



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



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FOURTH EVALUATION ROUND

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

COMPLIANCE REPORT SWITZERLAND

Adopted by GRECO at its 82nd Plenary Meeting
(Strasbourg, 18-22 March 2019)

I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Switzerland to implement the recommendations issued in the Fourth Round Evaluation Report on Switzerland which was adopted at GRECO's 74th Plenary Meeting (2 December 2016) and made public on 15 March 2017, following authorisation by Switzerland ([GrecoEval4Rep\(2016\)5](#)). GRECO's Fourth Evaluation Round deals with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. As required by GRECO's Rules of Procedure, the Swiss authorities submitted a Situation Report containing information on measures taken to implement the recommendations. This report was received on 28 September 2018 and served, together with the information submitted subsequently, as a basis for the Second Compliance Report.
3. GRECO selected Italy (in respect of parliamentary assemblies) and France (in respect of judicial institutions) to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Gaetano PELELLA, on behalf of Italy, and Ms Agnès MAITREPIERRE, on behalf of France. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
4. The Compliance Report assesses 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 outstanding 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

5. GRECO made twelve recommendations to Switzerland in its Evaluation Report. Compliance with these recommendations is dealt with below.
6. Generally speaking, the Swiss authorities explain that the government examined the GRECO recommendations at least partly within its competence (recommendations vii and ix) in its Message proposing that Parliament amend the Law on the Federal Supreme Court (LFSC).¹
7. As for Parliament, it sent the GRECO report to various parliamentary bodies so that they could address the recommendations within their respective areas of competence. Accordingly, the Political Institutions Committee of the National Council, in particular, incorporated recommendations i, iii and iv in its work leading to the parliamentary law amendments adopted on 15 June 2018 (parliamentary initiative 16.457).² The matter was also brought to the attention of the Bureaux of the National Council and the Council of States (recommendations ii and v), the Judicial Committee (recommendations vi and vii) and the Legal Affairs Committee of the National Council (recommendation xi).

¹ Message on the amendment of the Law on the Federal Supreme Court (LFSC), of 15 June 2018, published in the Federal Gazette (FF) 2018, p. 4713 and on the Internet: <https://www.admin.ch/opc/fr/federal-gazette/2018/4713.pdf>

² See in particular the committee Report, of 18 August 2017, published in the Federal Gazette (FF) 2017, p. 6425 and on the Internet: <https://www.admin.ch/opc/fr/federal-gazette/2017/6425.pdf>

Recommendation i.

8. GRECO recommended that consideration be given to increasing the degree of transparency (i) of debates and voting in both chambers' committees and (ii) of voting in the Council of States.
9. With respect to the first part of the recommendation, the Swiss authorities report that the Political Institutions Committee of the National Council has considered the issue of transparency of debates and voting within the parliamentary committees. It held a hearing with a member of the Swiss delegation to GRECO and has incorporated GRECO's recommendations in its thinking. A detailed discussion of this issue accordingly took place within the committee, whose proposals were discussed and then finally approved by the National Council and the Council of States during the final vote on the project, on 15 June 2018. The various arguments were set out in detail in a public document.³
10. In future, the committees will have to publish more documents (section 47a of the Parliament Act⁴ and Art. 8 of the Order on the administration of Parliament),⁵ in order to give the public wider access to important committee documents. Far from simply providing a means to make certain documents available to the public, the new statutory framework also requires the committees to systematically consider whether documents are essential for understanding the proposals they put to the Council.
11. The parliamentary committee took the view, however, that the minutes of committee meetings should remain confidential. Otherwise, the committees' work would become far less meaningful. Firstly, there was a high risk that their interlocutors (Federal Council, administration, experts, representatives of interest groups appearing at hearings, etc.) would no longer pass on certain important information. In particular, that would make it almost impossible to carry out overall supervision and would complicate the performance of other parliamentary tasks, including drafting legislation. Secondly, the task of preparing parliamentary decisions would move to informal committees operating "upstream" of the parliamentary debate, committees which would not function according to democratic rules and whose composition would not be representative.
12. As regards the second part of the recommendation, the Swiss authorities note firstly that a nominative list of votes in the Council of State is already published, under the Standing Orders of the Council of States (Rule 44a.46), in the case of qualified majority votes, votes covering a project in its entirety (following the detailed examination) and final votes (formal adoption of the act, at the end of the parliamentary procedure), and whenever ten members so request.
13. The issue of transparency of voting in the Council of States was re-examined on the basis of parliamentary initiative 17.432, calling for all votes in the Council of States to be published in the form of a nominative list. A detailed discussion of this issue was accordingly held within the Political Institutions Committee of the Council of States, which adopted a project along these lines by 10 votes against 2 with 1 abstention on 20 June 2017. The Bureau of the Council of States had previously taken a negative position on the project.

³ See p. 6426 and pp. 6431-6432 of the committee Report of 18 August 2017, published in the Federal Gazette (FF) 2017, p. 6425 and on the Internet: <https://www.admin.ch/opc/fr/federal-gazette/2017/6425.pdf>.

