



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

## SECOND COMPLIANCE REPORT

## SWITZERLAND

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

FOURTH  
EVALUATION  
ROUND

## **I. INTRODUCTION**

1. 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 Round Evaluation 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. 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 23 December 2020 and served as a basis for the Second Compliance Report.
4. 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 Second Compliance Report.

## **II. ANALYSIS**

5. It will be noted that GRECO addressed twelve recommendations to Switzerland in its Evaluation Report. In the subsequent 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 and vii had been partly implemented and recommendations v, vi, viii and ix had not been implemented. Compliance with the seven outstanding recommendations is therefore considered below.

### *Corruption prevention in respect of members of parliament*

#### **Recommendation ii.**

6. *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.*
7. GRECO points out that this recommendation was deemed partly implemented in the last report. GRECO welcomed 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 members of parliament and to make use of this opportunity to review the provisions in question. The fact that this document was to be accompanied by comments and examples was also commended and the first part of the recommendation was therefore deemed partly implemented. However, the Swiss authorities had made no reference to any tangible measures concerning the second part of the recommendation, which was therefore considered unimplemented.

8. With respect to the first part of the recommendation, the Swiss authorities report that the document referred to in the above paragraph was drafted and adopted by the Bureaux of the National Council and the Council of States in preparation for the start of the Federal Assembly's 51st parliamentary term (2019 – 2023). The "MPs' Guide to Receiving Benefits, Complying With Disclosure Requirements and Handling Information" was handed out to all re-elected and newly elected MPs in autumn 2019. A press release was also issued to raise public awareness of these guidelines<sup>1</sup>. The Guide can be downloaded from the Parliament website<sup>2</sup> and is available in German, French and Italian. Drafted in plain language, it serves to remind MPs of their obligations, of which it outlines the scope. It provides practical and specific support for MPs in the choices they must make, which are illustrated with diagrams and examples.
9. As regards the second part of the recommendation, the Swiss authorities explain that the Guide is issued, as mentioned above, to all members of parliament, whether re-elected or newly elected. It will also be sent to anyone replacing an MP during a parliamentary term. In addition, the central secretariat and Parliament's legal service offer personalised advice to any MPs who need it. Their contact details appear on the electronic reporting form which MPs use to disclose their professional activities and other positions held pursuant to Article 11 ParLA. Members of parliament can also find out how to contact the services providing information by consulting the handbook entitled "Next Stop Federal Palace / A Guide for Members of Parliament"<sup>3</sup>, which was reissued for the start of the 51st parliamentary term and includes sections on Gifts, Confidentiality, Incompatibilities and the (Register of) Interests.
10. Lastly, the Swiss authorities state that the enhanced declaration procedure (see recommendation v) also provides 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.
11. Regarding the first part of the recommendation, GRECO welcomes the adoption of the "MPs' Guide to Receiving Benefits, Complying With Disclosure Requirements and Handling Information" by the Bureaux of the two chambers of the Federal Assembly. In view of the satisfactory amount of information and examples provided, it finds this Guide to be in line with the objectives of the recommendation. In particular, the diagram illustrating the points that need to be clarified before accepting gifts or invitations is a good practice to note. In addition, the efforts made to bring the Guide to the attention of members of parliament and the public have been satisfactory. The first part of the recommendation may therefore be regarded as implemented.
12. With respect to the second part of the recommendation, GRECO considers that 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 – do not sufficiently meet the objectives in terms of raising awareness and providing advice. The central secretariat and Parliament's legal service are certainly able to provide advice on the rules. However, even if this advisory capacity may cater for the wide variety of issues which MPs may encounter in the course of their duties, having a dedicated person or advisory body

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<sup>1</sup> Joint press release issued by the Bureau of the National Council and the Bureau of the Council of States on 18 November 2019 ("Transparency and Receiving Benefits: New Guide for MPs"):

<https://www.parlament.ch/press-releases/Pages/mm-bue-n-s-2019-11-18.aspx?lang=1036>

<sup>2</sup> <https://www.parlament.ch/centers/documents/fr/leitfaden-ratsmitglieder-f.pdf>. MPs can also download the guide from "Parlnet", the intranet site of the Swiss Parliament and the Parliamentary Services.

