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## FOURTH EVALUATION ROUND

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

### SECOND ADDENDUM TO THE SECOND COMPLIANCE REPORT

including

### FOLLOW-UP TO THE ADDENDUM TO THE FOURTH ROUND EVALUATION REPORT (RULE 34)

**POLAND**

Adopted by GRECO at its 84<sup>th</sup> Plenary Meeting  
(Strasbourg, 2-6 December 2019)

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## **I. INTRODUCTION**

1. The Addendum to the Second Compliance Report assesses the measures taken by the authorities of Poland to implement the pending recommendations issued in the Fourth Round Evaluation Report on Poland (see paragraph 2) covering “Corruption prevention in respect of members of parliament, judges and prosecutors”, as well as the additional recommendations issued in 2018 in the Addendum to the Fourth Round Evaluation Report on Poland (Rule 34).
2. The Fourth Round Evaluation Report on Poland was adopted at GRECO’s 57<sup>th</sup> Plenary Meeting (19 October 2012) and made public on 25 January 2013, following authorisation by Poland ([Greco Eval IV Rep \(2012\) 4E](#)). The Fourth Round Compliance Report was adopted by GRECO at its 66<sup>th</sup> Plenary Meeting (12 December 2014) and made public on 24 February 2015, following authorisation by Poland ([Greco RC-IV \(2014\) 1E](#)). The Second Compliance Report ([GrecoRC4\(2017\)2](#)) was adopted at GRECO’s 75<sup>th</sup> Plenary (20-24 March 2017) and made public on 28 March 2017, following authorisation by Poland. The Addendum to the Second Compliance Report ([GrecoRC4\(2018\)11](#)) was adopted at GRECO’s 80<sup>th</sup> Plenary (18-22 June 2018) and made public on 28 June 2018, following authorisation by Poland.
3. In addition, in light of the judicial reform of 2016-2018 in Poland, which critically affected the judiciary, GRECO decided at its 78<sup>th</sup> Plenary meeting (4-8 December 2017) to apply its ad-hoc procedure to Poland. As a result, GRECO adopted at its 80<sup>th</sup> Plenary (18-22 June 2018) an Addendum to the Fourth Round Evaluation Report ([Greco-AdHocRep\(2018\)3](#)) (hereafter: the Rule 34 Report), which re-assessed outdated parts of the Fourth Round Evaluation Report, following a decision by GRECO at its 78<sup>th</sup> Plenary Meeting (4-8 December 2017) to apply Rule 34 of its Rules of Procedure.<sup>1</sup>
4. The authorities of Poland have submitted additional information regarding actions taken to implement the nine recommendations that, according to the Second Compliance Report, had been partly or not implemented, as well as the six additional recommendations issued in the Rule 34 Report. This information was received on 1 April 2019 and served as a basis for this Second Addendum to the Second Compliance Report.
5. GRECO selected Portugal and the Czech Republic to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Daniel Marinho PIRES on behalf of Portugal and Ms Helena KLIMA LIŠUCHOVÁ on behalf of the Czech Republic. They were assisted by GRECO’s Secretariat in drawing up the Second Addendum to the Second Compliance Report.

## **II. ANALYSIS**

6. It is recalled that GRECO, in its Evaluation Report, had addressed 16 recommendations to Poland. In the subsequent Compliance Report and Addendum, GRECO concluded that recommendations ix, xii, xiv and xvi remained partly implemented and recommendations i, ii, iii, v and vi remained not implemented. To this, the Rule 34 Report of June 2018 added a further six recommendations, which will be referred to below as Rule 34 recommendations i-vi. Compliance with the fifteen pending recommendations is dealt with below.

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<sup>1</sup> Rule 34 of GRECO’s Rules of Procedure provides for an *ad hoc* procedure that can be triggered in exceptional circumstances, such as when GRECO receives reliable information concerning institutional reforms, legislative initiatives or procedural changes that may result in serious violations of anti-corruption standards of the Council of Europe.

