and legal solutions to counter corruption in public administration, which were published on 9 December 2020 (to mark Anti-Corruption Day).³ The aim of these two sets of guidelines is standardisation and unification, so that the compliance systems in ministries and units of local government administration will be based on the same legal and organisational solutions. To the latter guidelines a special section is appended with specific anti-corruption recommendations for PTEFs.⁴
10. The authorities furthermore note that guidelines for promoting compliance in the area of preventing and fighting corruption already exist. These guidelines have been published by the Central Anti-Corruption Bureau (CAB) in a series of three educational publications addressed to officials, entrepreneurs and politicians containing information about the legal norms, indicating desired and non-desired behaviour with specific examples, supplemented with notes explaining the most frequent dilemmas. These publications formed the basis for the development of the CAB's anti-corruption e-learning platform.

² An English version of the Anti-Corruption Programme can be found on the website of the Central Anti-Corruption Bureau: https://www.cba.gov.pl/ftp/dokumenty_pdf/rppk%20po%20angielsku.pdf.

³ The guidelines aim to create "a foundation for establishing effective anti-corruption policies complying with specific character and competences of [public] institutions" and comprises six components: "1) tone from the top" (involvement of the management), 2) carrying out a corruption risk assessment, 3) creating a position for an employee in charge of anti-corruption issues within an institution, 4) mandatory regular training for both management and employees, 5) development and implementation of a gift policy, including a register of gifts, 6) effective and systematic self-assessment and monitoring of corruption threats, including reporting channels and protection for whistleblowers.

⁴ The recommendations focus on three main points: 1) "You lead by example"; 2) "You manage public funds and decide on the country's politics" and 3) "Your involvement matters".

11. GRECO takes note of the information provided. While the abovementioned guidelines can be a helpful tool towards establishing similar anti-corruption policies in public institutions and may to some extent address one of the concerns GRECO expressed in its Evaluation Report (i.e. the lack of a coherent and unified approach across ministries), it does not meet the requirements of the recommendation for an integrity plan in respect of all duly identified groups of PTEFs, as an overarching structure to the integrity arrangements in some ministries. GRECO can therefore not conclude that this recommendation has been complied with, even partly.
12. GRECO concludes that recommendation i has not been implemented.

Recommendation ii.

13. *GRECO recommended that a comprehensive code of conduct be developed for persons exercising top executive functions covering inter alia gifts and other benefits and conflicts of interest, accompanied by appropriate guidance including explanatory comments and concrete examples.*
14. The Polish authorities report that this recommendation has been implemented as part of the Anti-Corruption Programme. As mentioned in the previous recommendation, pursuant to measures 4.3 and 4.4 of the Anti-Corruption Programme, in December 2020, the CAB published guidelines on uniform organisational and legal solutions to counter corruption in public administration. This publication also contains guidelines on rules of conduct in situations where there are risks of corruption in contacts between public officials and clients. The first set of guidelines on uniform organisational and legal solutions includes specific guidance on gifts and other benefits, including a model gift register. The second set of guidelines on rules of conduct outlines how a public official is expected to act in his/her contacts with clients (including how to prevent and manage potential conflicts between his/her private interests and official duties) and provides five examples of corruption risks in contacts with citizens. The latter guidelines also contain a special section for PTEFs, recommending them to lead by example, to take due care in managing public funds and deciding on state policies, and to demonstrate their involvement in the anti-corruption policies of the state. This section also introduces a code of conduct for PTEFs, requiring them *inter alia* to focus on state interests above all, to not treat their public function as an opportunity to benefit themselves, to prevent and manage conflicts of interest, to make decisions impartially, to submit asset declarations and to support the fight against corruption. It furthermore encourages PTEFs to seek advice (from ethics advisers or the audit department in their office) or to turn to the CAB itself to report irregularities.
15. The authorities furthermore emphasise that the abovementioned guidelines were issued within the framework of the Anti-Corruption Programme. As such the guidelines, including the specific part on PTEFs, are agreed to and supported by the government as a whole.
16. GRECO takes note of the information on the development of different sets of guidelines, which in different places (either in the guidelines on uniform organisational and legal

solutions or in the guidelines on rules of conduct) address most integrity issues highlighted in the Evaluation Report (i.e. conflicts of interest, misuse of public resources, relations with lobbyist and other third parties). As regards the specific part on PTEFs, it would have preferred for this publication by the CAB to be given formal endorsement by either the Prime Minister's Office or the government and not to be constructed as "anti-corruption recommendations for PTEFs". GRECO nevertheless notes the assurances of the authorities that these recommendations are supported by the government. Moreover, GRECO emphasises that the recommendation calls for "a comprehensive code of conduct for persons exercising top executive functions" and recalls that in the Evaluation Report it referred to the need to establish rules of ethics "in a single document focusing on PTEFs and covering all relevant integrity rules and principles". By having this spread over different sets of guidelines, which for the most part seem to focus on employees of public institutions, with the specific part on PTEFs containing no explanatory comments or concrete examples, it cannot be said that the aim of the recommendation has now fully been met. Therefore, while the guidelines on rules of conduct are a welcome step in the right direction, GRECO cannot say that this recommendation has now been fully complied with.

17. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

18. *GRECO recommended (i) developing mechanisms to promote and raise awareness on integrity matters (and the future rules of conduct) among persons exercising top executive functions, including through integrity training at regular intervals; (ii) establishing a dedicated confidential counselling function to provide these persons with advice on integrity, conflicts of interest and corruption prevention*
19. The Polish authorities report, as regards the first part of the recommendation, that anti-corruption education in respect of public officials and persons performing public functions is one of the eight priorities of the Anti-Corruption Programme. This priority is implemented through three specific measures. Pursuant to measure 5.1 of the Programme⁵, guidelines were issued by the Head of the Chancellery of the Prime Minister on 27 May 2019, in the form of a general instruction on the structure and concept of training systems in ministries and central offices (and the institutions subordinate to and supervised by them). The development of such training systems should be preceded by a risk analysis and the state of implementation should be controlled. Furthermore, pursuant to measures 5.2 and 5.3 of the Programme⁶, permanent programmes of anti-corruption and ethics education have been developed. Activities undertaken in this area are primarily directed at newly employed staff and

⁵ Measure 5.1 foresees the development of draft guidelines for permanent anti-corruption training conducted by central offices and for sectoral educational programmes addressed to subordinate and supervised institutions.

⁶ These measures respectively envisage the implementation of permanent, cyclical educational programmes and training in ethics, anti-corruption and conflicts of interest, and the development and implementation of sectoral education programmes by individual ministries and central offices, including subordinate and supervised institutions.

those who occupy positions particularly exposed to risks of conflicts of interest, corruption and other irregularities.

