



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

ADDENDUM TO THE SECOND COMPLIANCE REPORT SWITZERLAND

Adopted by GRECO at its 92nd Plenary Meeting
(Strasbourg, 28 November – 2 December 2022)

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I. INTRODUCTION

1. The Addendum to the Second Compliance Report assesses the measures taken by the Swiss authorities to implement the pending 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.
3. In the [Second Compliance Report](#) adopted by GRECO at its 87th Plenary Meeting (25 March 2021) and made public on 10 June 2021, 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 March 2022 and served as a basis for the 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 Mr Gaetano PELELLA, on behalf of Italy, and Mr Vincent FILHOL, on behalf of France. They were assisted by GRECO's Secretariat in drawing up this 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 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 is therefore assessed 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 deemed partly implemented in its last report. The first part of the recommendation 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 Guide was considered sufficiently comprehensive and

illustrative and the efforts to bring it to the attention of members of parliament and the public had been satisfactory.

9. The second part of the recommendation was considered to have been partly implemented as, in GRECO's opinion, the measures described - all MPs being 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 - did not sufficiently meet the objectives in terms of raising awareness and providing advice. While the central secretariat and Parliament's legal service were able to provide advice on the rules, GRECO considered that having a dedicated person or advisory body trained in professional conduct would certainly be useful to answer questions on specific situations which were not covered in the Guide. GRECO also invited Parliament to be more proactive in raising awareness, for example by organising training sessions at regular intervals, especially as the Evaluation Report pointed out that MPs were not particularly sensitive to such issues.
10. As regards the second part of the recommendation, the Swiss authorities report that the National Council considered the matter at the summer 2021 session. On 10 June 2021 it dealt with postulate 20.4151 concerning the creation of a parliamentary ethics committee. Stating its position on the matter, the Bureau of the National Council referred to the legislative and practical measures implemented at the start of the new parliamentary term (December 2019); taking the view that the measures were sufficient, it suggested waiting to see how these worked out before introducing new requirements. The National Council rejected the postulate by 115 votes to 60, with 7 abstentions.
11. More generally, the "MPs' Guide to Receiving Benefits, Complying With Disclosure Requirements and Handling Information" continues to be handed out to members of parliament and the public. The legal service continues to offer personalised advice to any MPs who so request.
12. The Federal Council's "Strategy against Corruption for the period 2021-2024" has also enabled the Parliamentary Services to improve staff awareness regarding these issues. For example, everyone working in the Parliamentary Services has taken a mandatory online course on "corruption prevention and the Code of Conduct". As a result, staff members are more aware of the issue and even better equipped than before to answer any questions MPs may have.
13. Lastly, the enhanced declaration procedure also provides, according to the Swiss authorities, a new opportunity for raising awareness, since a parliamentary body, namely the Bureau of each Council, now sends an annual letter to MPs reminding them of their reporting obligations and inviting them to check and update their information.
14. With respect to the second part of the recommendation, GRECO regrets to note that the National Council has decided against setting up a body dedicated to confidential counselling for MPs. The possibility of calling upon external persons or bodies, which already exists in other fields, has also been ruled out for the time being. As regards awareness-raising measures, the fact that parliamentary staff must now take a mandatory online course on corruption prevention and the code of conduct is to be welcomed. GRECO notes, however, that no training arrangements have been made for MPs themselves. As for the annual reminder sent by the Bureau of each Council to MPs regarding their reporting obligations, this measure is not new and has been assessed by GRECO before, in previous reports.
15. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iv

16. *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).*
17. GRECO notes that this recommendation was partly implemented. The second part of the recommendation was deemed to have been implemented in a previous report. The first part remained unimplemented, no tangible measures having been taken to include quantitative data on financial interests and liabilities in MPs' declarations.
18. The Swiss authorities report that the subject of paid positions and their declaration is regularly reviewed by Parliament. For example, Initiative 19.414, mentioned in the previous report, is still being considered in Parliament.¹ The discussions have not yet led to the adoption of tangible measures, however.
19. GRECO takes note of the information provided, which makes no reference to any tangible measures to give effect to the first part of the recommendation. As the second part of the recommendation has already been implemented, it follows that the recommendation as a whole remains partly implemented.
20. GRECO concludes that recommendation iv remains partly implemented.

Recommendation v

21. *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.*
22. GRECO notes that this recommendation was partly implemented. GRECO described the letters from the Bureaux of the two Chambers reminding MPs of their reporting obligations as positive steps. It noted, however, that there were still no measures in place for the Federal Parliamentary Services to monitor compliance with reporting obligations and other standards of conduct applicable to MPs. GRECO pointed out that on many occasions in past reports, it had underlined the inadequacy of monitoring left solely to civil society and the need for parliaments to set up their own systems. With regard to sanctions for violations of reporting requirements, GRECO took the view that these were appropriate.
23. The Swiss authorities have now provided the following information. The monitoring procedure described in the previous compliance report is now up and running. In December 2021, MPs received another letter from the presidency of the Councils inviting them to update their list of interests and connections. MPs now certify electronically that they have completed the update, in a new section of the disclosure form. The Bureaux took note of the situation at their ordinary meeting on 11 February 2022. According to the Swiss authorities, this mechanism helps to regularly raise MPs' awareness of their reporting and transparency obligations and to supplement the information published, and even detect possible omissions.
24. GRECO notes that MPs are now required to certify electronically that their declarations are up to date. This is a positive step. The information provided, however, still makes no reference to measures to introduce a system of parliamentary scrutiny of MPs' compliance with their reporting obligations. GRECO

¹ <https://www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20190414>.

can only conclude, therefore, that implementation of the recommendation remains incomplete.