**Recommendations i-iii, v and vi.**

7. GRECO recommended:

- that interactions by parliamentarians with lobbyists and other third parties who seek to influence the legislative process, be made more transparent, including with regard to parliamentary sub-committee meetings (recommendation i);
- i) that the "Principles of Deputies' Ethics" be complemented in such a way so as to provide clear guidance to Sejm deputies with regard to conflicts of interest (e.g. definitions and/or types) and related areas (including notably the acceptance of gifts and other advantages, incompatibilities, additional activities and financial interests, misuse of information and of public resources, the obligation to submit asset declarations and on the attitude towards third parties such as lobbyists – and including elaborated examples); and ii) that such standards of ethics and conduct also be introduced for senators and disseminated among them (recommendation ii);
- both in respect of Sejm deputies and senators, the development of a clearly defined mechanism to declare potential conflicts of interest of parliamentarians – also taking into account interests of close family members – with regard to concrete legislative (draft) provisions (recommendation iii);
- that the monitoring mechanism in respect of compliance by parliamentarians with standards of ethics and conduct - including rules on conflicts of interest and related areas - be reviewed in order to increase its effectiveness, in particular by simplifying the system of various bodies involved and by providing it with the necessary financial and personnel resources (recommendation v); and
- both in respect of Sejm deputies and senators, (i) the establishment of a dedicated confidential counsellor with the mandate to provide parliamentarians with advice on ethical questions and possible conflicts of interests in relation to specific situations; and (ii) the provision of specific and periodic training for all parliamentarians on ethical questions and conflicts of interests (recommendation vi).

8. GRECO recalls that in the Addendum to the Second Compliance Report it had concluded that none of these five recommendations had been implemented. Initially, at the stage of the Compliance Report, various measures<sup>2</sup> had been reported. However, due to the early stages of these developments and the absence of any concrete information on the draft amendments to the Rules of Procedures concerning senators, as regards recommendations i, iii and vi (noting also that these did not concern Sejm deputies), GRECO concluded that these recommendations had not been implemented. In the Second Compliance Report, these measures seemed to have been largely discontinued and the aforementioned recommendations therefore remained non-implemented. In the Addendum to the Second Compliance Report, GRECO took note of the elaboration of a draft law on transparency of public administration, which would be applicable to members of parliament (as well as judges and prosecutors), dealing *inter alia* with conflicts of interest, incompatibilities and cooling-off periods and considered that this law could eventually have a bearing on some parts of the abovementioned recommendations. GRECO concluded that

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<sup>2</sup>These measures included a draft law on lobbying (regarding recommendation i), draft amendments to the Rules of Procedure for the Senate (recommendation i, iii and vi), a draft resolution on ethical rules for senators (recommendation ii) and a draft law on asset declarations of officials performing public functions (recommendation v).

these five recommendations remained not-implemented and expressed its disappointment that no further progress towards implementing the recommendations has been made in what was now almost six years since the adoption of the Evaluation Report.

9. The authorities now report that the abovementioned draft law on transparency of public administration was submitted to the Permanent Committee of the Council of Ministers, but - due to run-up to the parliamentary elections held on 13 October 2019 – the draft law has not yet been agreed by the Council of Ministers. Following the formation of the new Parliament, the Minister of Justice sent a letter to the Marshal of the *Sejm* and the Marshal of the *Senat*, drawing attention to the need to comply with the abovementioned recommendations and requesting further information on their implementation.
10. As it has done several times before, GRECO can only express its profound disappointment at the lack of any concrete progress in implementing any of these five recommendations. It urges the Polish authorities to have the issues addressed by these recommendations taken up with renewed vigour by the newly constituted parliament.
11. GRECO concludes that recommendations i-iii, v and vi remain not implemented.