20. The implementation of the abovementioned measures is based on the Recommendation of the Head of the Civil Service to promote a culture of integrity in the civil service. An Annex to the Recommendation contains training programmes on ethics, for three target groups, including those holding higher positions in civil service (i.e. directors general), which in turn provided a basis for the development in 2019 of e-learning courses on ethics. The authorities report that, in 2020, 15 255 staff members (including 941 persons occupying top positions in the Civil Service) followed the e-learning courses on ethics. The e-learning platform of the CAB (which was thoroughly modernised in 2017) is furthermore an important element of the corruption education system (also at local level), with in the period September 2020 to mid-February 2021 almost 60 000 users having completed an on-line anti-corruption training course, and ministries, government agencies and local government institutions are further assisted in the provision of anti-corruption training by 25 CAB trainers. In addition, the publication of the guidelines mentioned under recommendations i and ii above are being accompanied by a series of refresher training courses, which will include PTEFs. Both sets of guidelines underline the importance of training, with the guidelines on uniform organisational and legal solutions outlining which topics are to be covered in the training of new staff, referring also to the trainings available on the CAB's e-learning platform.
21. As regards the second part of the recommendation, the Polish authorities report that, to promote a culture of compliance in the administration, a network of ethics advisors was established in July 2017. In February 2020, the Head of the Civil Service issued a recommendation to standardise the tasks and duties of ethics advisers, as well the resources provided to them, as based on the experiences with the network since it was established. This network, which comprises staff of the Chancellery of the Prime Minister, ministries and other central and provincial offices, support directors general and the heads of central and provincial offices in promoting a culture of integrity. As part of their work, they can confidentially advise staff on the principles of and ethics in the civil service. In addition to advice from these ethics advisers, PTEFs may also seek advice and support from departmental coordinators for the implementation of the Anti-Corruption Programme and from the internal audit departments in the different ministries, or can turn to the CAB to report on irregularities or ethical dilemmas, as is also emphasised in the rules of conduct for PTEFs mentioned under recommendation i.
22. GRECO recalls, as regards the first part of the recommendation, that it noted in the Evaluation Report that there is "no systematic training or other awareness raising activities in place for PTEFs regarding their integrity". While it welcomes the initiatives mentioned in paragraphs 19 and 20 above, in particular the large number of people who have participated in these e-learning courses, these trainings appear to focus on the civil service in general (which does not make it very likely that the topics are sufficiently tailored to integrity issues faced by PTEFs, nor that deputy prime ministers, ministers, state secretaries or undersecretaries of state would readily participate in these). As such, GRECO cannot say that mechanisms to promote and raise awareness on integrity

matters among PTEFS have now been developed. As regards the second part of the recommendation, it recalls that in the Evaluation Report it had already noted the designation of ethics advisers in some ministries. While it can accept that the appointment of ethics advisers has become more of a general policy than it was at the time of adoption of the Evaluation Report and that there are now various avenues for PTEFs to seek advice on integrity issues, it cannot say that a dedicated confidential counselling function for PTEFs has now been established.

23. GRECO concludes that recommendation iii has not been implemented.

Recommendation iv.

24. *GRECO recommended ensuring that an independent oversight mechanism is in place to guarantee the effective implementation of the freedom of information legislation.*

25. The Polish authorities indicate that the issue of free access to public information has been sufficiently regulated by the 2001 Act on Access to Public Information, which also provides applicants with the right to appeal in second instance to an administrative court (in case of refusal to provide public information). In addition, the Ombudsman supervises the exercise of the right of access to public information (and may intervene in case of irregularities) and the Supreme Chamber of Control may supervise the manner in which decisions on making public information available have been issued. The authorities furthermore indicate that they have not received any indication that the Ombudsman's Office is overburdened and argue that any additional supervision concerning access to public information therefore seems unjustified.

26. GRECO recalls that in the Evaluation Report it already referred to the possibilities of a court appeal and/or to file a petition with the Ombudsman, in cases where a request for information had been refused. In view of the Ombudsman being overburdened with other human rights petitions and the lengthy judicial appeal process, GRECO took the view that the establishment of a dedicated complaints mechanism on freedom of information would be a better option. From the above, it is clear that the Polish authorities disagree with this point of view and that therefore no steps have been taken towards implementation of this recommendation, not even to ensure that the current system becomes more effective.

27. GRECO concludes that recommendation iv has not been implemented

Recommendation v.

28. *GRECO recommended ensuring that governmental legislative proposals effectively involve appropriate timelines for consultation and adequate impact assessments in practice, and that contacts and inputs received before the formal launching of consultations be equally documented*

29. The Polish authorities report that this recommendation will be implemented through measure 2.1 of the Anti-Corruption Programme, which envisages the development of a

mechanism for evaluating draft legislation in the government's legislative process in terms of corruption risks. The authorities emphasise that, even if this measure does not directly refer to existing legislative procedures, its implementation will increase the effectiveness of these procedures, in particular as it includes an analysis of the effectiveness of the existing regulatory impact assessment mechanism (both *ex ante* and *ex post*). This analysis was recently carried out and recommendations for the establishment of a mechanism to evaluate potential corruption risks in draft legislation are currently being prepared on the basis of the conclusions of this analysis.

30. GRECO welcomes the plans to establish a mechanism to assess corruption risks in draft legislation and the fact that this includes an analysis of the effectiveness of the impact assessment mechanism. While it would expect the latter analysis to ultimately contribute to addressing part of the recommendation, as of yet it cannot be said that in practice governmental legislative proposals now involve adequate impact assessments. Similarly, it can also not conclude that steps have been taken to ensure that appropriate timelines for consultation are now in place and that contacts and inputs received before the formal launching of consultations are being documented.
31. GRECO concludes that recommendation v has not been implemented.

Recommendation vi.

32. *GRECO recommended (i) that detailed rules be introduced on the way in which persons exercising top executive functions interact with lobbyists and other third parties seeking to influence the public decision-making process; and (ii) that sufficient information about the purpose of these contacts be disclosed, such as the identity of the person(s) with whom (or on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion*
33. The Polish authorities report that this recommendation will be implemented through measure 1.3 of the Anti-Corruption Programme on the "implementation of new solutions in the field of sanctioning the compliance of public authorities with the provisions on lobbying". This measure foresees, first of all, an analysis of the effectiveness of the 2005 Act on Lobbying Activities in the Process of Law-making, which has just been finalised. The outcomes of this analysis may be followed by the development of proposals for legislative changes.
34. The authorities also make reference to the guidelines on the rules of conduct in a situation of corruption risks in official-client relations, as issued in December 2020 under measure 4.4 of the Anti-Corruption Programme (see under recommendation ii above). These guidelines include a model of a gift policy and benefit register and, specifically in the part on PTEFs, outlines that PTEFs should "pay attention to openness and transparency of [their] actions, in particular in relation to lobbyists".
35. GRECO welcomes that an analysis of the effectiveness of the 2005 Act on Lobbying Activities in the Process of Law-making has been carried out, even if it has not been informed of its outcomes. It urges the authorities to follow this analysis with further

measures to address the concerns underlying this recommendation. With this analysis and the rather general reference to contacts with lobbyists (or the model for the policy on gifts), GRECO cannot conclude that this recommendation has been complied with, even partly.

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

Recommendation vii and viii

37. GRECO recommended:

- *that common cross-government rules and guidance are introduced on ancillary activities; (recommendation vii)*
- *broadening the scope of application of the legislation on post-employment restrictions, in order to deal effectively with conflicting activities and to prevent improper moves to the private sector after the termination of functions of persons exercising top executive functions; (recommendation viii)*

38. The Polish authorities report in respect of recommendation vii that various restrictions on conducting business activities and performing certain functions by PTEFs are set out in the 1997 Act on Restrictions on Conducting Business Activities by Persons Performing Public Functions. The CAB checks compliance with the provisions of this Act. As regards recommendation viii, reference is made to the forthcoming transposition of the EU Directive 2019/1 on the empowerment of competition authorities of member states to be more effective enforcers and to ensure the proper functioning of the internal market. The draft Act on Competition and Consumer Protection with which the above Directive will be transposed will extend certain post-employment restrictions for PTEFs.