⁴ Parliament Act (ParlA), *Recueil systématique du droit fédéral* (RS) 171.10, published on the Internet: <https://www.admin.ch/gov/fr/accueil/droit-federal/recueil-systematique.html>

⁵ Order on the administration of Parliament (OLPA), RS 171.115

⁶ Standing Orders of the Council of States (SO-CS), RS 171.14

14. The various arguments are detailed over several pages of the committee's report,⁷ which also mentions the GRECO recommendation (p. 5498-5500). The report states that transparency already exists for all voting in the Council of States, as the proceedings are broadcast on the Internet, meaning that ballot results can be consulted at any time. The proposed amendment would nevertheless have enabled the results to be presented in the form of a ready-made nominative list, thereby sparing interested persons the need to compile the list themselves from video footage of the debates.
15. The majority of Council of States members ultimately concluded, however, that by making it possible for political observers to summarily "profile" MPs, in a very simplistic way, nominative lists posed a threat to the culture of constructive dialogue and solution finding that are a particular feature of the Council of States. The decision-making process in the Council of States is not the same as in the National Council, where the opposition between the parties is much more pronounced. Differences in the way they operate account for the decision to have two federal chambers, with exactly the same powers, in the first place. These differences also make it easier to reach compromises and, hence, to achieve consensus between the two chambers. Accordingly, on 12 September 2017, the Council of States refused to proceed with the project by 27 votes against 17, with 1 abstention, following intensive discussions.⁸
16. GRECO notes that both parts of the recommendation have been the subject of appropriate, thorough and well-documented scrutiny by the two chambers of the Swiss parliament. As regards the first part of the recommendation, GRECO welcomes the fact that the Parliament Act and the Order on the administration of Parliament have been amended to require committees to publish more documents. In this respect, the Swiss authorities have gone further than the first part of the recommendation, which merely called for consideration to be given to such a measure. GRECO regrets, however, that the degree of transparency of voting in committees (first part of the recommendation) and of voting in the Council of States (second part of the recommendation) has not been increased by the Swiss parliament. Since this issue has been examined in a way that meets GRECO's criteria, however, the recommendation must be considered fully implemented.
17. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

18. *GRECO recommended (i) that a code of professional conduct, together with explanatory comments and/or concrete examples, be adopted for the members of the Federal Assembly and brought to the attention of the public, and that (ii) in addition, practical information and advisory measures be set in place.*
19. The Swiss authorities report that the Bureaux of the National Council and the Council of States have decided, in preparation for the start of the 51st parliamentary term (winter 2019), that a summary document will be prepared under the supervision of the Bureau of the National Council. This document should provide an overview of the MPs' rights and obligations, accompanied by appropriate comments and examples, with a strong focus on corruption prevention. It will replace the various existing directives and letters (incompatibilities, interests and connections, corruption prevention, etc.).

⁷ Committee Report of 20 June 2017, published in the Federal Gazette (FF) 2017, p. 5493 and on the Internet: <https://www.admin.ch/opc/fr/federal-gazette/2017/5493.pdf>

⁸ Official Bulletin (BO) 2017, p. 523ss <https://www.parlament.ch/fr/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=40894>

20. It is planned to bring together *inter alia* the applicable rules concerning conflicts of interest and interests in general (including the content of the relevant register) and also the rules on confidentiality, immunity, accessory activities, incompatibility, relations with third parties seeking to influence MPs, entry passes (and the content of the relevant register), advantages, invitations and gifts or travel (including the new register of official journeys abroad undertaken by MPs). This work should also provide an opportunity to review the relevance of the content of the existing texts and to clarify particular aspects.
21. By compiling the various texts into a single document, the Bureaux hope to improve receptiveness to them and pave the way for more effective application. The adoption of this new document will also provide an opportunity to once again raise MPs' awareness of corruption prevention and remind them of the existing avenues for obtaining advice.
22. The final document will be issued by the two Bureaux and will be aimed directly at members of the federal parliament. It will be accessible to all and serve as a valuable tool for persons in contact with parliamentarians (lobbyists, organisers wishing to invite parliamentarians to events, employers, media, etc.).
23. At the same time, the guidance brochure addressed to MPs do underwent a complete overhaul in February 2017 and now has a new format and a new title. Containing a wealth of specific and detailed information as well as numerous links to other information and documents, it has a more pragmatic and broader purpose than the summary document currently being prepared and described above. It is a useful addition to the other, more formal information given to MPs. The brochure will be updated at the beginning of the next parliamentary term. It is also available on the Internet.⁹
24. GRECO welcomes the intention of the Bureaux of the two chambers of the Federal Assembly to bring together in a single document all the rights and obligations of parliamentarians and to make use of this opportunity to review the provisions in question. The fact that this document is to be accompanied by comments and examples, with a strong focus on corruption prevention, is also a positive sign. Pending examination of this document and its adoption, the first part of the recommendation is to be regarded, for now, as partly implemented. No reference has been made, however, to any tangible measures concerning the second part of the recommendation, which must therefore be considered not to have been implemented to date.
25. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

26. *GRECO recommended extending the obligation to declare personal interests to include any conflict between the specific private interests of an MP and the subject under examination in parliamentary proceedings, be it in the Councils or in committee, regardless of whether the conflict could also be identified by examining the register of interests.*
27. The Swiss authorities explain that, as part of the recent revision of parliamentary law (parliamentary initiative 16.457, see paragraph 7 of this report), the Political Institutions Committee of the National Council looked at MPs' reporting obligations.