#### *Corruption prevention in respect of judges*

##### **Recommendation ix.**

12. *GRECO recommended that appropriate legal, institutional and/or operational measures be put in place or strengthened to ensure a more in-depth scrutiny of judges' asset declarations and to enhance the preventive dimension of asset declarations. This should include greater co-ordination of all relevant control bodies.*
13. GRECO recalls that this recommendation was considered partly implemented in the Addendum to the Second Compliance Report. In the Compliance Report, it was reported that several measures had been taken to reform the monitoring system with respect to asset declarations to be submitted by judges. They were aimed at strengthening co-operation among the bodies involved rather than entrusting this task to one leading body. It appeared that the rules on review of asset declarations by fiscal authorities, developed by the Ministry of Finance, provided several tools for significantly strengthening in-depth control of the declarations – *inter alia*, by defining a wide range of sources of information to be taken into account – and for co-operation with other bodies concerned. Moreover, draft legislation on asset declarations had been prepared by the Ministry of Justice. However, by the stage of the Second Compliance Report, the work on the aforementioned draft law had stopped. In light of the fact that the rules on the review of asset declarations developed by the Ministry of Finance nevertheless remained in force, GRECO concluded at that stage that the recommendation remained partly implemented. In the Addendum to the Second Compliance Report, GRECO took note of the preparation of a draft law on transparency of public administration (as referred to under recommendations i-iii, v and vi above), which would also be applicable to judges, and more in particular some of the proposed features of this law (such as the rules on cooperation between different control bodies, publication of certain information in asset declarations and the powers of the Central Anti-Corruption Bureau to require the submission of an ad-hoc declaration). As the draft law was still at an early stage of the legislative process, GRECO concluded that recommendation ix remained partly implemented.
14. The authorities indicate that no further information can be reported. As already mentioned in paragraph 8 above, the draft law on the transparency of public

administration, which would also be applicable to judges, has not been agreed yet by the Council of Ministers.

15. As no tangible progress has been reported, GRECO concludes that recommendation ix remains partly implemented.

#### *Corruption prevention in respect of prosecutors*

##### **Recommendation xii.**

16. *GRECO recommended that the "Collection of Ethical Principles governing the Prosecutors' Profession" (i) be disseminated among all prosecutors and made easily accessible to the general public; and (ii) that they be complemented in such a way so as to offer proper guidance specifically with regard to conflicts of interest (e.g. definitions and/or types) and related areas (including in particular the acceptance of gifts and other advantages, incompatibilities and additional activities).*
17. GRECO recalls that in the Addendum to the Second Compliance Report it concluded that the recommendation remained partly implemented. As regards the first part of the recommendation, at the stage of the Compliance Report, GRECO had already concluded that this had been implemented satisfactorily, with the distribution of the "Collection of Ethical Principles governing the Prosecutors' Profession" among prosecutors and the information on this provided to the general public. As regards the second part of the recommendation, in the Addendum to the Second Compliance Report, GRECO welcomed the adoption of a new "Collection of Ethical Principles governing the Prosecutors' Profession" in December 2017. It however found that the relevant provisions remained rather general and thus did not offer much guidance as regards conflicts of interest and related areas, as required by the recommendation. The recommendation therefore remained partly implemented.
18. The authorities now report that the National Prosecution Council (NPC) has not had the opportunity to interpret the relevant ethical principles in relation to a concrete case. In addition, given that the composition of the NPC was changed in 2018, it was not yet in a position to give general guidance on this issue and should be considering this issue soon.
19. GRECO finds it regrettable that no further steps have been reported to implement the second part of the recommendation, also in light of the fact that the composition of the NPC changed already last year.
20. GRECO concludes that recommendation xii remains partly implemented.

##### **Recommendation xiv.**

21. *GRECO recommended (i) that the competences of the National Prosecution Council for supervising compliance with ethical principles for prosecutors be clearly defined by law and that the Council be provided with adequate tools and powers for effectively performing this function; and (ii) that appropriate legal, institutional and/or operational measures be put in place or strengthened to ensure a more in-depth scrutiny of prosecutors' asset declarations and to enhance the preventive dimension of asset declarations. This should include greater co-ordination of all relevant control bodies.*
22. GRECO recalls that this recommendation remained partly implemented in the Addendum to the Second Compliance Report. As regards the first part of the recommendation, GRECO welcomed the steps taken to provide NPC with the power to enact the "Collection of Principles of Professional Ethics for Prosecutors" and to