39. GRECO takes note of the information provided. It already referred in the Evaluation Report to the 1997 Act on Restrictions on Conducting Business Activities by Persons Performing Public Functions⁷, when it issued these two recommendations, noting *inter alia* that a similar recommendation on post-employment restrictions had been issued in the its Second Round Evaluation Report, which had remained not implemented. No further steps appear to have been taken to introduce common cross-government rules and guidance on ancillary activities, as required by recommendation vii. Without concrete information on the nature of the post-employment restrictions to be introduced by the Act on Competition and Consumer Protection, once adopted, it can also not be said that any measures have now been taken to broaden the scope of application of the legislation on post-employment restrictions, as required by recommendation viii.

⁷ In this context, GRECO *inter alia* commented (as regards recommendation vii) on a need for additional rules and guidance for when the ancillary activities do not involve visible remuneration or economic interest, additional guidance on the perception of partiality or personal interest, for the responsibility for deciding on incompatible ancillary activities not being left entirely to the discretion of the supervising PTEF or body and (as regards recommendation viii) on the need to cover a broader range of disqualifications than employment or performance of duties for a company for which the PTEF had issued decisions in individual matters.

40. GRECO concludes that recommendations vii and viii have not been implemented.

Recommendation ix.

41. *GRECO recommended that (i) the asset declaration system currently in place for different categories of persons exercising top executive functions be streamlined notably with a central register and accompanying guidance, and that the information is made easily and publicly accessible and that (ii) consideration be given to widening the scope of asset declarations to also include information on spouses and dependent family members (it being understood that such information would not necessarily need to be made public)*

42. The Polish authorities report in respect of the first part of the recommendation that measure 1.2 of the Anti-Corruption Programme envisages the creation of a uniform system for submission, analysis and control of asset declarations. However, the system designed and tested so far can only be implemented once amendments to the relevant regulations have been made.

43. As regards the second part of the recommendation, the authorities refer to the September 2019 amendments to the Act on the Execution of the Mandate of a Deputy and Senator. These amendments apply to those PTEFs who are at the same time MPs and extends the scope of their asset declarations to include certain data on spouses and dependent family members. These draft amendments have however been sent by the President of the Republic to the Constitutional Tribunal to test their compatibility with the Constitution. The Constitutional Tribunal has to date not yet considered this case.

44. GRECO takes note of the information provided. As regards the first part of the recommendation, the intention to reform the asset declaration system is to be welcomed. However, it is not yet clear if this reform will address all of GRECO's concerns, as its content is not known. As regards the second part of the recommendation, GRECO notes that legislative amendments only apply in respect of PTEFs who are also MPs. No consideration appears to have been given to extending the scope of the asset declarations submitted by PTEFs who are not MPs. This part of the recommendation has therefore only been partly complied with.

45. GRECO concludes that recommendation ix has been partly implemented.

Recommendation x.

46. *GRECO recommended establishing an independent review mechanism for the declarations of financial interests of persons entrusted with top executive functions, provided with adequate legal, technical and other means to perform its tasks in an effective and accountable manner*

47. The Polish authorities report that the introduction of an additional mechanism for the control of asset declarations would not be justified as the current legal status ensures an appropriate level of independent supervision by the CAB and the Supreme Chamber

of Control. Based on the 2006 Act on the CAB, officers of the CAB check the compliance of persons performing public functions with the provisions of the Act on Restrictions on Conducting Business Activities by Persons Performing Public Functions, in particular the obligation to submit asset declarations. Furthermore, the Supreme Chamber of Control also conducts control proceedings within the scope of its powers (e.g. concerning the correctness of the procedure for submission, analysis and control of the asset declarations, not the substance of asset declarations).

48. GRECO recalls that it had several misgivings about the asset review system, which led it to conclude that “in order to ensure the existence of an effective, credible and accountable review mechanism, a radical reform would be desirable”. While some of the technical improvements (as reported under recommendation ix above) could ultimately address some specific issues related to the effectiveness of the reviews, it is clear from the above that an independent review mechanism for the declarations of financial interests has not been established.
49. GRECO concludes that recommendation x has not been implemented.

Recommendation xi.

50. *GRECO recommended that a robust mechanism of supervision and sanction be put in place for the effective implementation of the future rules of conduct and other standards for the prevention of corruption*
51. The Polish authorities report that under measure 4.2 of the Anti-Corruption Programme, – as mentioned under recommendation i above – guidelines for the creation and implementation of effective compliance programmes in the public sector have been developed (and published in September 2020). The aim of these guidelines is to establish an enforceable compliance programme, ultimately based on standardised rules and templates of conduct addressed to managers, officials and other public sector employees. As outlined under recommendation ii above and pursuant to measures 4.4 of the Anti-Corruption Programme, these guidelines are complemented by guidelines on rules of conduct in a situation of corruption risks in relationships between officials and clients, which contain a separate section on PTEFs. These rules of conduct were published in December 2020.
52. The authorities furthermore state that the current system of supervision and accountability of PTEF is considered adequate and sufficient to protect the public sector from undesirable activities and does not require any legislative or institutional changes. Strengthening the prevention of corruption and compliance with integrity regulations is being carried out by all ministries involved in the Anti-Corruption Programme.
53. GRECO takes note of the information provided. While it welcomes the development of guidelines on compliance programmes, it notes that these guidelines present – as mentioned in the introduction – “a general framework that may be used for establishing effective compliance programmes in public sector entities”, referring in a rather general manner in another section of the document to the enforcement of norms. In this

context, GRECO also notes that the section on PTEFs appended to the rules of conduct, as mentioned above, do not refer to any possible supervision or enforcement. As such, it cannot be said that a robust mechanism of supervision and sanctioning to ensure PTEFs' adherence to rules of conduct and integrity standards, as required by the recommendation, is now in place.

54. GRECO concludes that recommendation xi has been not implemented.

Recommendation xii.

55. *GRECO recommended that in respect of persons exercising top executive functions, an in-depth reform of the system of immunities be carried out with a view to facilitating the prosecution of corruption-related offences by excluding these from the scope of immunities and by ensuring that the procedure for the lifting of the immunity is transparent and based on objective and fair criteria used effectively in practice*
56. The Polish authorities report that only PTEFs who are also MPs enjoy immunity by virtue of their parliamentary mandate. Article 105 of the Constitution provides that from the announcement of election results until the expiry of his/her mandate, an MP shall not be subjected to criminal accountability without the consent of the *Sejm* or Senate. S/he may also not be detained or arrested without the consent of the *Sejm*, except for when s/he is caught in the act of committing an offence and if his/her detention is necessary to ensure the proper course of proceedings. Further detailed rules and procedures for the prosecution of MPs with the consent of the *Sejm* or Senate are set out in the 1996 Act on the Exercise of the Mandate of a Deputy or Senator. Like in other European countries, the immunity of MPs is a constitutional mechanism that guarantees the independence of the parliament and protects against criminal liability during the execution of the parliamentary mandate. In view of the authorities, there are no grounds for considering that the scope of parliamentary immunity goes beyond what is necessary in a democratic society and would not be in line with Resolution (97) 24 on the Twenty Guiding Principles for the Fight against Corruption.
57. The authorities further emphasise that Poland does not have a system of immunities for PTEFs and, unless they hold a parliamentary mandate, they do not hold special protection against being held criminally responsible. Thus, the Prime Minister and deputy prime ministers, ministers and secretaries of state have neither material immunity nor formal immunity, and are – unless they are MPs – subject to the general rules of criminal liability for corruption offences. Finally, the authorities point out that the Prime Minister and ministers are also subject to constitutional liability before the State Tribunal, for violation of the Constitution or law, as well as for crimes committed in connection with their position.
58. GRECO recalls that it expressed several misgivings about the system of immunities in Poland (which even if it is limited to parliamentary immunity has a significant bearing on cases initiated against PTEFs, when they also hold a parliamentary mandate), including its scope (in that it includes acts unrelated to official duties) and the process for lifting it (in particular, the fact that the parliamentary committee deciding on lifting the immunity