⁹ <https://www.parlament.ch/centers/documents/fr/naechster-halt-bundeshaus-f.pdf>

28. In this respect, the authorities note that section 11 ParIA makes a distinction between interests which must be reported on assuming office and at the start of each calendar year and entered in a public register (paragraphs 1 and 2) and interests which are to be reported orally when an MP makes a statement in the Council or in a committee (paragraph 3). The two categories are different in nature: the first comprises interests arising, in abstracto, from professional activities and other positions held (paragraphs 1 and 2) while the second consists of personal interests directly affected by a matter under discussion, in a specific case (paragraph 3).
29. In its public report dated 18 August 2017,¹⁰ the committee noted that section 11.3 ParIA already provides that any MP whose personal interests are directly affected by a matter under discussion is bound to report it when speaking on that matter in the Council or in committee and that "the obligation to report the interests provided for in section 11.3 ParIA applies regardless of whether the particular conflict between specific private interests and the parliamentary matter discussed could also be identified by examining the public register referred to in paragraph 2".
30. Examining the GRECO recommendation afforded an opportunity, therefore, to clarify a problem relating to the interpretation of section 11 ParIA. Thus interpreted and described in the Committee report dated 18 August 2017, the current legal situation is, according to the authorities, in line with the GRECO recommendation and constitutes a clear reminder of the rule in a current public document.
31. GRECO takes note of the explanations provided by the Swiss authorities. It appreciates the position taken by the Political Institutions Committee of the National Council, to the effect that the obligation to report a parliamentarian's personal interests applies regardless of whether those interests could also be identified by examining the published register. Such an interpretation, which is in keeping with the spirit of recommendation iii, seems to contradict certain information received when preparing the Evaluation Report, which noted that "this obligation to declare does not concern interests which have already been made public". In the interests of awareness and in order that the parliamentarians to whom this obligation applies should be fully informed, GRECO invites the authorities to include and publish this interpretation in the document setting out parliamentarians' rights and obligations, mentioned under recommendation ii.
32. GRECO concludes that recommendation iii has been dealt with satisfactorily.

Recommendation iv.

33. *GRECO recommended (i) including quantitative data concerning MPs' financial and economic interests, and details of their main liabilities in the existing disclosure system; and (ii) considering broadening the scope of their declarations to include information on their spouses and dependent family members (it being understood that this information would not necessarily be made public).*
34. With respect to the first part of the recommendation, the Swiss authorities report that the parliamentary law amendments mentioned above (see paragraph 7) and adopted on 15 June 2018 introduced additional reporting obligations. MPs must now indicate their professional activities (and not only their occupation) and specify their job title and their employer if they are employees (section 11.1.a ParIA). In addition, they must specify whether the other activities declared are voluntary or remunerated.

¹⁰ See p. 6432 of the committee Report of 18 August 2017, published in the Federal Gazette (FF) 2017, p. 6425 and on the Internet: <https://www.admin.ch/opc/fr/federal-gazette/2017/6425.pdf>.

35. Parliament has decided not to take further measures, however. For example, the possibility of including quantitative data concerning MPs' financial and economic interests in the reporting system was explicitly rejected first in committee and then in the National Council, one notable argument being that the intensity of MPs' support for certain interests does not necessarily depend on the amount of remuneration they receive from the interest groups concerned.¹¹
36. As regards the second part of the recommendation, this was also examined by the Political Institutions Committee of the National Council as part of the aforementioned amendment process. The committee heard a member of the Swiss delegation to GRECO and then held a discussion on the subject. It summed up its position on the matter as follows:¹² "As regards extending the obligation to report interests to include information about family members, the committee considered it in line with the GRECO recommendation, but rejected it on the ground that third-party interests worthy of protection would thus be disclosed and that any such regulation would raise issues over where to draw the line that would be difficult to resolve."
37. GRECO is pleased to note that parliamentarians' reporting obligations have been elaborated on to some extent, to include for example an indication of professional activities or job title and employer in the case of parliamentarians who are employees. Such information, however, is not the primary focus of the recommendation, the first part of which calls for the inclusion of quantitative data concerning MPs' financial and economic interests and details of their main liabilities. GRECO regrets that Parliament has not complied with this request because, as it has repeatedly stated in its reports, "Debts and liabilities are an important part of MPs' interests and some information on an approximate value of significant assets and interests is also relevant information in this context."¹³ Whether an MP holds only a few shares in a company or, on the contrary, a large portion of its capital is of consequence and such data can usefully inform the public and civil society. The first part of the recommendation has not been implemented therefore.
38. As regards the second part of the recommendation, again GRECO regrets that Parliament rejected the idea of including in MPs' declarations certain information about the spouse and dependent family members. There is no question, however, that the proposal has been the subject of appropriate, thorough and documented scrutiny by the Political Institutions Committee of the National Council. This part of the recommendation has been implemented satisfactorily therefore. It follows that the recommendation as a whole has been partly implemented.
39. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

40. *GRECO recommended the adoption of appropriate measures to improve the scrutiny and the application of the obligations concerning disclosure and the standards of conduct applicable to members of the Federal Assembly.*
41. The Swiss authorities explain that section 11.1 ParIA requires MPs to report their interests and connections when they first take their seats and at the start of each calendar year. The central secretariat of the Parliamentary Services is responsible for collecting the information and assists MPs in fulfilling their reporting obligation. If

¹¹ Cf. pp. 6432 and 6434 of the committee Report of 18 August 2017, published in the Federal Gazette (FF) 2017, p. 6425 and on the Internet: <https://www.admin.ch/opc/fr/federal-gazette/2017/6425.pdf>.

