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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 SWITZERLAND

Adopted by GRECO at its 97th Plenary Meeting
(Strasbourg, 17-21 June 2024)

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I. INTRODUCTION

1. This Second Addendum to the Second Compliance Report assesses the measures taken by the Swiss authorities to implement the outstanding recommendations issued in the Fourth Round Evaluation Report on Switzerland (see paragraph 2), which deals with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. The [Fourth Evaluation Round report on Switzerland](#) was adopted at GRECO's 74th Plenary Meeting (2 December 2016) and made public on 15 March 2017, following authorisation by Switzerland. The corresponding [Compliance Report](#) was adopted by GRECO at its 82nd Plenary Meeting (22 March 2019) and made public on 13 June 2019, following authorisation by Switzerland. The [Second Compliance Report](#) was adopted by GRECO at its 87th plenary meeting (25 March 2021) and made public on 10 June 2021.
3. In the [Addendum to the Second Compliance Report](#) adopted by GRECO at its 92nd Plenary Meeting (2 December 2022) and made public on 11 May 2023, it was concluded that Switzerland had implemented satisfactorily or dealt in a satisfactory manner with five of the twelve recommendations contained in the Fourth Round Evaluation Report. Of the remaining recommendations, five had been partly implemented and two had not been implemented.
4. 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 December 2023 and served as the basis for the Second Addendum to the Second Compliance Report.
5. 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 Ms Emma RIZZATO, on behalf of Italy, and Ms Lise CHIPAULT, on behalf of France. They were assisted by GRECO's Secretariat in drawing up this Second Addendum to the Second Compliance Report.

II. ANALYSIS

6. It will be noted that GRECO made twelve recommendations to Switzerland in its Evaluation Report. In the Addendum to the Second Compliance Report, GRECO held that recommendations i, x and xii had been implemented satisfactorily, recommendations iii and xi had been dealt with in a satisfactory manner, recommendations ii, iv, v, vii and viii had been partly implemented and recommendations vi and ix had not been implemented. Compliance with the seven outstanding recommendations will therefore be dealt with below.

Corruption prevention in respect of members of parliament

Recommendation ii

7. *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.*
8. GRECO points out that this recommendation was considered partly implemented in the last report. The first part was considered fully implemented with the adoption by the bureaux of the two chambers of the Federal Assembly of the "MPs' Guide to

Receiving Benefits, Complying With Disclosure Requirements and Handling Information". The second part of the recommendation was partly implemented. Some awareness-raising measures had been taken – all MPs were provided with a copy of the Guide, pointed towards the services available to answer questions, and sent an annual reminder of their obligation to declare their interests, while compulsory online training on corruption prevention and the code of conduct was provided for MPs' staff members. However, GRECO considered that those measures were inadequate. No training was provided for MPs themselves and the National Council had decided against setting up a body dedicated to confidential counselling for them.

9. The Swiss authorities explain that following the federal elections on 22 October 2023, the "Guide to Receiving Benefits, Complying With Disclosure Requirements and Handling Information" has been updated and distributed to all members of parliament, both old and new. It was also published online.¹ In the guide, the bureaux of the chambers explicitly recommend transparency (chapter 3.4). The legal service continues to offer personalised advice to any MPs who so request.
10. At the end of each year of the new parliament, members will also receive letters from the President reminding them – and again raising their awareness – of their obligation to make declarations and to update entries concerning them in the register of interests. This awareness-raising measure initiated at the end of 2020 is therefore continuing.
11. GRECO considers that the information provided does not mention any new measures to implement the second part of the recommendation, with regard either to training or to confidential counselling for members of parliament.
12. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iv