of an MP can demand access to the full criminal file, the absence of fair and objective criteria for taking such decisions and a lack of transparency). Given that parliamentary immunity has been shown to be an obstacle in cases initiated against certain PTEFs (according to the Evaluation Report, this concerned at least one minister) and bearing in mind that this issue was also raised in its First Evaluation Round Report, GRECO can only urge the authorities once again to deal with this issue, as required by the recommendation.

59. GRECO concludes that recommendation xii has not been implemented

Recommendation xiii.

60. *GRECO recommended ensuring that proceedings before the State Tribunal do not hamper the prosecution of corruption-related offences before the ordinary courts.*

61. The Polish authorities report that the State Tribunal holds certain officials constitutionally responsible (in the form of a constitutional tort), penalising behaviour that is socially harmful and illegal, but does not always give rise to criminal liability. As regards criminal offences, members of the Council of Ministers (i.e. the Prime Minister, the deputy prime ministers and ministers) may also be held criminally responsible for offences committed in connection with their position. However, in such cases, the authorised body (which in case of the Prime Minister and other members of the Council of Ministers is the *Sejm*, requiring 115 members of the *Sejm* in favour of launching a procedure) must in its resolution state that it is expedient to hold them jointly liable for constitutional tort and criminal offences. In such a case, the State Tribunal takes over the preparatory proceedings from the prosecutor. If the authorised body votes against commencing the procedure, the prosecutor can continue his/her case.

62. The authorities emphasise that the proceedings before the State Tribunal do not constitute an obstacle to prosecution of corruption-related offences committed by PTEFs, because – as a rule – this procedure applies only to constitutional tort, while crimes of corruption are subject to the general rules of criminal liability.

63. GRECO takes note of the information provided, which however does not contain any new elements to what is described in the Evaluation Report. GRECO maintains its misgivings about the various jurisdictions and procedures available in respect of PTEFs, which may hamper the possibility to effectively prosecute PTEFs for corruption offences. Poland must, as a minimum, ensure that there is a clear demarcation between these procedures.

64. GRECO concludes that recommendation xiii has not been implemented.

Regarding law enforcement agencies

65. The Polish authorities report that, for the Police, by Decision No. 165 of 21 May 2019 the Commander-in-Chief of the Police appointed a team to analyse the recommendations of GRECO. Under supervision of the Commander of the Bureau of

Internal Affairs of the Police (BIAP), the team diagnosed existing regulations in the areas covered by the report and identified possible avenues for addressing the recommendations. This led to the development of a “schedule of actions” as well as monitoring of the actions taken for the implementation of the recommendations.

Recommendation xiv.

66. *GRECO recommended that the Police and Border Guard undertake comprehensive risk assessments of corruption-prone areas and activities, beyond what is revealed by the mere criminal cases actually processed, and that the data are used for the pro-active design of integrity and anti-corruption policies*
67. The Polish authorities report, as regards the Border Guard, in line with the Anti-Corruption Programme of the government, the collective list of positions of officers and other employees of the Border Guard in terms of corruption risks has been updated in 2020, on the basis of data provided by heads of all organisational units in accordance with uniform criteria (e.g. scope of authorisation, contacts with people outside the Border Guard, influence of the internal environment), cataloguing also the consequences of possible corrupt acts should they occur (e.g. the extent of the potential financial loss, reputation loss etc.). The resulting summary list of positions is distributed to all heads of organisational units, published on the intranet and discussed in specialised trainings for officers to be appointed to the rank of first officer and for management and command staff. The list supports managers in supervising the performance of official duties by employees of the Border Guard and facilitates the organisation of the service in such a way that it minimises risks of corruption.
68. As regards the Police, measures have been taken, first of all, to improve the identification of risks of corruption within the framework of management control using a tool called the Risk Identification Sheet, which help managers of police organisational units to identify risks in strategic and operational tasks in a given year (on the basis of a common methodology specified in Ordinance No. 19 of the Police of December 2016, on strategic planning and the system of management control in the Police). Furthermore, measures have been taken to improve abilities within the Police to analyse quantitative and qualitative data on irregularities, events and acts posing a threat of corruption within the Police. These measures include:
- improvements to the IT systems in order to enable the use of data on complaints, including anonymous complaints, and preparations to improve the use of data on disciplinary offences, which still requires some further work to make it operational. Further work on other IT systems of the Police however had to be postponed due to technical complications and the high costs involved;
 - changes to the rules on planning control activities to ensure an analysis of threats of fraud, abuse and corrupt practices (whereby the selection of topics for the annual Police Control Plans explicitly take the possibility of risks of fraud, abuse and corrupt behaviour in a given area into account);
 - analyses of the cause and effect of various revealed irregularities (which, since the beginning of 2020, includes analyses of the content of anonymous letters), to identify possible remedial measures;

- examination and evaluation of mechanisms in place to prevent corrupt behaviour when conducting audits (as - for example - has been done for the audits of cameras in the Police and the advisory activities concerning the use of payment terminals in traffic).

These measures have been complemented by a diagnosis of the functioning of the anti-corruption system within the Police by the Internal Audit Team (ZAW) at the National Police Headquarters, on which basis the BIAP developed a Programme for Strengthening Integrity and Combating Corruption in the Police for the years 2021-2023, which was approved by the Commander-in-Chief of the Police in December 2020.

69. Ahead of the implementation of the above programme, various corruption preventive measures have been strengthened in the Police, including in the area of training⁸, awareness-raising⁹, regulatory proceedings¹⁰, human resource processes¹¹ by making corruption prevention a systemic element of management and control in the Police. This is included in the Priorities and Plan of Activities of the Commander-in-Chief of Police and the Plan of Activities of the National Police Headquarters, and – as mentioned above – through the development of the Programme for Strengthening Integrity and Combating Corruption in the Police for the years 2021-2023.
70. GRECO takes note of the information provided. As regards the Police, GRECO welcomes the improvements made to the methods of identifying risks of corruption and other abuses within the Police (which has moved beyond what is revealed by processed criminal cases, as was mentioned in the Evaluation Report) and that data on possible risks and threats is being used for the development of various anti-corruption and integrity measures and has led to the design of a programme to strengthen integrity within the Police. As regards the Border Guard, GRECO notes that the Evaluation Report already mentions the annual update of the map of corruption threats (pursuant to the previous anti-corruption programme of the government). As no information has been provided neither on changes made to ensure a more risk-based approach and nor on this information being used for the pro-active design of integrity and anti-corruption policies (beyond this being used in trainings and to facilitate supervision by managers), GRECO cannot consider this recommendation as fully complied with.