interpret these principles when so requested. However, based on the information provided, it could not say that the NPC had been provided with the adequate tools and powers to supervise compliance with these principles, given that it did not seem to have the power to take any sort of action in response to violations of these principles. As regards the second part of the recommendation, at the stage of the Compliance Report, various measures had been initiated in order to reform the system for monitoring asset declarations to be submitted by prosecutors (and other categories of persons concerned), including the adoption of rules by the Ministry of Finance (providing for more in-depth scrutiny of asset declarations), guidelines by the General Prosecutor and the preparation of a draft law on asset declarations. At the stage of the Second Compliance Report, the draft legislation had however been abandoned. At the stage of the Addendum to the Second Compliance Report, the authorities reported on the draft law on the transparency of publication administration, which was also reported on as regards MPs and judges. GRECO considered this notable development to be at still an early stage and concluded that the recommendation as a whole remained partly implemented.

23. The authorities refer, as regards the second part of the recommendation, to what was earlier reported regarding the draft law on the transparency (see paragraphs 8 and 13 above). No further information was provided as regards the first part of the recommendation.
24. As no further developments have been reported, GRECO concludes that recommendation xiv remains partly implemented.

#### **Recommendation xvi.**

25. *GRECO recommended (i) the provision of on-going training to all prosecutors on conflicts of interest, rules concerning gifts, prohibition or restriction of certain activities and declaration of assets and private interests, by way of dedicated courses referring to practical examples; and (ii) the provision of proper dedicated counselling in prosecutors' offices, in order to raise prosecutors' awareness and to provide them with confidential advice on questions of ethics and conduct – particularly with regard to the areas mentioned under (i) – in relation to specific facts, taking into account the need for common, nationwide solutions.*
26. GRECO recalls that in the Addendum to the Second Compliance Report it concluded that this recommendation remained partly implemented. As regards the first part of the recommendation, it had already been satisfied in the initial Compliance Report with the information provided regarding training activities on ethical matters provided to prosecutors, which were to continue in future. As regards the second part of the recommendation, in the Addendum to the Second Compliance, in which the authorities reported that the National Prosecutor's Office was considering ways to implement this part of the recommendation, GRECO expressed regret that almost six years since the adoption of the Evaluation Report no further steps were reported on.
27. The authorities did not provide any information on measures taken to implement the second part of this recommendation.
28. GRECO cannot but reiterate the regret it earlier expressed that a system to provide for confidential counselling on integrity issues has not been set up.
29. GRECO concludes that recommendation xvi remains partly implemented.

**Rule 34 recommendation i.**

30. GRECO recommended that the provisions on the election of judges to the National Council of the Judiciary be amended, to ensure that at least half of the members of the National Council of the Judiciary are judges elected by their peers.
31. The authorities did not provide any information on measures taken to implement this recommendation.
32. GRECO regrets – in particular given the National Council of the Judiciary’s (NCJ) central role in the process of appointing judges in Poland as well as in appointing judges to the Disciplinary Chamber of the Supreme Court – that no steps were taken to amend the Law on the National Council of the Judiciary, to ensure that at least half of the members of the NCJ are judges elected by their peers. GRECO maintains its position, as out-lined in the Rule 34 Report, that the current composition of the NCJ (whereby effectively 21 out of 25 members of the NCJ are being elected by Parliament) is not in compliance with Council of Europe standards.
33. GRECO concludes that Rule 34 recommendation i has not been implemented.

**Rule 34 recommendation ii.**

34. GRECO recommended i) to reconsider the establishment of an extraordinary appeals chamber and disciplinary chamber at the Supreme Court and ii) reduce the involvement of the executive in the internal organisation of the Supreme Court.
35. The authorities report, as regards the first part of the recommendation, that an analysis of the jurisprudence of the Supreme Court was carried out by the Ministry of Justice, with the aim of scrutinising the practice of the two new chambers in order to assess their effectiveness. On the basis of this analysis, the following conclusions were reached:
  - As the competences of the extraordinary appeals chamber are quite broad (in that the chamber does not only deal with extraordinary appeals), it would not be appropriate to dissolve this chamber;
  - Due to the small number of extraordinary appeals submitted to and examined by the extraordinary appeals chamber (two cases in 2018 and 11 in 2019), its influence is marginal;
  - Extraordinary appeals concern exceptional situations, where an impasse has been reached (e.g. when there are conflicting judgments or where principles of social co-existence could prevail over the law);
  - The extraordinary appeals chamber operates impartially, as is demonstrated by the chamber’s examination of electoral protests submitted after the October 2019 parliamentary elections (in which the chamber *inter alia* turned down appeals by the governing party for not having been based on a breach of law) and by the chamber’s decision to turn down several extraordinary appeals submitted by the Prosecutor General.
36. Furthermore, as concerns the establishment of the disciplinary chamber, the authorities indicate that the disciplinary chamber deals with issues that were, to some extent, already within the competence of the SC. The amended Law on the Supreme Court only served to unify disciplinary liability procedures in respect of all legal