<sup>3</sup> See the "Contact list" at the back of the handbook (pp. 57-59) as well as the contacts provided under the various sections: <https://www.parlament.ch/centers/documents/fr/nachester-halt-bundeshaus-stand-2019-11-06-f.pdf>. The handbook can also be downloaded as an application.

trained in professional conduct would certainly be useful to answer questions on specific situations which are not covered in the Guide. In this respect, GRECO notes that MPs may consult external bodies specialising in other fields, such as harassment (see page 36 of the above-mentioned handbook), and that similar arrangements could be made for matters relating to professional conduct. GRECO also invites 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. This part of the recommendation may therefore be regarded as partly implemented.

13. GRECO concludes that recommendation ii remains partly implemented.

**Recommendation iv.**

14. *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).*
15. GRECO notes that this recommendation was considered partly implemented in the last report. GRECO considered that the first part had not been implemented because Parliament had not complied with its request to include quantitative information on MPs' financial and economic interests, as well as the details of their main liabilities. On the other hand, the second part of the recommendation was considered to have been satisfactorily implemented, as it had been the subject of appropriate, thorough and documented scrutiny by the Political Institutions Committee of the National Council. However, GRECO regretted that Parliament had rejected the idea of including in MPs' declarations certain information about spouses and dependent family members.
16. As regards the first part, the Swiss authorities now report that the parliamentary law amendments described in the first Compliance Report (paragraphs 7 and 34) entered into force on 2 December 2019<sup>4</sup>, at the start of the 51st parliamentary term. Although Parliament has not adopted any further measures since then, the subject of MPs' financial and economic interests is nevertheless regularly on the agenda. They point to the following initiatives by way of example:
- Parliamentary Initiative 18.476 "For a transparent declaration of MPs' interests and connections", which the National Council refused to consider on 7 September 2020 by 113 votes to 67 with 9 abstentions<sup>5</sup>;
  - Parliamentary Initiative 19.414 "Ban on parliamentary committee members accepting paid positions", which both political institutions committees decided to pursue with comfortable majorities<sup>6</sup>. A draft will therefore be drawn up soon.
17. GRECO notes that no reference was made to any tangible measures to include quantitative data on financial interests and liabilities in MPs' declarations. Although in the last report, GRECO welcomed the changes brought about by the parliamentary law amendments described by the authorities, it pointed out that they were not in

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<sup>4</sup> Official Compilation 2018, p. 3 461:

<https://www.admin.ch/opc/fr/official-compilation/2018/3461.pdf>

<sup>5</sup> See also the Report of the Political Institutions Committee of the National Council of 29 May 2020: [https://www.parlament.ch/centers/kb/\\_layouts/15/DocIdRedir.aspx?ID=4U7YAJRAVM7Q-1-47787](https://www.parlament.ch/centers/kb/_layouts/15/DocIdRedir.aspx?ID=4U7YAJRAVM7Q-1-47787)

<sup>6</sup> Committee of the Council of States (20 August 2019): seven votes to two with two abstentions. Committee of the National Council (14 February 2020): 15 votes to six with one abstention.

line with the primary focus of the first part of the recommendation. This has therefore still not been implemented. As the second part of the recommendation was regarded as implemented in the last report, it follows that the recommendation as a whole remains partly implemented.