⁸ Changes have been developed to various vocational training programmes in the Police to include corruption prevention elements, a corruption prevention e-learning programme at the Policy Academy has been developed, corruption prevention has been included in local training programmes and the financial allocation in the budget of the Police towards the provision of integrity trainings have increased.

⁹ As will be outlined under recommendation xv further below, it is planned to appoint ethics advisers in the Police. Furthermore, awareness is being raised by ensuring a wider dissemination of information on integrity on the Police Intranet, making these easy to find for staff of the Police (*inter alia* by supplementing the pages of the BIAP with a tab on corruption prevention, containing electronic versions of relevant anti-corruption manuals, e-learning programmes and general information on integrity issues, as well as on the general national police website (www.policja.pl), the portals of the organisational units and the website of the Police.

¹⁰ In June 2020, the Ordinance on the tasks of the Police in the field of legislation was amended and now provides for a procedure by which a police unit must consult the BIAP and Criminal Bureau of the Police if it is thought that the normative act would lead to corruption or a conflict of interest.

¹¹ The topic “risk of corruption” has been included as a factor in job description cards (in a similar way as is being done for civil servants), which can be used for risk management by supervisors, and questions to assess attitudes towards corruption of candidates for a position in the police have now been systematically included in job interviews.

71. GRECO concludes that recommendation xiv has been partly implemented

Recommendation xv.

72. *GRECO recommended that the rules of conduct for the Police and Border Guard be updated to better address gifts and other benefits, ad hoc conflicts of interest and relations with third parties, and be accompanied by appropriate comments and examples, as well as confidential counselling.*
73. The Polish authorities report as regards the Border Guard that it is planned to update the 2003 Rules on professional ethics of Border Guard officers and to develop a so-called good practice guide. Work on this has however been postponed (due to the pandemic) and is now planned for the second quarter of 2021. Furthermore, in June 2019, the Commander-in-Chief appointed a Plenipotentiary for the Protection of Human Rights, Equal Treatment and Professional Ethics. Apart from promoting the principles of professional ethics, the Plenipotentiary will also provide consultations to officers and employees of the Border Guard in the field of professional ethics (complementing the work of part-time advisers established in 2008 - i.e. the adviser to the Commander-in-Chief of the Border Guard and the advisor of the heads of Border Guard organisational units – and the ethics advisers appointed in some of the Border Guard organisational units). In the context of updating the abovementioned Rules on professional ethics, the function of ethics advisers for officers will also be analysed, with a view to establishing a proper network of ethics advisers and standardising their tasks.
74. As regards the Police, the abovementioned Programme for Strengthening Integrity and Preventing Corruption in the Police 2021-2023, as approved in December 2020, envisages the preparation of a draft manual of standards of conduct, on the avoidance of conflicts of interest and corrupt behaviour. A first draft of the manual has been prepared, but due to the extra police work related to the pandemic it has not been completed yet. This draft manual includes such topics as to the type of behaviour that could be seen to be abusive, corruptive or untransparent and should be avoided, how to deal with potential conflicts of interest and the types of sanctions attributed to certain behaviour. The standards of police conduct are complemented with examples and comments. An information campaign on the manual and training courses for the police community have been planned once the manual has been adopted. The work on developing the manual is being complemented by proposals for amendments to the Police Act, which have been submitted to the Ministry of Internal Affairs in June 2020, which propose a tightening of the rules on conflicts of interest regarding the employment of family members and post-employment of police staff.¹² The Ministry of Internal Affairs and Administration is currently undertaking an analysis of possible changes to the Police Act, in which context the above proposals are being considered.

¹² If adopted as foreseen, the amendments would prohibit spouses and certain family members working in a direct hierarchical relationship to one another in the Police and would prohibit former police officers for working for entities with whom the Police has a procurement contract, if the person took part in the procurement procedure or in the performance of the contract concluded as a result of such procedure.

75. As regards the provision of confidential advice in the Police, the Programme for Strengthening Integrity and Preventing Corruption in the Police 2021-2023 also foresees the appointment of ethics advisers in each organisational unit of the Police. Managers of police organisational units are obliged to implement this measure, define rules on the appointment and functioning of ethics advisers in their unit and report back on the implementation of this measure before January 2022.
76. GRECO welcomes that work on updating the rules of conduct in the Police is underway and that a similar update is being planned for the Border Guard. It also welcomes the appointment of a Plenipotentiary for the Protection of Human Rights, Equal Treatment and Professional Ethics as a confidential councillor, as a complement to the existing ethics advisers in the Border Guard, and the developments regarding the appointment of ethics advisers in the Police. Pending the completion of this work (and a positive assessment of the content of the rules of conduct for both agencies), GRECO can only conclude that this recommendation has been partly complied with.
77. GRECO concludes that recommendation xv has been partly implemented.

Recommendation xvi.

78. *GRECO recommended establishing a career-based system for the appointment, promotion and dismissal of all senior managers in the Police and Border Guards, based on objective criteria, proper vetting and a formal, competitive and transparent process, it being understood that the function of chief commanders could be limited to a fixed term*
79. The Polish authorities report, as regards the Police, that on 24 January 2020, the Commander-in-Chief of the Police sent a letter to the Minister of Internal Affairs and Administration with a request to take a position on the issues covered by recommendation xvi. The reply of the Secretary of State of the Ministry of Internal Affairs and Administration of 10 February 2020 stated that Articles 5 and 5b of the Police Act as well as the 2007 Ordinance on requirements to be met for appointments to higher official positions correctly regulated the requirements for and manner of appointment to the position of Commander-in-Chief of the Police and Commander of the BIAP. The practice so far has shown that this procedure ensures the proper implementation of the statutory tasks of the Police and corresponds to the essence of civil supervision and subordination of the Commander-in-Chief of Police to the Minister of Internal Affairs and Administration. There are therefore no grounds for changing this.
80. Furthermore, after internal consultations within the Police, it was agreed that the current procedures of dismissal of senior police officers should be left unchanged, as they ensure the proper performance of statutory police tasks. Similarly, it was considered that there was no need to create a separate promotion procedure for senior police officers. In this context, it is also emphasised that, in accordance with Article 6i of the Police Act, before being nominated to a particular post, officers are subject to a check by the Internal Supervisory Office (ISO), as regards information which could negatively affect a proper performance of their tasks.

81. As regards the Border Guard, the authorities point out that the appointment, promotion and dismissal of senior Border Guard officers is carried out on the basis of the 1990 Act on the Border Guard (as amended) and the implementing acts issued on the basis of this act. The course of a career in the Border Guard is essentially influenced by an officer's professional qualifications, length of service and education, in accordance with the provisions of the 2009 Regulation of the Minister of Internal Affairs and Administration. It is furthermore emphasised that previous experience allows for the conclusion that appointments, promotions and dismissals in the Border Guard are properly regulated, in a transparent manner, and that there is thus no need to change existing regulations or otherwise take further action.
82. GRECO regrets that no steps have been taken to improve the system of appointing, promoting and dismissing senior managers in the Police and Border Guards and that, in spite of evidence to the contrary, the current system is considered to be satisfactory. In this respect, GRECO recalls that the issue is not so much that the Commander-in-Chief is subordinate to and appointed/dismissed by the Minister of Internal Affairs, but rather the discretionary nature of decisions on appointments (and promotions and dismissals) of senior managers in both the Police and Border Guard, given the absence of objective criteria, proper vetting and formal, competitive and transparent procedures. GRECO urges the authorities to address this issue.
83. GRECO concludes that recommendation xvi has not been implemented.