professions. Its establishment has been shown to be especially important in relation to corruption-related cases.<sup>3</sup>

37. The authorities did not provide any further information as regards the second part of the recommendation.
38. GRECO welcomes that the Ministry of Justice has carried out an analysis of the jurisprudence of the Supreme Court. It however regrets that this analysis has not fully taken into account all of the concerns GRECO outlined in its Rule 34 report, *inter alia* as regards the creation of a hierarchy within the court and the involvement of lay judges (elected by the legislature) in the proceedings of these two chambers.<sup>4</sup> GRECO can therefore only conclude that the first part of the recommendation has been partly implemented. It will continue to follow this issue<sup>5</sup>, also to see what impact the decisions of the President, as regards the internal organisation of the Supreme Court, have on the functioning of this court (in view of the fact that no further information has been provided in respect of the second part of the recommendation).
39. GRECO concludes that Rule 34 recommendation ii has been partly implemented.

#### **Rule 34 recommendation iii.**

40. *GRECO recommended that, the new retirement age is not applied as an obligatory measure to currently sitting Supreme Court judges in combination with the provisions allowing the executive to extend the tenure of such judges, and it is ensured that the possible extension of new Supreme Court judges' tenure beyond retirement age is free from political influence.*
41. The authorities report that with the adoption of Amendments to the Law on the Supreme Court of 21 November 2018, which entered into force on 1 January, Article 37, paragraphs 1a-4, and Article 111 of the Law on the Supreme Court of 8 December 2017 have been repealed. Due to these changes, the procedure whereby the President can extend the tenure of a Supreme Court judge beyond his/her retirement has been repealed. In addition, judges of the Supreme Court who had previously retired pursuant to the amendments of the Law on the Supreme Court of December 2017, returned to their previous positions and their judicial service is considered to have been uninterrupted. Furthermore, judges of the Supreme Court who took up their position before 1 January 2019 remain in active service until the age of 70 (which was the retirement age of Supreme Court judges before this was lowered to 65 with the amendments of December 2017). They additionally have the possibility of declaring to the First President of the Supreme Court that they wish to continue to remain in their post, presenting a medical certificate confirming their ability to

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<sup>3</sup> The disciplinary chamber *inter alia* allowed the arrest and detention of a judge charged with several acts of corruption, changed the legal assessment and imposed a more severe sanction on a judge who filled in his asset declaration without due care and maintained the decision of a disciplinary court holding a prosecutor criminally liable.

<sup>4</sup> In this context, GRECO recalls the criteria put forward at its 75<sup>th</sup> Bureau meeting to assess whether a "consider" recommendation has been implemented. These criteria are i) pertinence (i.e. Has the reflection process carried out in the country concerned really taken into account GRECO's underlying concerns (and not something unrelated)?; ii) extent (Were these concerns examined/discussed in depth, possibly with the involvement of appropriate (expert) institutions/individuals?); iii) legitimacy (has the decision to act/not to act been taken by an appropriate authority?; iv) documentation (has the reflection process and/or its results been properly documented: dates of meetings; persons/institutions involved; written sources available, possibly even accessible to the public?).

<sup>5</sup> GRECO took note in this context of the judgment of the Court of Justice of the EU (CJEU) of 19 November 2019 as regards the Disciplinary Chamber of the Supreme Court, which states that "the referring court must ascertain whether the new Disciplinary Chamber of the Supreme Court is independent in order to determine whether that chamber has jurisdiction to rule on cases where judges of the Supreme Court have been retired, or in order to determine whether such cases must be examined by another court which meets the requirement that courts must be independent".



perform the duties of a judge on health grounds, which allows them to adjudicate as a Supreme Court judge until the age of 72.