¹² See p. 6432 of the committee Report of 18 August 2017, published in the Federal Gazette (FF) 2017, p. 6425 and on the Internet: <https://www.admin.ch/opc/fr/federal-gazette/2017/6425.pdf>.

¹³ Evaluation Report on Switzerland, paragraph 67

they are unsure about the scope of this obligation, MPs can seek advice from the Parliamentary Services legal service and indeed regularly do so.

42. Since the flow of information was digitalised, the process has become easier not only for the Parliamentary Services but also and above all for MPs, who can thus easily enter and submit the various items of personal information, including notably any links they may have with interest groups. Since the introduction of the electronic form, the central secretariat has noticed a significant increase in the number of updates concerning interests and connections.
43. At the end of each calendar year, the central secretariat sends an email to all MPs, reminding them that they are required to update the information submitted. The computer system linked to the electronic form provides an overview of any changes in MPs' circumstances. The central secretariat can thus send a (second) email reminder to any MPs who have not updated their information.
44. Staff in the central secretariat also make use of their occasional direct contacts with MPs to remind them of their obligation to report their interests and connections, and of the fact that this can be done easily via the electronic form. Sometimes too, between five and ten times a year on average, third parties draw the central secretariat's attention to a failure to report links with interest groups. The central secretariat then contacts the MP concerned, inviting them to comply with their obligation.
45. The current situation could still be improved, however. In the opinion of the Bureau of the National Council, the current level of compliance with reporting obligations is not wholly satisfactory, yet the reporting of interests provided for in section 11 ParIA is crucial for understanding the interaction between the economy, society and politics and for promoting transparency. For that reason, the Bureau of the National Council proposed accepting postulate 16.3276¹⁴ tabled by the Greens on 26 April 2016. The postulate was adopted by the National Council on 16 December 2016. The Bureau of the National Council has accordingly been instructed to carry out a study to assess the effectiveness of the current system, to identify any shortcomings and to suggest remedial measures if necessary.
46. More broadly, the preparation of a summary document providing an overview of MPs' rights and obligations, as described in paragraphs 18 and following, is also intended to ensure more effective application of the various rules.
47. GRECO notes that the information on the Parliamentary Services' work in terms of liaising with MPs and issuing reminders and advice has already been taken into account in the evaluation report. It welcomes the finding of the Bureau of the National Council to the effect that the level of compliance with reporting obligations is not wholly satisfactory and the announcement that a study is to be carried out to assess the effectiveness of the current system and propose remedial measures if necessary. This work is still at too early a stage, however, for GRECO to conclude that the recommendation has been implemented, even partly.
48. GRECO concludes that recommendation v has not been implemented.

¹⁴ <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20163276>

Recommendation vi.

49. GRECO recommended that measures be taken to strengthen and improve the effectiveness in terms of quality and objectivity of the recruitment of judges to the federal courts.
50. The Swiss authorities report that Parliament's Judicial Committee discussed the GRECO evaluation report and the recommendations contained therein at its meeting on 28 August 2017, after hearing a member of the Swiss delegation to GRECO. Among the matters considered at this meeting was the procedure for recruiting judges. The committee concluded that no changes were necessary in this area at this stage. It considers that the recruitment procedure is embedded in a well-defined and transparent framework, vacancies are advertised for recruitment by public competitive examination and all applications are examined by its sub-committee, which draws up a shortlist, checks candidates' references and even holds hearings with experts. The shortlisted candidates are interviewed by the plenary committee, which decides whether or not to nominate them for election to the Federal Assembly.
51. GRECO regrets that Parliament's Judicial Committee has decided not to follow this recommendation. It will be recalled that this recommendation was made in response to a finding that the political affiliation of candidates for judicial office is a decisive factor in their recruitment, which can on occasion take precedence over their competence. This system also makes it very difficult, if not impossible, to elect judges whose political affiliation is unknown, no matter how qualified they may be. The issue remains a topical one.
52. GRECO concludes that recommendation vi has not been implemented.

Recommendation vii.

53. GRECO recommended (i) eliminating the practice of judges of the federal courts paying a fixed or proportional part of their salary to political parties; (ii) ensuring that no non-reelection of judges of the federal courts by the Federal Assembly is motivated by these judges' decisions and (iii) considering eliminating or revising the procedure for the re-election of these judges by the Federal Assembly.
54. With respect to the first part of the recommendation, the Swiss authorities explain that the government considered this issue in its Message, as mentioned in paragraph 6.¹⁵ It concedes that the payments levied on judges' salaries raise various questions about the independence of the judiciary and how it is perceived by the public, referring in particular to a critical article on this subject. The government considers however that, at present, any attempt to abolish these payments would be met with strong political opposition and has accordingly decided not to propose such a ban.
55. With respect to the second part of the recommendation, the authorities note that the evaluation report (paragraph 101), while expressing some misgivings about the relationship between judges and the political authorities, found that the system's stability, the principle of concordance and the election of parliament by proportional vote were important and effective safeguards. It further noted that judges of the federal courts had always been re-elected *en bloc* thus far.

¹⁵ See chapter 1.4, p. 4735 of the Message on the amendment of the Law on the Federal Supreme Court (FSC), of 15 June 2018, published in the Federal Gazette (FF) 2018, p. 4713 and on the Internet: <https://www.admin.ch/opc/fr/federal-gazette/2018/4713.pdf>.