Recommendation xvii.

84. *GRECO recommended improving the terms of employment in the Police and Border Guard i) by designing additional measures to improve gender balance at all levels and in all sectors and ii) by reviewing the scale of remuneration so as to establish more attractive wages for the lower ranks, whilst maintaining a stimulating margin for progression throughout the career*
85. The Polish authorities report as regards the first part of the recommendation that for the Border Guard a number of activities (open days, job fairs, recruitment via social networks etc.) have been undertaken to promote working for the Border Guard and encourage both women and men to join its ranks. There has been a noticeable increase in the number of women admitted to the Border Guard. In 2018, this was already 40.77%, which in 2019 increased to 42.54% and 43.19% in 2020.¹³ While at the same time there has also been a small increase in the number of women in leadership positions (from 18.23% in 2018 to 19.73% in 2020), it is expected that further positive effects on the gender balance in higher positions will be seen over time (when the required length of service and professional qualifications have been reached). Already in 2019, there was an increase (from 29% in 2018 to 38.62% in 2019) in the number of women referred to the training required for the appointment to the rank of first officer in the Polish Border Guard.

¹³ It is recalled, as indicated in the Evaluation Report, that on 31 October 2018, 73,7 % of the Border Guards were men and 26,3 % female.

86. In the Police, various measures are being taken to encourage women to serve in the Police, these include promotional activities¹⁴, the organisation of open days and internship days for students of police classes, plans to include a module to diagnose the current situation of women in the Satisfaction at Work survey in 2021 and training seminars to eliminate gender-based discrimination in the service. So far, this has however not led to an increase in the number of female applicants to the Police: In 2019, 819 women from in total 4877 applicants (16.8%) were admitted to the Police, decreasing to 906 women out of 6837 applicants (13.3%) in 2020. At the end of December 2020, female police officers accounted for just over 17% of the total number of police officers.
87. As regards the second part of the recommendation, as a result of an agreement between the Minister of Internal Affairs and Administration and trade unions of 8 November 2018 (which was referred to in the Evaluation Report) salaries of officers of the Police and Border Guard increased on average with 655 Polish Zloty (PLN; approximately 145 EUR) per month in 2019 and a further 500 PLN (approximately 110 EUR) per month in 2020. The agreement is being implemented in different ways for different categories of staff in the Police and Border Guard, affecting the base amount of salary in various pay grades and the multipliers applied for seniority. The increase in salaries has made the Police and Border Guard more attractive on the labour market.
88. Furthermore, both for the Police and Border Guard, on 25 August 2020, the President signed the Act on Special Solutions for the Support of Uniformed Services Supervised by the Minister Responsible for Internal Affairs, which grants an incentive benefit for officers who have worked in the Border Guard and Police for more than 25 years of 1 500 Polish Zloty (PLN (approximately EUR 330) per month and, for more than 28 years and 6 months, PLN 2 500 (approximately EUR 550) per month. The aim of these benefits is to create an additional motivation for long-serving officers.
89. GRECO takes note of the information provided. As regards the first part of the recommendation, GRECO welcomes that more women are entering the Border Guard, thereby providing an improved gender balance at entry level positions, with already a small increase at higher positions (which is expected to further increase over time). It regrets that a similar improvement in gender balance cannot be shown for the Police, but it accepts that the recommendation asked for “the design of additional measures”, which is something that has been done, even if the results are rather discouraging to date. GRECO concludes that this part of the recommendation has been dealt with in a satisfactory manner. GRECO nevertheless urges the Police to step up their efforts in this regard to improve the gender balance in the Police, to achieve similar results as the

¹⁴ These promotional activities seek to present the profession of a police officer as attractive and accessible to both women and men, aiming to break existing stereotypes that the role of women in the police would be limited to support roles and would not include uniformed positions. Thus, female police officers were represented in all roles in the police as fully entitled and preordained to carry out all tasks assigned to the police. Further activities in this context included a movie featuring selected female police officers, a documentary about the female world weightlifting vice-champion and Paralympic medallist who works for the police, the publication of promotional materials, the organisation of a gala for the 95th anniversary of women’s accession to the police, a six-part cartoon book and radio play highlighting the role of women in the Police.

Border Guard. As regards the second part of the recommendation, GRECO welcomes the implementation of the agreement referred to in the Evaluation Report, which has led to an increase in the salaries of officers in both the Border Guard and the Police, as well as the additional bonus provided to long-serving officers in both services. GRECO concludes that this part of the recommendation has been complied with.

90. GRECO concludes that recommendation xvii has been dealt with in a satisfactory manner.

Recommendation xviii.

91. *GRECO recommended developing a streamlined system for authorising secondary activities (remunerated or not) in the Police and Border Guard, which would involve effective follow-up after a permission was granted*
92. The Polish authorities report, as regards the Police, that in June 2020 a proposal for a legislative amendment to the Police Act to further regulate secondary activities was submitted to the Minister of Internal Affairs. The draft legislative amendment would amend Article 62 of the Police Act (which provides that police officers cannot take paid employment outside the service or perform activity or work which would be contrary to the obligations of the Police Act or undermine trust in the Police), by adding that secondary employment requires written consent of the superior referred to in Article 32, paragraph 1 of the Police Act¹⁵ and that further details (*inter alia* on the scope of information to be included in a police officer's application, the procedure for granting or refusing paid employment outside the service, the withdrawal of the permission or reduction of the period for which permission has been granted, methods of verification) will be regulated by way of an ordinance. As indicated before, the Ministry of Internal Affairs and Administration is currently undertaking an analysis of possible changes to the Police Act, in which context the above proposal is being considered.
93. As regards the Border Guard, work is currently underway to amend the Act on the Border Guard as regards secondary activities. It is foreseen that instead of direct superiors, it will be only be officers specifically tasked with staff matters (as referred to in Article 36(1) of the Act on the Border Guard), who can grant permission to take up paid employment outside the Border Guard. The draft amendment also sets out the procedure for granting permission, the circumstances which should be taken into account in the decision to permit (or prohibit) the secondary employment, the period for which the permission is granted (which cannot be longer than 12 months), the follow-up to be given and the records to be kept. This draft amendment is complemented by a draft ministerial regulation outlining *inter alia* the procedures to be followed and the scope of information to be included in an application to engage in paid employment outside the service.

¹⁵ The superiors referred to in this article are the Commander-in-Chief of the Police, the Commander of the Central Bureau of Investigation of the Police, the Commander of the BIAP, regional and district (city) police chiefs and commandants of police schools.