42. GRECO recalls that it had considered the lowering of the retirement age its “most pressing concern” in the Rule 34 Report. It therefore welcomes that these provisions have been repealed and that Supreme Court judges who had retired under the provisions of the 2017 amendments of the Law on the Supreme Court have been reinstated.<sup>6</sup>
43. GRECO concludes that Rule 34 recommendation iii has been implemented satisfactorily.

**Rule 34 recommendation iv.**

44. *GRECO recommended that the disciplinary procedures applicable to Supreme Court judges are amended, in order to exclude any potential undue influence from the legislative and executive powers in this respect, in particular by excluding the possibility for the executive to intervene in these proceedings.*
45. The authorities did not provide any information on the implementation of this recommendation.
46. GRECO regrets that no steps were taken to amend the provisions on disciplinary proceedings, also considering the lack of progress on the related issue of the Disciplinary Chamber referred to under ad-hoc recommendation ii above.
47. GRECO concludes that Rule 34 recommendation iv has not been implemented.

**Rule 34 recommendation v.**

48. *GRECO recommended that the procedures for appointing and dismissing presidents and vice-presidents of ordinary courts be amended, to exclude any potential undue influence from the executive power therein.*
49. The authorities did not provide any information on the implementation of this recommendation.
50. GRECO regrets that the relevant provisions of the Law on the Organisation of Ordinary Courts have not been changed. It maintains its previous position that the appointment of court presidents should as a minimum be a merit-based process and that procedures for the dismissing court presidents should be transparent, subject to established procedures and safeguards, with clear and objective criteria, excluding political influence and with a possibility for appeal for the (vice-)presidents concerned. As such, participation of the Minister of Justice (who is also the Prosecutor General) in the process of appointing and dismissing presidents and vice-presidents of ordinary courts should be avoided. In this context, GRECO reiterates its deep regret about the dismissals of the around 160 presidents / vice-presidents in late 2017 to early 2018 and its concern that the further amendments to the Law on the Organisation of Ordinary Courts of May 2018 only served to cement the new appointments. It calls again on the Polish authorities to amend the procedures for appointing and dismissing presidents and vice-presidents of ordinary courts, to exclude any potential undue influence from the executive power therein.

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<sup>6</sup> GRECO also welcomes that with these amendments the Polish authorities enforce the final ruling of the Court of Justice of the European Union in case C-619/18 of June 2018, in which the Court declared the legislation concerning the retirement of Supreme Court judges in contravention of EU law because it “undermines the principle of the irremovability of judges, that principle being essential to their independence”.