56. The same is true of all the re-elections which have occurred since the evaluation report. For example, when the Federal Administrative Court was fully renewed for the period 2019-2024, 61 outgoing judges won between 199 and 208 votes – out of 208 valid votes. The eight other judges obtained scores ranging from 156 to 179 votes, with an absolute majority of 105 votes.¹⁶
57. Likewise, when the Federal Patent Court was fully renewed for the period 2018-2023, the 33 outgoing substitute judges won 196 votes or more, out of 207 valid votes and with an absolute majority of 104 votes. As for the ordinary judge, he won 207 votes out of the 215 valid votes, with an absolute majority of 108 votes.¹⁷ This shows that non-re-election remains a notional risk and that the negative scenario envisaged in the second part of the recommendation has not materialised.
58. With respect to the third part of the recommendation, this has been considered at the highest political level and summarised in a public document. For in the Message mentioned in paragraph 6,¹⁸ the government outlines GRECO's arguments together with the reasons for keeping the current system. It concludes that, overall, the system has proved its worth and that mainstream political opinion would be against eliminating the re-election procedure.
59. Parliament's Judicial Committee also discussed GRECO's evaluation report and the recommendations contained therein, as already mentioned, at its meeting on 28 August 2017, after hearing a member of the Swiss delegation to GRECO. During the meeting, it looked at the rule providing for federal court judges to be elected for a fixed period and hence re-elected at the end of that period. It concluded that the principle of democratic legitimacy, derived from a long-standing Swiss tradition, is still relevant and meaningful today. It therefore decided not to call for the procedure for re-electing judges of the federal courts to be amended.
60. As regards the first part of the recommendation, GRECO welcomes the fact that the government acknowledges in its Message that the payments to political parties levied on judges' salaries raise questions about their independence and how this independence is perceived by the public. It is disappointed to note, therefore, the government's decision not to propose that Parliament ban such payments, on the grounds that there would be strong political opposition, and calls on the Swiss authorities to reconsider this position. Since no tangible measures have been taken, this part of the recommendation has not been implemented.
61. As regards the second part of the recommendation, GRECO is pleased to note that its fears about judges not being re-elected for reasons related to their decisions have not materialised. It takes the view, however, that the two full renewals which happened since the adoption of the evaluation report are not sufficient to dispel its fears. It, therefore, wishes to keep this matter under review. This part of the recommendation is only partly implemented.
62. In respect of the third part of the recommendation, GRECO again notes with regret that the government and Parliament have decided to stay with the status quo and to refrain from moving towards eliminating the requirement for federal judges to be periodically re-elected. This procedure is, in its opinion, no less problematic from the point of view of independence of the judiciary than the above-mentioned practice of

¹⁶ Re-elections of 14 March 2018: <https://www.parlament.ch/fr/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=42854>

¹⁷ Re-elections of 27 September 2017: <https://www.parlament.ch/fr/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=41171>

¹⁸ See chapter 1.4, p. 4734 of the Message on the amendment of the Law on the Federal Supreme Court (FSC), of 15 June 2018, published in the Federal Gazette (FF) 2018, p. 4713 and on the Internet: <https://www.admin.ch/opc/fr/federal-gazette/2018/4713.pdf>.

judges paying part of their salary to political parties. GRECO recognises, however, that this issue has been the subject of appropriate, documented scrutiny at the highest political level – government and Parliament, in keeping with its criteria. This part of the recommendation has therefore been implemented satisfactorily and the recommendation as a whole must be regarded as partly implemented.

63. GRECO concludes that recommendation vii has been partly implemented.

Recommendation viii.

64. *GRECO recommended (i) that the rules of conduct applicable to federal court judges be developed and be accompanied by explanatory comments and/or concrete examples on conflicts of interest and other questions related to integrity, such as gifts, invitations, relations with third parties and so on, and that the rules be brought to the attention of the public, and (ii) that additional practical measures be taken for their implementation, such as offering confidential counselling and practical training for federal court judges.*
65. The Swiss authorities have provided the following information on the four federal courts.
66. Federal Supreme Court (FSC): the 38 members of the FSC discussed the GRECO evaluation report at a plenary meeting on 25 September 2017. The Administrative Committee of the FSC, consisting of the president of the FSC, the vice-president of the FSC, a third ordinary judge and the general secretary, had previously voted in favour of adopting a charter of ethics. It accordingly proposed that the plenary Court set up a working group. The working group consists of 12 members of the FSC, namely the three members of the Administrative Committee, two court presidents, including the president of the Conference of Presidents, and seven ordinary judges. All the FSC courts have at least one representative on the working group. The working group met for the first time on 19 February 2018 and has sat on three occasions to date. A preliminary draft set of recommendations concerning the conduct of FSC judges has been prepared. It was discussed at the plenary session of the FSC that took place on 11 November 2018. Federal judges decided to adopt, in a new written form "Uses" which relate to the exercise of their function, the guarantee of their independence, as well as their behaviour in public. After approval of the three language versions, the document will be published on the internet.
67. Federal Administrative Court (FAC): the Swiss authorities point out that the FAC already had a charter of ethics, described as "substantial" in the evaluation report (paragraph 142). With respect to the second part of the recommendation, they report that the ethical principles enshrined in the charter are the subject of regular reminders, including notably when swearing in new judges, each of whom receives a copy. During the ceremony, an excerpt from the charter is presented by the president in charge.
68. The subject of ethics has also been the focus of special events such as a lecture by a judge from the German Constitutional Court on (judges') ethics in matters relating to asylum.
69. As regards initial training, the induction programme for newly appointed judges includes a module on the charter of ethics and participation in a professional conduct course for federal officials. This course includes a module on the rules on corruption, with an interactive e-learning component to be followed on the federal government's online platform.