13. *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).*
14. GRECO notes that this recommendation was considered partly implemented. The second part was deemed to have been implemented in a previous report. The first part was still not implemented, as no tangible steps had been taken to implement it.
15. The Swiss authorities report that the subject matter of the recommendation was debated in Parliament, in connection with consideration of parliamentary initiative 22.485, "Disclosure by income category of secondary activities of members of parliament", tabled by Member of the Council of States, Lisa Mazzone. This calls for all members of parliament to be required to indicate the income bracket received for all secondary activities. The Political Institutions Committee (PIC) of the Council of States first followed up on the initiative on 19 October 2023.² As its counterpart committee in the National Council had not given its approval (on 12 January 2024), the Political Institutions Committee of the Council of States took up the matter again on 9 April 2024 and finally decided to propose to its Council that no further action be taken on the initiative, arguing in particular that parliamentarians already had to declare their secondary activities and indicate whether or not they were remunerated. Given that the parliamentary mandate is not exercised on a full-time basis, the

¹ <https://www.parlament.ch/centers/documents/fr/leitfaden-ratsmitglieder-f.pdf>

² <https://www.parlament.ch/press-releases/Pages/mm-spk-s-2023-10-20.aspx?lang=1036>.

committee considers that further extensions of the obligation to declare interests are not appropriate. On 28 May 2024, the Council of States followed the Committee's lead and decided, by 22 votes to 18 with one abstention, not to proceed with the initiative. The initiative has thus been definitively rejected.

16. GRECO notes with regret the rejection of the parliamentary initiative aiming at the disclosure of an income bracket for remuneration received by members of parliament for secondary activities they engage in. The first part of the recommendation remains therefore not implemented. Regarding the second part of the recommendation, GRECO recalls that it had already been implemented.
17. GRECO concludes that recommendation iv remains partly implemented.

Recommendation v

18. *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.*
19. GRECO notes that this recommendation was considered partly implemented. The Bureaux of the two chambers send out letters reminding MPs of their reporting obligations. MPs are required to certify electronically that their declarations are up to date. However, GRECO previously noted that no steps had been taken to introduce a system of parliamentary monitoring of compliance.
20. The Swiss authorities state that following the federal elections in October 2023, MPs checked the information they are required to report under the Parliament Act and expressly confirmed that it is full and up to date. During the parliament, they will be regularly invited to check and update the information they are required to disclose.
21. GRECO regrets the fact that Parliament has not introduced a system for monitoring MPs' compliance with their reporting duties and the rules of conduct that apply to them. Regular checking by MPs of the information disclosed concerning them does enable them to update it and to rectify any unintentional errors or omissions. However, it does not enable any intentional errors or omissions to be detected.
22. GRECO concludes that recommendation v remains partly implemented.

Corruption prevention in respect of judges

Recommendation vi

23. *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.*
24. GRECO points out that this recommendation had not been implemented. A popular initiative on justice which would have increased the objectivity of the recruitment of judges was rejected by referendum. The Judicial Committee of the Federal Parliament nevertheless decided to adopt regulations to increase the transparency of its preparatory work for the election of judges and work on drafting the regulations was in progress. It had also asked the relevant legislative committees to explore the possibility of creating an advisory committee specifically responsible for preselecting candidates. The two committees had agreed and discussions had been conducted on setting up this committee. While noting the measures with interest, GRECO concluded that they were too preliminary to entail the partial implementation of the recommendation.