51. GRECO concludes that Rule 34 recommendation v has not been implemented.

**Rule 34 recommendation vi.**

52. *GRECO recommended that the disciplinary procedures applicable to judges of ordinary courts be amended to exclude any potential undue influence from the executive powers therein, in particular by excluding the possibility for the executive to intervene in these proceedings.*
53. The authorities report that further amendments to the Law on the Organisation of Ordinary Courts and other laws of 20 July 2018 introduced changes in the provisions on disciplinary proceedings in respect of judges of ordinary courts. The amendments entered into force on 10 August 2018. Articles 112 and 112a of the Law provide for respectively a procedure for selecting more deputy disciplinary commissioners (also called deputy disciplinary ombudsmen) and a mechanism for the assignment of cases to disciplinary commissioners (whereby disciplinary cases are assigned in order of receipt of the cases to disciplinary commissioners in alphabetical order of the names of these commissioners<sup>7</sup>), which ensures greater transparency in the assignment of disciplinary cases.
54. While it is acknowledged that the amendments do not directly address the concerns expressed in the Rule 34 Report, the authorities indicate that they do to some extent address issues identified by GRECO: with the increased number of candidates for deputy disciplinary commissioners elected by the General Assembly of District Judges<sup>8</sup> the risk of executive influence on the conduct of proceedings, as referred to in the Rule 34 Report, is reduced. In addition, the new provisions on the assignment of disciplinary cases to disciplinary commissioners ensures that the executive is not involved in the allocation of cases.
55. In addition, the authorities emphasise that the involvement of the executive in disciplinary proceedings against judges of ordinary courts is limited only to the very preliminary phase of the proceedings and that in a majority of cases the disciplinary courts do not adjudicate in accordance with the position of the disciplinary commissioners or their deputies.
56. GRECO takes note of the information provided. It appreciates attempts to reduce the influence of the executive in the allocation of disciplinary cases to disciplinary commissioners but cannot conclude that that an increase in the number of deputy disciplinary commissioners would reduce possibilities for the executive (the Minister of Justice / Prosecutor General) to intervene in disciplinary proceedings against judges of ordinary courts. GRECO can only agree with what was already acknowledged by the authorities, namely that these amendments do not directly address the concerns expressed by GRECO in its Rule 34 Report.
57. More in particular, with the legislation currently in place, the Minister of Justice *inter alia* has the power to select judges at disciplinary courts, to appoint the (Chief) Disciplinary Commissioner for ordinary courts (and his /her two deputies), to initiate disciplinary proceedings, to challenge the closing of disciplinary proceedings and to appeal a decision of the first instance disciplinary court. This type of involvement by the executive is in the view of GRECO not off-set by an increase in the number of

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<sup>7</sup> The authorities furthermore outline that a deviation from this rule may only take place if the disciplinary commissioner to whom a case has been assigned is ill or for "another important reason".

<sup>8</sup> The six candidates for deputy disciplinary commissioner who received the highest number of votes at the general assembly are presented to the head disciplinary commissioner / disciplinary prosecutor for common courts, who will select one deputy disciplinary commissioner out of these six candidates.

disciplinary commissioners or changes to the allocation of disciplinary cases.<sup>9</sup> Its concerns are additionally compounded by the issues underlying Rule 34 Recommendation ii above, concerning the disciplinary chamber at the Supreme Court (given that this disciplinary chamber acts as a second instance disciplinary court for ordinary judges and the president of this chamber decides discretionally which first instance disciplinary court is to hear the case).

58. Against this background, GRECO notes with concern the allegations about disciplinary proceedings being misused to exert pressure on judges, be it for the content of certain rulings, submitting requests for preliminary rulings to the CJEU, for criticism of the government's judicial reforms, or for being present at events where such criticism is being expressed. While GRECO would not be in a position to assess the merits of each of these allegations, it is clear that the current legal provisions would make it possible for disciplinary proceedings to be misused and to be motivated by other reasons than judicial misconduct. In all of the above respects, the current disciplinary proceedings give rise to serious concerns in respect of the independence of judges, as GRECO already stated in the Rule 34 Report, having a chilling effect on the judiciary as a whole.<sup>10</sup>
59. GRECO concludes that Rule 34 recommendation vi has not been implemented.

### **III. CONCLUSIONS**

60. **In view of the foregoing, GRECO concludes that Poland has implemented seven of the sixteen recommendations of the Fourth Round Evaluation Report, and one of the six recommendations of the Addendum to the Fourth Round Evaluation Report (Rule 34 Report).**
61. More specifically, recommendations iv, vii, viii, x, xi, xiii and xv, as well as Rule 34 recommendation iii, have been implemented satisfactorily or dealt with in a satisfactory manner. Recommendations ix, xii, xiv and xvi remain partly implemented, Rule 34 recommendation ii has been partly implemented, recommendations i, ii, iii, v and vi remain not implemented, and Rule 34 recommendations i, iv, v and vi have not been implemented.
62. As regards Members of Parliament, the level of implementation remains unchanged since the Compliance Report of December 2014, with only one out of six recommendations having been implemented. Given the importance of these recommendations for the prevention of corruption among parliamentarians, GRECO urges that more determined action be taken to address these remaining recommendations, following the October 2019 parliamentary elections.
63. With respect to prosecutors, GRECO finds it regrettable that the National Prosecutor's Office is still "considering" ways to establish dedicated counselling on questions of ethics and conduct and that it has not found itself in a position to give general guidance on conflicts of interest and related issues to complement the "Collection of Ethical Principles". For both judges and prosecutors, further amendments to the asset

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<sup>9</sup> In addition, the disciplinary proceedings themselves raise concern, in particular given the limited procedural rights given to accused judges, with it for example being possible for such proceedings to be conducted in the absence of the accused judge, with very strict time limits for submitting evidence, affecting the judges' right of defence.