25. GRECO concludes that recommendation v remains partly implemented.

Corruption prevention in respect of judges

Recommendation vi

26. *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.*
27. GRECO notes that this recommendation was deemed not to have been implemented in the previous report. It was pleased to note that the Justice Initiative had been successfully submitted and led to ongoing reflections within the Federal Assembly and the Judicial Committee in this connection. This work might, where appropriate, lead to greater objectivity in the recruitment of federal court judges. However, the work was still at a very early stage and many uncertainties remained, in particular as to the eventuality of an indirect counter-proposal.
28. The Swiss authorities now report that the federal Justice Initiative was rejected in a popular vote on 28 November 2021, with 68% of participants voting against.
29. That said, the Judicial Committee remains concerned to ensure the quality and objectivity of the recruitment procedure for which it is responsible. It regularly examines its practices and any improvements it could make. On 25 November 2020, it held an internal discussion alongside the debate on the popular initiative and decided to hold hearings on the selection procedure for judges. On 19 May 2021, the Committee accordingly heard experts and representatives of cantonal judicial committees. After this meeting, it decided to adopt regulations to increase the transparency of its preparatory work for elections. It also asked the relevant legislative committees to explore the possibility of creating an advisory committee specifically responsible for pre-selecting candidates. The Committee on Legal Affairs of the Council of States (CAJ-E) responded to this request by tabling, on 20 May 2021, Initiative 21.452 "Advisory Committee for the Judicial Committee's Selection Procedure".² Its counterpart in the National Council having given the go-ahead on 19 August 2021, the CAJ-E is now tasked with preparing a draft act; it held an initial discussion on the matter in the second quarter of 2022 and will continue its work in November 2022. As for the draft regulations on the preparation of judicial elections, these are currently being finalised by the sub-committee of the Judicial Committee; the plenary committee is expected to consider them during the fourth quarter of 2022 and possibly propose some improvements to internal procedures.
30. GRECO notes the rejection by popular vote of the federal Justice Initiative. It is interested to note, however, the measures initiated by the Judicial Committee. Regulations aimed at improving the transparency of its work on the pre-selection of judges and the possible future creation of an advisory committee specialising in pre-selection would seem to be steps in the right direction. The work is still at a preliminary stage, however, and GRECO does not have any details of these two projects.
31. GRECO concludes that recommendation vi remains not implemented.

² <https://www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20210452>.

Recommendation vii

32. *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.*
33. GRECO notes that this recommendation was deemed to have been partly implemented. With regard to the first part, GRECO welcomed the reflections under way on the Justice Initiative and Parliamentary Initiative 20.468 proposing to prohibit federal judges from making payments and donations to parties. However, it was still too early to establish whether these efforts would bear fruit and this part of the recommendation therefore remained unimplemented. The second part of the recommendation was considered to have been dealt with in a satisfactory manner and the third part to have been implemented satisfactorily.
34. The Swiss authorities explain that Parliamentary Initiative 20.468 which seeks to strengthen the independence of the judiciary by prohibiting elected officials from making payments and donations to parties,³ already mentioned in the previous GRECO compliance report, has now been examined by the competent parliamentary committee. On 18 November 2021, the committee proposed by 14 votes to 5, with 4 abstentions, that the initiative should not be pursued: while it is unanimous in considering that the problem lies at most in an appearance of dependence, it is divided on how to respond. The majority are of the opinion that an outright ban on payments and donations would be too radical and point out that payments are currently made on a voluntary basis. The minority believes that the need for transparency requires a change in the current system. The National Council went along with its committee and rejected Parliamentary Initiative 20.468 by 157 votes to 34 with 1 abstention on 15 March 2022. The initiative has thus been dropped once and for all.
35. Independently of this parliamentary initiative, however, it has already been decided as part of the new federal rules on transparency in the funding of political parties⁴ that payments from judges (and other elected officials and office holders) will have to be declared in full, even if they fall below the 15 000-franc threshold stipulated in the general rule laid down in Section 76b of the revised Political Rights Act.
36. Regarding the first part of the recommendation, GRECO notes with regret the rejection of Parliamentary Initiative 20.468 proposing to prohibit judges from making payments and donations to political parties. Even though the transparency of the sums in question is now provided for in the revised Political Rights Act, this positive step does not in itself contribute to the implementation of the recommendation.
37. GRECO concludes that recommendation vii remains partly implemented.

Recommendation viii

38. *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*

³ <https://www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20200468>.

⁴ See Addendum to the 2nd Third Round Compliance Report.

their implementation, such as offering confidential counselling and practical training for federal court judges.