25. The Swiss authorities explain that the Judicial Committee has now finalised its draft regulations in the form of "Guiding principles for the preparation of elections". They were published on 15 February 2023 (FF 2023 666).³
26. With regard to the plan to set up an advisory committee, the Legal Affairs Committee of the Council of States (CAJ-E) decided on 7 November 2023 not to continue the work in this connection, by six votes to six, with the casting vote by the chair. The CAJ-E called the effectiveness of such a committee into question. In its view, it was for the Judicial Committee to take the necessary steps to ensure that candidatures were examined in greater depth and further improve a procedure which, on the whole, had proven its worth (press release of 8 November 2023⁴).
27. At its sitting on 22 November 2023, the Judicial Committee noted that the plan had been dropped and decided to place discussion of how to further improve the selection of candidatures under the current legal framework on the agenda for a future meeting. To that end, it instructed its secretariat to consider the various possibilities (in particular in terms of examination of files and the structure of hearings) and to report back to it. Work will therefore continue in 2024. In addition, a new parliamentary initiative (23.485)⁵ was tabled on 22 December 2023, calling for the creation of an advisory board that the Judicial Commission could call on to support its selection procedures, and for the creation of legal bases that would enable it to broaden the scope of references used to assess candidates.
28. GRECO welcomes the adoption and publication by the Committee of regulations entitled "Guiding principles for the preparation of elections". These regulations formalise and clarify the principles for recruiting federal judges, as called for in the evaluation report. Nevertheless, the other concerns expressed by GRECO in the report still apply. The political allegiance of the candidates is still a decisive criterion in the choice made by the Committee and the Federal Assembly and it cannot be ruled out that it takes precedence over the competence of the candidates. In this connection, GRECO is disappointed that the plan to set up an advisory committee to preselect candidates has so far been unsuccessful. It takes note of the new parliamentary initiative on the subject, which aims to improve the verification of candidates' qualifications. Moreover, it strongly encourages the Judicial Committee to continue its work to enhance the objectivity of the selection of candidates for judicial office.
29. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii

30. *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-re-election 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.*
31. GRECO points out that it considered in its previous reports that this recommendation was partly implemented. The first part was not implemented, the second part had been dealt with in a satisfactory manner and the third part was completely implemented.

³ https://www.parlament.ch/centers/documents/_layouts/15/DocIdRedir.aspx?ID=DOCID-53009006-9142.

⁴ <https://www.parlament.ch/press-releases/Pages/mm-rk-s-2023-11-08.aspx>.

⁵ <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20230485>

32. The Swiss authorities point out that the new rules on transparency in the funding of political parties came into force on 23 October 2022 and provide that payments by judges (and other elected representatives and office holders) must now be declared, regardless of the amount.
33. GRECO already took note in its previous report of the new disclosure requirement concerning payments by judges, which is now in force. While it is good that such payments are now disclosed, they have not been eliminated, as called for in the first part of the recommendation.
34. GRECO concludes that recommendation vii remains partly implemented.

Recommendation viii

35. *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.*
36. GRECO notes that, in its previous compliance reports, it considered that the recommendation had been partly implemented. The Federal Supreme Court (FSC) and the Federal Criminal Court (FCC) had implemented both parts of the recommendation. As regards the Federal Administrative Court (FAC), GRECO took the view that the first part of the recommendation had been partly implemented, while the second part had been implemented. As regards the Federal Patent Court (FPC), GRECO considered that the first part of the recommendation had been implemented while the second part remained unimplemented.
37. As regards the Federal Administrative Court (FAC), the Swiss authorities point out that the Court already had a charter of ethics, described as “substantial” in the Evaluation Report (paragraph 142).
38. The working group set up to translate the principles of the charter of ethics into a code of conduct has met several times and initial wording proposals have been discussed intensively. Substantive dialogue between judges is therefore in progress and the working group’s results should be discussed at a retreat of all judges at the end of May 2024.
39. It should also be noted that the charter of ethics and its principles are presented when new judges are sworn in before the full court, and that part of the subsequent introductory training for new judges is given over to the topics of the charter of ethics and the rules on internal collaboration in the court.
40. As regards the Federal Patent Court (FPC), the Swiss authorities point out that a code of conduct was adopted and published on 26 September 2022.
41. When the four newly elected substitute judges were sworn in at the plenary session on 11 November 2023, the code of conduct was read out to the entire court to remind the newly elected judges and the other judges of their duties.
42. Reading out the code of conduct when swearing in judges is a new practice which the court intends to continue so as to keep on raising all judges’ awareness of the various aspects dealt with in the code of conduct. This awareness-raising measure

supplements the intensive and fruitful discussions which took place between judges when the code of conduct was being drawn up and which, given the court's small size, already made them sufficiently aware of its substantive content and its scope in practice. In this connection, it should be noted that there are currently two ordinary and 41 substitute judges at the Federal Patent Court.