70. As regards the possibility of obtaining confidential advice, judges can turn to the FAC presidency or the president of their own court and/or more experienced colleagues if they feel the need to do so. Where necessary, individual coaching can also be arranged.
71. Federal Criminal Court (FCC): the authorities report that in 2019, a relatively large number of new judges are due to take up office because an appeal court has been set up within the FCC. This will provide an opportunity to explore the subject of ethics in greater depth. The question of a charter of ethics is accordingly still being considered. With respect to the second part of the recommendation, the FCC has an official ombudsman service, which is there to assist all court personnel, not only judges, and whose purview includes matters relating to ethics.
72. Federal Patent Court (FPC): the authorities confirm the finding in the evaluation report that conflicts of interest are the most acute problem facing the FPC, one that has been exacerbated by the large number of substitute judges that make up the court. This recurring issue is being taken very seriously. Detailed directives concerning independence have been appearing since 2011. They are published on the FPC website¹⁹ and are regularly updated.
73. As regards the second part of the recommendation, the induction training for newly appointed judges covers *inter alia* the subject of judicial independence, including relevant case law. Also, when seeking to determine whether there is a potential conflict of interest in a particular case, the judges regularly contact the President to discuss the matter. In addition, the plenary sessions which bring together FPC judges twice a year provide an opportunity for in-house training and professional development. All the judges and the first registrar take part. Judicial independence is a frequent topic of discussion on these occasions.
74. As regards the FSC, GRECO welcomes the current finalisation by the plenary session of a document on the practices to be followed by the judges of the TF in the exercise of their function, on the guarantee of their independence and on their behaviour in public. This could satisfy the requirements of the first part of the recommendation. As it has not been able to review the text, however, GRECO cannot yet conclude that it would lead to a partial implementation of the recommendation.
75. The FAC makes no reference to any new measures taken in response to the recommendation. GRECO notes that, while it did indeed describe the FAC's Charter of Ethics as "substantial" in the evaluation report, it also stressed the need to further develop and supplement this document by adding explanatory comments and/or concrete examples. The representatives of the FAC met during the evaluation visit appeared open to such a possibility and it is a pity that so far, there has been no follow-up on this.
76. GRECO notes that the FPC is still considering whether to adopt a charter of ethics and calls on it to step up its discussions in this area. It also notes with interest that there is an official ombudsman service, which could be a first step towards addressing the second part of the recommendation. No reference, however, has been made to any measures concerning ethics training for judges.
77. Lastly, as regards the FPC, GRECO notes that the directives concerning independence – which already existed when the evaluation report was adopted – deal only with the issue of conflicts of interest. The first part of the recommendation calls for a text to be drafted, which would deal more broadly with all issues relating to ethics, such as gifts, accessory activities, contacts with third parties, confidentiality, etc. As regards

¹⁹ <https://www.bundespatentgericht.ch/fr/bases-legales/>

the training activities reported, once again, these seem to deal only with the issue of independence, and not with ethics in the wider sense.

78. GRECO concludes that recommendation viii has not been implemented.

Recommendation ix.

79. *GRECO recommended (i) the setting in place of a disciplinary system to sanction any breaches by federal court judges of their professional duties by means other than removal and (ii) that measures be taken to ensure that reliable and sufficiently detailed information and data are kept on disciplinary proceedings concerning these judges, including the possible publication of the relevant case-law, while respecting the anonymity of the persons concerned.*
80. The Swiss authorities report that in its Message mentioned in paragraph 6, the government indicated that it would not be calling on Parliament to introduce a system of disciplinary sanctions for judges. It explains in particular that no major problems have arisen under the current arrangements and that if judges had disciplinary proceedings pending, this could undermine the judiciary. After discussing the GRECO report, Parliament's Judicial Committee also decided not to call for changes to the statutory framework. The authorities point out lastly that the supreme parliamentary supervision over the judiciary, exercised chiefly by the control committees, makes it possible to monitor any developments in the situation as regards breaches of the rules of conduct.
81. GRECO regrets that no measures have been taken to give effect to the recommendation. It notes that one notable feature of the current system, under which removing judges from office is the only sanction available for serious breaches of the rules of conduct, is the lack of transparency regarding the punishment of less serious infringements, assuming they are punished at all. The system does not respect the rights of the judges concerned and, by creating an impression of impunity except in very serious cases, is not such as to build public confidence in the judiciary. GRECO calls on the Swiss authorities to review their position on this matter.
82. GRECO concludes that recommendation ix has not been implemented.

Corruption prevention in respect of prosecutors

Recommendation x.