18. GRECO concludes that recommendation iv remains partly implemented.

**Recommendation v.**

19. *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.*
20. GRECO points out that this recommendation was considered not to have been implemented in the Compliance Report. It welcomed the finding of the Bureau of the National Council to the effect that the level of compliance with reporting obligations was not wholly satisfactory and the announcement that a study was to be carried out to assess the effectiveness of the current system and propose remedial measures if necessary. The work was still at a very early stage, however.
21. The Swiss authorities explain that on 26 August 2020, the Bureau of the National Council adopted Report 20.077 in accordance with postulate 16.3276 "Ensuring the effective implementation of the disclosure of interests" tabled by the Greens<sup>7</sup>. The report provides a comprehensive overview of the situation, incorporating GRECO's recommendations in Chapter 2.2.
22. Following this report, the Bureau of the National Council decided to enhance the procedure for updating the register of interests as described in the previous Compliance Report (paragraph 43) by writing to MPs at the end of each year. The letter which the national councillors received on 30 November 2020 reminded them of their duty to declare their interests, referred to the report adopted in accordance with postulate 16.3276 and to GRECO's recommendations and pointed to the "Guide" at their disposal (see recommendation ii). It invited MPs to check and update their information and to sign the enclosed confirmation form. This form must be sent to the Bureau. In its letter, the Bureau informed MPs that it would take note of the replies received at the beginning of 2021. The authorities argue that this mechanism makes it possible to regularly raise MPs' awareness of their reporting and transparency obligations and to supplement the information published, or even detect possible omissions.
23. The Bureau of the Council of States followed suit; at the beginning of December 2020, members of the Council of States were sent the exact same letter which their colleagues in the National Council had received on 30 November 2020.
24. Lastly, the authorities report that the Directives of 9 December 2019 on parliamentary intergroups<sup>8</sup> entered into force on 20 March 2020. They govern the announcement procedure and the status of parliamentary intergroups within the meaning of Article 63 ParIA. Pursuant to Chapter 3.1 of these directives, the parliamentary intergroups must announce the type of activities planned (e.g. conferences, informal meetings and study trips, etc.). Pursuant to Chapter 3.2, the Parliamentary Services keep a register containing the above-mentioned information, adding any new parliamentary intergroups which are formed. The register is published on the Parliament website<sup>9</sup>.

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<sup>7</sup> <https://www.parlament.ch/centers/kb/ layouts/15/DocIdRedir.aspx?ID=4U7YAJRAVM7Q-1-48020>

<sup>8</sup> <https://www.parlament.ch/centers/documents/fr/richtlinien-parlamentarische-gruppen-f.pdf>

<sup>9</sup> <https://www.parlament.ch/centers/documents/de/gruppen-der-bundesversammlung.pdf>

25. GRECO takes note of the information provided. Report 20.077 adopted by the Bureau of the National Council and the letters from the Bureaux of the two Assemblies reminding MPs of their reporting obligations are certainly positive steps. However, GRECO notes that there are still no measures in place for the Federal Parliamentary Services to monitor compliance with reporting obligations and other standards of conduct applicable to MPs. The above-mentioned report further explains that the declaration system relies on individual members of parliament acting responsibly and civil society acting as a watchdog, and that the Bureau of the National Council does not intend at this stage to introduce "active screening by the Bureau [...] which would be excessively costly and incompatible with a militia [i.e. non-professional] parliament". GRECO points out that on many occasions in past reports, it has underlined the inadequacy of monitoring left solely to civil society and the need for parliaments to set up their own systems.
26. With regard to sanctions, Report 20.077 notes that while the Bureaux cannot order the publication of MPs' interests or connections without their permission, violations of reporting requirements may give rise to disciplinary measures under Article 13 ParIA (including the loss of speaking rights, exclusion from the Chamber, a reprimand and exclusion from committees for a maximum of six months). GRECO takes the view that these sanctions are appropriate.
27. GRECO concludes that recommendation v has been partly implemented.

*Corruption prevention in respect of judges*

28. In a preliminary remark, the Swiss authorities report that on 26 August 2019, a federal popular initiative on "Appointing federal judges by drawing lots (Justice Initiative)" was successfully submitted. It aims to ensure judges at the Federal Supreme Court have increased independence from political parties, in particular during the appointment, election and re-election process<sup>10</sup>. To this end, it proposes to amend the Federal Constitution so that Federal Supreme Court judges are appointed by drawing lots, with an independent specialised committee determining eligibility for the selection by lot. Under the initiative, the Federal Council would appoint the members of this committee for a single 12-year term. The committee would only accept candidates with the necessary professional and personal skills. Judges of the Federal Supreme Court would serve, as of their appointment, until retirement. Re-election would therefore no longer be possible. On the other hand, the initiative provides that, on a proposal from the Federal Council, the Federal Assembly may remove from office judges who have committed a serious breach of their official duties or are no longer able to perform them.
29. On 19 August 2020, the Federal Council (government) proposed that Parliament reject this initiative without drafting a counter-proposal. It argued that the drawing of lots would not allow the best candidates to be identified from among those put forward by the specialised committee, meaning that elected judges would be selected at random. This did not reflect Swiss traditions, according to which federal and cantonal judges are elected by Parliament or by the people, thereby giving them democratic legitimacy<sup>11</sup>.