39. GRECO notes that this recommendation was deemed to have been partly implemented. It concluded that the two parts relating to the Federal Supreme Court (FSC) and the Federal Criminal Court (FCC) had been implemented. With regard to the Federal Administrative Court (FAC), GRECO took the view that the first part of the recommendation had not been implemented in the absence of measures to further develop the FAC's Charter of Ethics through the addition of explanatory comments and/or concrete examples. The second part of the recommendation had been implemented by the FAC. With regard to the Federal Patent Court (FPC), GRECO considered that both parts of the recommendation remained unimplemented.
40. With regard to the FAC, the Swiss authorities point out that the Court already had a charter of ethics, described as "substantial" in the evaluation report (paragraph 142). A retreat for all judges was held on 16 and 17 May 2022. The operationalisation of the principles of the ethical charter was discussed and a working group was set up to concretise the discussions in a draft code of conduct which should complement the existing ethical charter with concrete examples and/or explanatory comments. The integration of ethics into everyday life is seen as a recurrent process aiming at regularly reassessing the ethical guidelines and updating them, if necessary, to new contexts and challenges.
41. With regard to the FPC, the plenary session of the Court held on 10 November 2021 was specifically devoted to the implementation of GRECO recommendation viii. A draft code of conduct previously prepared by the Administrative Committee was submitted to members of the Court. After intense and fruitful discussions, the judges proposed numerous changes to the draft during this session. The revised draft code of conduct was adopted on 26 September 2022 and published on the court's website⁵.
42. GRECO notes with satisfaction the ongoing work within the FAC to supplement the principles of the ethical charter with a code of conduct including concrete examples and/or explanatory comments. These developments are clearly in line with a partial implementation of the first part of the recommendation concerning the FAC. The second part is already being implemented by this court.
43. With regard to the Federal Patent Court, GRECO notes with interest the adoption and publication of a code of conduct. This code is complemented by pre-existing guidelines, in particular on the independence of the tribunal members. This fulfils the requirements of the recommendation, which is now implemented by this court. In particular, it is positive that the code provides for regular discussions on appropriate conduct and the need to update the code where necessary. However, no further implementation measures appear to have been taken at this stage. GRECO considers that the second part of the recommendation therefore remains unimplemented by the FPC.
44. GRECO concludes that recommendation viii remains partly implemented.

Recommendation ix

45. *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*

⁵ <https://www.bundespatentgericht.ch/en/legal-basis>

judges, including the possible publication of the relevant case-law, while respecting the anonymity of the persons concerned.

46. GRECO notes that this recommendation was deemed not to have been implemented. With the exception of the reflections under way on the Justice Initiative, about which GRECO had concluded that it was still too early to be regarded as a first step towards implementing the recommendations to which it relates, no reference had been made to any new tangible measures concerning the situation described in the Evaluation Report.
47. 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-reelection for Federal Supreme Court judges. GRECO's recommendation therefore aims to introduce formal sanctions for less serious violations. There have been no new developments in this area.
48. GRECO notes with regret the continuing absence of measures to implement the recommendation.
49. GRECO concludes that recommendation ix remains not implemented.

III. CONCLUSIONS

50. **Based on the conclusions contained in the second Fourth Round Compliance Report on Switzerland and in the light of the above, GRECO concludes that there has been no progress in the overall implementation of the recommendations. Switzerland has still only implemented satisfactorily or dealt in a satisfactory manner five of the twelve recommendations contained in the Fourth Round Evaluation Report.** Of the other recommendations, five remain partly implemented and two remain unimplemented.
51. 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, vii and viii have been partly implemented and recommendations vi and ix have still not been implemented.
52. With respect to members of parliament, the situation remains essentially the same as that found in the previous compliance report. The additional measures taken are few in number - MPs' staff must now take a mandatory online ethics course and MPs must certify electronically that their declarations of interest are up to date - and are not an indication of progress in implementing the recommendations. MPs still do not have a dedicated body to advise 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.
53. With respect to judges, the additional measures taken to implement the recommendations are more encouraging. The Federal Assembly's Judicial Committee is currently working on a regulation with a view to, *inter alia*, making the pre-selection of judges more transparent and a draft legal basis is being prepared to create an advisory committee specialising in pre-selection to make the process more objective. The Federal Patent Court has adopted and published a code of conduct. The Federal Administrative Court has set up a working group to develop a draft code of conduct to supplement the existing ethical charter with concrete examples and/or explanatory comments. The fact remains, however, that following the rejection of the Justice Initiative and Parliamentary Initiative 20.468, proposing to prohibit judges from making payments and donations to parties, judges still pay part of their salary to the

political parties. Finally, no measures have been taken to introduce sanctions other than removal from office for judges who commit a breach of their official duties.

54. In view of the fact that seven (out of twelve) recommendations are yet to be fully implemented, GRECO in accordance with Rule 31 revised, paragraph 9 of its Rules of Procedure, asks the Head of the Swiss delegation to submit additional information regarding the implementation of recommendations ii, iv, v, vi, vii, viii and ix by 31 December 2023.
55. 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.