83. *GRECO recommended (i) that the work in progress with a view to the adoption of rules of conduct for members of the Attorney General's Office of the Confederation be completed, that the resulting rules be accompanied by explanatory comments and/or practical examples and that they be brought to the attention of the public, and (ii) that additional implementing measures be taken, such as offering confidential advice and practical training for federal prosecutors.*
84. As regards the first part of the recommendation, the Swiss authorities report that the Code of Conduct for the Office of the Attorney General of the Confederation (OAG) entered into force on 1 July 2017 in the form of a Directive of the Attorney General. When drafting the code, the reflections of prosecutors at every level of the hierarchy were taken into account. The OAG's Code of Conduct was published on the OAG website at the end of September 2017.²⁰ It is also mentioned, together with the GRECO recommendation, in the OAG's 2017 annual report.²¹

²⁰ <https://www.bundesanwaltschaft.ch/mpc/en/home/die-bundesanwaltschaft/code-of-conduct.html>.

²¹ See chapter 2.2, p. 4 and chapters 4 and 5, p. 28. Published on the Internet: <https://www.bundesanwaltschaft.ch/mpc/en/home/taetigkeitsberichte/taetigkeitsberichte-der-ba.html>

85. The Code contains rules on independence, impartiality, withdrawal, integrity, dignity and preventing conflicts of interest – whether in connection with the exercise of an accessory activity, giving gifts or advising third parties – and also on wealth management (operations on own account). It also requires OAG staff to provide their line managers with information on a whole series of matters relating to the aforementioned subjects.
86. As regards the second part of the recommendation, the authorities report that an advisory committee has been set up, as provided for in Article 8 of the Code. It is independent of the management of the OAG and its members are drawn from the widest possible range of roles within the OAG and linguistic regions. Its task is to ensure that the Code is disseminated among, and properly understood by, OAG staff, to suggest any amendments or additions to the Attorney General and to answer any questions put by staff. The committee prepares an annual report on its activities and publishes its opinions in an anonymised manner, to ensure confidentiality.
87. The OAG management presented the Code of Conduct to OAG prosecutors and administrative staff in the summer of 2017. The advisory committee also gave a presentation at the OAG's annual meeting in December 2017. In addition, the advisory committee met with staff from each division and site to present the Code of Conduct. Tasked with ensuring in-service training in ethics, it will continue to meet with OAG staff on an annual basis to present its advisory opinions and answer any questions they may have. Demand increased from October 2017 onwards and an initial anonymised report on the opinions issued by the advisory committee on ethics was drawn up as at 31 January 2018. The committee is also responsible for providing ethics training for new staff, and ethics has featured among the topics covered on Induction Day since February 2018.
88. The authorities further report that the cantons of Bern and Zurich have also adopted a code of conduct for prosecutors and that a working group from the Latin Conference of prosecutors produced a model code of conduct which has been made available to the association's member cantons.
89. Lastly, a federal prosecutor has been tasked with giving training in ethics, as part of the course introduced for young prosecutors by the *Ecole romande de la magistrature pénale* (CASMAP, Ecole ARC in Neuchâtel). This training was delivered for the first time in January 2018.
90. As regards the first part of the recommendation, GRECO welcomes the entry into force and the publication of the OAG code of conduct, which applies to all its staff members, including the Attorney General and the deputy attorney generals. The document is comprehensive and accompanied by comments and GRECO appreciates the fact that it has been designed in an open-ended fashion, based *inter alia* on any opinions and clarification which the advisory committee set up under the Code may provide. It further notes that failure to comply with the code may be treated as a breach of professional obligations and result in disciplinary action. The first part of the recommendation has been implemented satisfactorily therefore.
91. As regards the second part of the recommendation, GRECO welcomes the establishment of the advisory committee, which is independent of the OAG management and whose composition reflects the diversity of the OAG's organisational structure and functions, as well as the linguistic regions of Switzerland. It notes that the new committee provides opinions on ethical issues at the request of prosecutors, OAG staff and management. These opinions are confidential upon request and published in an anonymised manner. In addition, the committee may at any time propose that the OAG make adjustments to the Code - something it has already done - and it regularly runs initial and in-service training activities on ethics.

All these elements point to satisfactory implementation of the second part of the recommendation.

92. Lastly, GRECO is pleased to note that the cantons of Bern and Zurich have also adopted a code of conduct for prosecutors and that the Latin Conference of prosecutors has produced a model code of conduct, which has been made available to the association's member cantons. The ethics training provided by the *Ecole romande de la magistrature* is likewise to be welcomed.
93. GRECO concludes that recommendation x has been implemented satisfactorily.

Recommendation xi.

94. *GRECO recommended if revised, ensuring that the rules and procedures governing the supervisory authority of the Attorney General's Office of the Confederation make proper allowance for the potential conflicts of interest where its members are involved in proceedings before the criminal authorities of the Confederation.*
95. The Swiss authorities point out that, under the law as it stands, members of the supervisory authority of the Office of the Attorney General of the Confederation (SA-OAG) cannot represent a party in proceedings before the criminal authorities of the Confederation (section 24.2 LOAP).²² A parliamentary initiative 15.473, pending at the time of the evaluation, sought to remove this statutory restriction, thus prompting GRECO to make this recommendation.
96. At its meeting on 28 and 29 June 2018, the Legal Affairs Committee of the Council of States decided not to abolish this statutory restriction. No further action, therefore, is to be taken on parliamentary initiative 15.473, on which the GRECO recommendation was based.
97. GRECO is pleased to note that the authorities have decided not to abolish the rule prohibiting members of the SA-OAG from representing a party before the criminal authorities of the Confederation and not to proceed with parliamentary initiative 15.473, which gave rise to the present recommendation.
98. GRECO concludes that recommendation xi has been dealt with in a satisfactory manner.