94. GRECO takes note of the proposal for a legislative amendment to the Police Act and the Act on the Border Guard, which would provide for a less decentralised, more detailed and solid procedure. It notes that currently this proposal does not extend to unremunerated activities and GRECO would encourage the authorities to have this included in the proposal, in view of potential conflicts of interest therein. Notwithstanding GRECO's appreciation of the initiatives of the Police and Border Guard, as the legislative proposals are still at a very early stage (and have not entered parliamentary procedure), GRECO cannot conclude that this recommendation has been complied with, even partly.

95. GRECO concludes that recommendation xviii has not been implemented

Recommendation xix.

96. *GRECO recommended that a robust and effective system for the verification of declarations of assets and interests be introduced*

97. The Polish authorities report that, in accordance with the position of the Minister of Internal Affairs and Administration of 10 February 2020, measures in this area should be consistent across all services and be carried out within the framework of the Anti-Corruption Programme. As also outlined under recommendation ix for PTEFs above, measure 1.2 of this Programme foresees the creation of a uniform system for the submission and analysis of asset declarations by persons performing public functions. This is complemented by measure 1.1 which envisages to ensure consistency of regulations specifying the limitations to conducting business activities by persons performing public functions, in particular regarding asset declarations, and keeping a register of interests. Pending the legislative changes to implement these two measures, the Police had proposed amendments to the ordinance of the Ministry of Internal Affairs and Administration on the procedure for handling asset declarations of police officers and the procedure for publishing asset declarations of persons acting as police authorities, but it was ultimately decided that any solution in this area should be consistent for all services and be carried out within the framework of the Anti-Corruption Programme. Plans have furthermore been made to extend the functionality of the IT system in the Police as regards asset declarations, which will however only be implemented once the abovementioned legislative developments have taken place.

98. GRECO takes note of the information provided. As no concrete measures have been taken to introduce a robust and effective system for the verification of declarations of assets and interests, as required by the recommendation, GRECO cannot say this recommendation has been complied with, even partly.

99. GRECO concludes that recommendation xix has not been implemented

Recommendation xx.

100. GRECO recommended (i) clarifying the respective responsibilities of bodies dealing with the integrity and oversight of Police and Border Guard, and (ii) implementing coherent disciplinary approaches, on the basis of common guidelines
101. The Polish authorities report that in January 2018 amendments to the 1996 Act on Special Forms of Supervision by the Minister Responsible for Internal Affairs entered into force. Before the entry into force of these amendments, the Minister of Internal Affairs had in practice limited possibilities to directly verify information on potential irregularities in the supervised services, in spite of his/her formal supervisory role. Pursuant to these amendments a new body (ISO) has been created, which assists the Minister in his/her supervision of the Police and Border Guard. As part of this supervision, the ISO *inter alia* assesses the performance of tasks by the BIAP and the Bureau of Internal Affairs of the Border Guard (BIABG), can order these bureaus to carry out certain operational activities and can request information on the results of operational activities conducted by the BIAP and BIABG in respect of supervised entities. The BIAP and the BIABG are subordinate to respectively the Commander-in-Chief of the Police and the Commander-in-Chief of the Border Guard, but their commanders are appointed by the Minister of Internal Affairs. The legal amendments are furthermore complemented by two regulations on the work of the BIAP and the BIABG.¹⁶
102. Furthermore, in October 2020 the Act on Special Solutions for the Support of Uniformed Services Supervised by the Minister Responsible for Internal Affairs entered into force. This Act provides a statutory ground for the provisions on disciplinary proceedings which were previously contained in a regulation of the Minister of Internal Affairs and Administration, amending the Act on the Border Guard and the Police Act with a view to optimising disciplinary proceedings, ensuring the effectiveness of supervisors in preserving an adequate level of service performance and unifying disciplinary proceedings across the uniformed services.
103. Based on this Act, amendments to the Act on the Border Guard came into force on 1 January 2021, which *inter alia* clarify what constitutes a disciplinary offence and that border guards are subject to disciplinary liability regardless of any possible criminal liability.¹⁷ In addition, the amendments introduce the institution of disciplinary ombudspersons, who are responsible for conducting disciplinary proceedings, on the

¹⁶ Ordinance No. 49 of the Minister of Internal Affairs and Administration of 27 July 2018 on establishing the organizational regulations of the Bureau of Internal Affairs of the Police and Order No. 50 of the Minister of Internal Affairs and Administration of 27 July 2018 on the regulations of the Bureau of Internal Affairs of the Border Guard.

¹⁷ The amendments to the Border Guard Act for example provide that a breach of official discipline or failure to observe the rules of professional ethics constitutes a disciplinary offence and clarify that a breach of official discipline comprises a breach of regulations or a failure to fulfil obligations arising from the provisions of the law, including orders and instructions issued by supervisors on the basis of these regulations. This is complemented by a non-exhaustive list of breach of service discipline. The period for imposing a disciplinary sanction is additionally extended to two years. In addition, the amendments also aim to strengthen the rights of the officers, by – for example – reducing the period for the which records of disciplinary interviews are held (five months), providing that two or more disciplinary incidents in a short interval of time can be considered a single disciplinary offence and granting the charged officers the right to make photocopies of the disciplinary file.

basis of a decision to initiate such proceedings by a disciplinary superior, and who present a report on the results of the proceedings to the disciplinary superior (who ultimately issues a decision).¹⁸ The disciplinary ombudspersons are appointed by disciplinary superiors for a period of four years from among permanent staff members.¹⁹ There are currently 306 disciplinary ombudspersons in the Border Guard. As they are always from a different organisational unit than the persons subject to the proceeding, it allows for more impartial proceedings to be carried out.

104. In addition, a guidebook of good practices in conducting disciplinary proceedings in the Border Guard was developed in June 2019 and published on the intranet portal of the Border Guard, before the Act on the Border Guard was amended. Even if the amendments already regulate disciplinary proceedings in a more detailed manner, it has been planned to update this guidebook in light of the amended legislation and experiences in practice. E-training on the new disciplinary proceedings has been rolled out (with up until the end of January 2021, 124 border guards having been trained on the new proceedings).
105. As regards the Police, the abovementioned Act on Special Solutions for the Support of Uniformed Services Supervised by the Minister Responsible for Internal Affairs did not lead to further amendments to the Police Act. The authorities indicate that, after a legal analysis, it was concluded that the competence of the authorities responsible for integrity issues located within the police structure was beyond doubt, so no changes to the existing legislation were considered necessary in this respect. A further regulation of the Minister of Internal Affairs and Administration on certain issues connected with disciplinary proceedings with respect to police officers is nevertheless under way.
106. As regards the first part of the recommendation, GRECO welcomes the information on the role of the ISO (an office which was newly established at the time of adoption of the Evaluation Report), which also clarifies the issue of subordination of the BIAP and BIABG. It recalls however that one of the main concerns expressed in this respect in the Evaluation Report referred to a frequent duplication of functions between the various bodies responsible for internal affairs. It could be that this issue is further clarified in the two regulations mentioned above, but without further information GRECO can as of yet not say that the first part of the recommendation has been fully addressed.

¹⁸ Pursuant to Article 135d of the Act on the Border Guard, disciplinary superiors are the Minister of Internal Affairs and Administration (in respect of the Commander-in-Chief, the Commander of Internal Affairs and his deputies), the Commander-in-Chief (in respect of all Border Guard Officers), the commanders of internal affairs, border guard units, training centre and detention centre (who have disciplinary power in respect of officers in all subordinate units) and the commanders of the deployment unit for the mission abroad (who have disciplinary powers in respect of officers in the deployment unit). With the exception of disciplinary proceedings initiated by the Minister of Internal Affairs and Administration, the Commander-in-Chief of the Border Guard can until the day of issuing the decision of closing the disciplinary proceedings take over any such proceedings or transfer them to another disciplinary superior.