<sup>10</sup> In this context, GRECO has taken note of the decision taken by the European Commission on 10 October 2019 to refer Poland to the CJEU on the grounds that "the new disciplinary regime undermines the judicial independence of Polish judges and does not ensure the necessary guarantees to protect judges from political control". The European Commission has requested an expedited procedure, in view of the potential impact of the disciplinary regime on judicial independence, in order to obtain a final judgment as soon as possible.

declaration system appears to be the subject of a draft law on transparency of public administration, but this process is still only at an early stage.

64. Particularly in respect to judges, following the heavily criticised judicial reforms (2016-2018) in Poland and GRECO's decision to apply its *ad-hoc* procedure ("Rule 34"), six further recommendations to Poland have been added in the Addendum to the Evaluation Report through the adoption of the Rule 34 Report. As regards these recommendations, GRECO welcomes that the provisions on the early retirement of Supreme Court judges (and the possibility to have their tenure prolonged by the President) were repealed, something GRECO had considered as a pressing concern. It is also pleased that the Supreme Court judges who had retired under the provisions of the 2017 amendments to the Law on the Supreme Court were reinstated.
65. Notwithstanding the abovementioned positive steps, insufficient measures have been taken to address any of the other recommendations of the Rule 34 Report. While an analysis has been carried out of the jurisprudence of the Supreme Court, in the view of GRECO this falls short in several respects of an actual reconsideration of the establishment of the disciplinary chamber and extraordinary appeals chamber at the Supreme Court. Furthermore, nothing has been done to amend the provisions on the elections of members of the National Council of the Judiciary, which in its current composition does not meet Council of Europe standards, to reduce the involvement of the executive in the internal organisation of the Supreme Court, to amend the disciplinary procedures applicable to Supreme Court judges, to amend the procedures for appointing and dismissing presidents and vice-presidents of ordinary courts or to amend disciplinary procedures applicable to judges of ordinary courts. As stated in the Rule 34 Report, these provisions, taken together, enable the legislative and executive powers to influence the functioning of the judiciary in a critical manner, thereby significantly weakening the independence of the judiciary in Poland. GRECO therefore cannot but urge the Polish authorities to address the concerns raised by these five pending recommendations of its Rule 34 Report.
66. While GRECO considers all recommendations of the Rule 34 Report of importance, it currently is most concerned about the developments regarding disciplinary proceedings. As outlined above, GRECO took note of the allegations of disciplinary proceedings being misused to exert pressure on judges (for submitting requests for preliminary rulings to the Court of Justice of the European Union, for certain politically undesired rulings, for criticism of the government's judicial reforms, or for being present at events where such criticism was expressed). Without going into the merits of these allegations, the way the current system has been set up, with the strong involvement of the executive in these proceedings (be it the Minister of Justice in disciplinary proceedings of ordinary judges or the President when it comes to the Supreme Court), leaves judges increasingly vulnerable to political control, thereby undermining judicial independence. GRECO is of the strong opinion that even the impression that disciplinary proceedings against judges are being used as a form of political control is to be avoided at all costs. It therefore strongly urges the Polish authorities as a matter of priority to amend the disciplinary procedures applicable to judges, to exclude any potential undue influence from the executive powers therein.
67. In view of the above (with only eight out of a total of 22 recommendations having been implemented), GRECO concludes that the overall very low level of compliance with the recommendations is "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of the Revised Rules of Procedure. GRECO therefore decides to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the Head of the Polish delegation to provide a report on the progress in implementing the pending recommendations (i.e. recommendations i-iii, v-vi, ix, xii, xiv and xvi, and ad-hoc

recommendations i-ii and iv-vi), at the latest by 31 December 2020, pursuant to paragraph 2(i) of that rule.

68. Finally, GRECO invites the authorities of Poland to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make the translation public.