Recommendation xii.

99. *GRECO recommended that measures be taken to ensure that reliable and sufficiently detailed information and data are kept on disciplinary proceedings concerning prosecutors, including the possible publication of the relevant case-law while respecting the anonymity of the persons concerned.*
100. The Swiss authorities note that disciplinary proceedings against the Attorney General and his two deputies are already listed in the SA-OAG's annual reports.²³ The SA-OAG, indeed, has dedicated a special section of its annual report to this subject since it was first created in 2011. These reports are published in various sources, including the Internet. The 2017 report,²⁴ for example, mentions a complaint against the Attorney General. It culminated in a decision not to consider the application because it contained no evidence of a breach of official duties.

²² Law on the organisation of the criminal authorities (LOAP), RS 173.71

²³ See paragraph 274 of the evaluation report

²⁴ See chapter 3.1, p. 11. Published on the Internet: <http://www.ab-ba.ch/fr/rapport.php>

101. According to paragraph 281 of the evaluation report, the GRECO recommendation is thus concerned with disciplinary measures pronounced by the Attorney General and more specifically with the fact that the OAG as a whole and the public at large are not informed of such proceedings. In response to the recommendation, the OAG decided to follow the same practice as the SA-OAG in its own annual report, which is also published on the Internet. The 2017 report²⁵ accordingly mentions the GRECO recommendation and the reasons which led to the creation of this new section along with the main rules where disciplinary arrangements for prosecutors are concerned. It concludes that there are no disciplinary investigations to report for the year under review.
102. GRECO welcomes the inclusion in the OAG annual report of a new section on investigations and any disciplinary action concerning OAG prosecutors. This measure, like the similar section that already appears in the annual reports of the SA-OAG regarding the Attorney General and his or her deputies, is in line with the recommendation's objective of keeping and publishing data relating to disciplinary matters.
103. GRECO concludes that recommendation xii has been implemented satisfactorily.

III. CONCLUSIONS

104. **In the light of the foregoing, GRECO concludes that Switzerland has implemented satisfactorily or dealt with in a satisfactory manner five of the twelve recommendations contained in the Fourth Round Evaluation Report.** Of the remaining recommendations, three have been partly implemented and four have not been implemented.
105. More specifically, recommendations i, x and xii have been implemented satisfactorily, recommendations iii and xi have been dealt with in a satisfactory manner, recommendations ii, iv and vii have been partly implemented and recommendations v, vi, viii and ix have not been implemented.
106. With respect to members of parliament, GRECO welcomes the intention of the Bureaux of the two chambers of the Federal Assembly to bring together in one document, accompanied by comments and examples, all the rights and obligations of MPs. Other instances of progress are the fact that the parliamentary committees are now required to publish more information about their important documents and the requirement to provide further details of professional activities in the declarations of interests. GRECO appreciates the clarification provided by the Political Institutions Committee of the National Council to the effect that the requirement to report personal interests applies to MPs regardless of whether those interests could also be identified by examining the published register. GRECO regrets, however, that the Federal Assembly has failed to act on other recommendations, such as including quantitative data concerning MPs' economic and financial interests and improving the scrutiny of declarations of interests.
107. As regards judges, there is little progress to report. The Federal Supreme Court is in the process of finalising a document setting out rules of conduct for its judges and the Federal Criminal Court is considering the matter. The same cannot be said, however, for the Federal Administrative Court and the Federal Patent Court and none of the four federal courts has taken further steps in terms of ethics awareness raising and training. Nor have any measures been taken as regards improving the

²⁵ See chapter 6.3, p. 29. Published on the Internet:
<https://www.bundesanwaltschaft.ch/mpc/en/home/taetigkeitsberichte/taetigkeitsberichte-der-ba.html>

recruitment of federal court judges in terms of quality and objectivity, eliminating the procedure for the re-election of these judges and the practice of them paying part of their salary to political parties, even though the government has acknowledged that such practices are problematic in terms of independence of the judiciary. The recommendation to put in place a system of disciplinary sanctions (other than removal) for judges has not been followed either. GRECO calls on the authorities to make more resolute efforts to implement the recommendations concerning judges.

108. GRECO welcomes, however, the fact that all its recommendations concerning prosecutors have already been implemented. The Office of the Attorney General of the Confederation (OAG) had adopted a code of conduct and an advisory committee, independent of the OAG management, has been set up to monitor compliance with the code, give opinions and organise training on ethics. GRECO also welcomes the fact that no further action is to be taken on parliamentary initiative 15.473 which sought to abolish the rule prohibiting members of the OAG Supervisory Authority from representing a party before the criminal authorities of the Confederation. Lastly, the publication in the OAG annual report of information concerning any disciplinary proceedings and measures against federal prosecutors is also to be welcomed.
109. In the light of the foregoing, GRECO notes that the measures taken in respect of prosecutors and, to a lesser extent, members of parliament have enabled Switzerland to achieve an acceptable level of compliance with the recommendations. Further efforts are needed as regards not only MPs but also, more importantly, judges. GRECO therefore invites the Head of the Swiss delegation to submit additional information regarding the implementation of recommendations ii, iv and v to ix by 30 September 2020.
110. GRECO invites the Swiss authorities to authorise publication of this report as soon as possible, to translate in the other official languages and to make these translations public.