¹⁹ The Act also provides further criteria as to whom can be appointed to the position of disciplinary ombudsperson, in which circumstances a disciplinary ombudsperson cannot be involved in the proceedings and how the officer subject to the proceedings can apply to have the disciplinary ombudsperson and/or disciplinary spokesperson recuse themselves.

107. As regards the second part of the recommendation, GRECO appreciates that with the Act on Special Solutions for the Support of Uniformed Services Supervised by the Minister Responsible for Internal Affairs and the corresponding amendments to the Act on the Border Guard, a clarification of responsibilities has taken place as regards disciplinary proceedings in the Border Guard and that a more coherent disciplinary approach is being implemented. It however does not appear that similar steps have been taken for the Police and GRECO can therefore not conclude that this part of the recommendation has been complied with.
108. GRECO concludes that recommendation xx has been partly implemented.

Recommendation xxi.

109. *GRECO recommended that a clear process for the disclosure of crimes, misconducts and disciplinary violations within the Police and border Guard be established, with appropriate protection measures against retaliation*
110. The Polish authorities report that the Police has set up a working group (which the Plenipotentiary of the Border Guard for the Protection of Human Rights, Equal Treatment and Professional Ethics has also joined) to develop measures to address what is called “poorly understood professional solidarity” (i.e. a code of silence) and improve the safe reporting of irregularities. The work of this working group has slowed down because of the Covid-19 pandemic, but so far an internal working document on whistleblowers in the Police has been developed, which analyses the conditions for safe whistleblowing and contains recommendations for further action.
111. Furthermore, more specifically as regards protection measures against retaliation, measure 4.1 of the Anti-Corruption Programme envisages the preparation and implementation of legal provisions for the protection of whistleblowers, bearing also in mind the transposition of EU Directive 2019/1937 of 23 October 2019 on the protection of persons who report breaches of Union law. Pending these legislative developments, work is underway in the Police to introduce further protection for whistleblowers in internal anti-mobbing and anti-discrimination procedures (signifying *inter alia* that retaliatory actions against a whistleblower in the work place can be a manifestation of discrimination), with a view to providing protection against retaliation attempts and making legal and/or psychological assistance available. This work is being supplemented this with various measures to raise awareness of the importance of whistleblowing, the protection of whistleblowers and an organisational culture based on integrity (including the need to break a code of silence).²⁰

²⁰ Measures in this respect include adding material on the importance and protection of whistleblowers in various vocational and other training programmes, the launch of an information campaign in the Police aimed at changing mentalities (including the breaking of a possible so-called blue wall of silence and the positive effects of whistleblowing in the interest of the state and citizens), *inter alia* by including the topic “Breaking the silence” in the May 2020 edition of the “Police 997” magazine; various activities by superiors at all levels aimed at building an organizational culture based on integrity (including promoting anti-corruption attitudes, publishing information in the police press on the intranet, raising topics in meetings, briefings and trainings); Plans are also being developed for conducting surveys of police officers, employees and their superiors to diagnose what

112. GRECO takes notes of the efforts undertaken within the Police aimed at protecting whistleblowers through anti-mobbing and anti-discrimination procedures, raising the awareness of the importance of whistleblowing and promoting a culture of integrity, pending the legislative developments mentioned in the Government's Anti-Corruption Programme. However, notwithstanding GRECO's appreciation for these measures, it cannot say that a clear process for the disclosure of crimes, misconduct and disciplinary violations within the Police and Border Guard has now been established (which, as indicated in the Evaluation Report, would involve specific and sufficiently clear regulations obliging officers to report misbehaviour, as well as clear reporting channels and protective measures against retaliation). As such, GRECO cannot say that this recommendation has been complied with, even partly.
113. GRECO concludes that recommendation xxi has not been implemented.

III. CONCLUSIONS

114. **In view of the foregoing, GRECO concludes that Poland has dealt with in a satisfactory manner only one of the twenty-one recommendations contained in the Fifth Round Evaluation Report.** Five recommendations have been partly implemented and 15 recommendations have not been implemented. More specifically, recommendation xvii has been dealt with in a satisfactory manner, recommendations ii, ix, xiv, xv and xx have been partly implemented and recommendations i, iii-viii, x-xiii, xvi, xviii, xix and xxi have not been implemented.
115. With respect to top executive functions, it is regrettable that only two recommendations have been partly implemented. It is clear that only limited steps have been taken to respond to GRECO's recommendations. Implementation has mostly focused on the measures put forward in the Anti-Corruption Programme 2018-2020, a programme which was already in place at the time of adoption of the Evaluation Report. GRECO's call for a more ambitious approach concerning integrity policies for persons exercising top executive functions has unfortunately gone unheeded. While steps have been taken to implement various measures of the Anti-Corruption Programme, these only address the concerns underlying GRECO's recommendations in a rather limited manner, as they are to a large extent not sufficiently targeted to persons exercising top executive functions. GRECO urges the authorities to take more resolute action to address its recommendations and the underlying concerns outlined in the Evaluation Report.
116. More positive steps have been taken by the Police and Border Guard, with especially the Police displaying notable efforts to improve its methods of identifying risks of corruption and to change its policies and working methods in response to this. Both agencies are in the process of updating their rules of conduct and have taken steps towards establishing mechanisms for confidential counselling. Both in the Police and the Border Guard, terms of employment have been improved (in particular as regards the scale of remuneration) and a better gender balance has been achieved in the Border Guard (with the Police

actions are necessary to improve the established process of disclosing offences, misdemeanours and disciplinary violations in the Police.

having also taken positive measures which will hopefully ultimately lead to similar results). In the Border Guard, the implementation of amendments to the Act on the Border Guard has foreseen a more coherent approach to disciplinary proceedings, *inter alia* by the appointment of disciplinary ombudspersons. Topics on which progress has been slow or non-existent mostly concern those areas where further legislation is needed, such as secondary activities, the system of asset declarations and the protection of whistleblowers, or where there is a fundamental difference of opinion on the need to address the concerns, such as the appointment process of senior managers in the Police and Border Guard – which GRECO had identified as a top priority in its Evaluation Report. Further information is also needed to see if a clarification of responsibilities between the various bodies involved in internal oversight in both agencies has taken place (in particular following the establishment of the Internal Supervisory Office of the Ministry of Internal Affairs). More can also be done to provide for a clear process for the disclosure of misconduct within the Police and Border Guard (pending possible solutions to be proposed by a working group on breaking what is called “a poorly understood professional solidarity”).

117. In view of the above, GRECO notes that further progress is necessary to demonstrate an acceptable level of compliance with the recommendations within the next 18 months. Pursuant to Rule 31 revised bis, paragraph 8.2 of its Rules of Procedure, GRECO invites the Head of delegation of Poland to submit additional information regarding the implementation of the pending recommendations, i.e. recommendations i to xvi and xviii to xxi by 30 September 2022.
118. Finally, GRECO invites the authorities of Poland to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make the translation public.