43. GRECO welcomes the work in progress at the Federal Administrative Court (FAC) to translate the principles of the charter of ethics into a code of conduct. However, this work has not yet been completed and GRECO has not had an opportunity to consider the resulting text. It notes the additional awareness-raising measures reported and points out that it already considered that the second part of the recommendation had been implemented by the FAC. The first part remains partly implemented for the time being.
44. As regards the implementation by the Federal Patent Court (FPC) of the second part of the recommendation, GRECO takes note of the steps taken, in particular the intensive discussions which took place during the drafting of the code of conduct. Discussions on the scope of the code's principles and their practical implementation are in fact one of the key benefits of such an instrument in terms of awareness-raising. It also notes that the court is intending to continue awareness-raising for new judges, in particular through reading out the code in public when they are sworn in. These measures represent satisfactory implementation of the second part of the recommendation by the FPC. GRECO encourages the court to hold further discussions in future about the implementation and/or updating of the code so as to continue raising judges' awareness of the issue.
45. GRECO concludes that recommendation viii remains partly implemented.

Recommendation ix

46. *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.*
47. GRECO points out that this recommendation had not been implemented.
48. The Swiss authorities point out that a system is already in place to punish serious breaches of official duties and consists of removal from office for federal judges of first instance and non-re-election for Federal Supreme Court judges. GRECO's recommendation therefore aims to introduce formal sanctions for less serious violations. In this connection, no progress has been made, although practical discussions on the framework governing the supervision of the federal courts are under way.
49. GRECO takes note of the discussions under way concerning the framework governing supervision of the federal courts. However, no tangible measures to implement the recommendation seem to have been taken at this stage. The recommendation has therefore still not been implemented.
50. GRECO concludes that recommendation ix has still not been implemented.

III. CONCLUSIONS

51. **Based on the conclusions contained in the Addendum to the second Fourth Round Compliance Report on Switzerland and in the light of the above, GRECO concludes that there has been slight progress in the overall implementation of the recommendations. Switzerland has still only implemented satisfactorily or dealt with in a satisfactory manner five of the twelve recommendations contained in the Fourth Round Evaluation Report.** Of the other recommendations, however, six have now been partly implemented and one has still not been implemented.
52. 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, v, vi, vii and viii have been partly implemented and recommendation ix has still not been implemented.
53. As regards members of parliament, no additional progress has been made. MPs still do not have a dedicated body to advise them on issues relating to integrity and do not receive any training in this area. Their declarations of interest still do not contain quantitative data or information on their liabilities, and they are still not monitored by the Parliamentary Services.
54. As regards judges, there has been some further progress. The federal courts are well on the way to implementing the recommendation on rules of conduct and raising awareness of the relevant issues. The Judicial Committee of the Federal Parliament has published regulations which increase transparency regarding its work on the preselection of judges. However, this process is still characterised by the decisive nature of candidates' political allegiance. Judges still pay part of their salary to the political parties, even though they must now declare this. Lastly, no measures have been taken to introduce sanctions other than removal from office for judges who commit a breach of their official duties.
55. The overall response to the recommendations remains mixed. Seven out of the twelve recommendations are still not fully implemented, almost eight years after the adoption of the Evaluation Report.
56. The adoption of this Second Addendum to the Second Compliance Report terminates the Fourth Round compliance procedure in respect of Switzerland. The Swiss authorities may, however, wish to inform GRECO of further developments with regard to the implementation of the outstanding recommendations.
57. GRECO invites the Swiss authorities to authorise publication of this report as soon as possible, to translate it into the other official languages and to make these translations public.