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<sup>10</sup> The legal text of the initiative is published in the Federal Gazette (FF) 2018, p. 2 709: <https://www.admin.ch/opc/fr/federal-gazette/2018/2709.pdf>.

<sup>11</sup> See Message by the Federal Council, of 19 August 2020, on the popular initiative: "Appointing federal judges by drawing lots (Justice Initiative)", published in the Federal Gazette (FF) 2020, p. 6 609: <https://www.admin.ch/opc/fr/federal-gazette/2020/6609.pdf>.



30. Irrespective of the government's proposal, Parliament is free in turn to adopt a position on the initiative. Whatever it decides, however, neither the government nor Parliament may prevent a ballot from taking place. Only the committee that launched the initiative may decide to withdraw it. As with all federal popular initiatives, a double majority of citizens and cantons is needed in order for the initiative to be approved.
31. The National Council's Legal Affairs Committee, the first of the two parliamentary committees to examine the initiative, agreed with the Federal Council that the independence of judges was essential, but considered that the initiative raised more issues than it solved, particularly by introducing a lottery system: the election of judges by elected representatives of the people currently ensured their legitimacy and acceptance of their decisions. In addition, the current system had the merit of allowing for a balanced composition of the Federal Supreme Court in terms of gender, the regions represented and political values. The committee was confident that the independence of the judiciary was safeguarded in Switzerland and that the Judicial Committee (responsible for preparing the election of judges) was carrying out its mandate properly. However, it recognised that there was always room for improvement and having payments to political parties levied on judges' salaries could give the impression that the judiciary was dependent on the political authorities.
32. By a very narrow majority (13 votes to 12), it therefore proposed, as a first step, drafting an indirect counter-proposal aimed at making the selection of judges more objective (pre-selection by a specialised committee on the basis of criteria relating solely to professional and personal skills), abolishing systematic re-election, introducing the possibility of removing Federal Supreme Court judges from office and examining alternatives to payments to political parties<sup>12</sup>.
33. The Committee on Legal Affairs of the Council of States, asked to vote on the very principle of an indirect counter-proposal, took the view that, as a whole, the current system had proved its worth and was not in need of comprehensive reform. It did, however, recognise that some points raised by the National Council's Legal Affairs Committee merited further consideration. It therefore decided, by six votes in favour, six against and one abstention, thanks to the casting vote of its Chair, to defer to its counterpart in the National Council to continue its work to propose improvements wherever these were absolutely necessary<sup>13</sup>.
34. The Legal Affairs Committee of the National Council was presented with concrete proposals for a preliminary legislative draft<sup>14</sup> and finally decided (by 13 votes to 11 with 1 abstention) not to draw up a preliminary draft law and an explanatory report to implement its indirect counter-proposal at its meeting on 14 January 2021. The majority was of the opinion that the proposed provisions would not add much value to the current system, which works well overall<sup>15</sup>. The National Council also followed this view and decided not to draft a counter-proposal. The matter now goes to the Council of States.

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<sup>12</sup> See press release of 6 November 2020 (section two):

<https://www.parlament.ch/press-releases/Pages/mm-rk-n-2-2020-11-06.aspx>

<sup>13</sup> See press release of 3 December 2020:

<https://www.parlament.ch/press-releases/Pages/mm-rk-s-2020-12-03.aspx>.

<sup>14</sup> <https://www.parlament.ch/centers/documents/fr/20-480-bericht-bj-umsetzung-2021-02-04-f.pdf>

<sup>15</sup> See press release of 15 January 2021:

<https://www.parlament.ch/press-releases/Pages/mm-rk-n-2021-01-15.aspx>

### **Recommendation vi.**

35. *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.*
36. It will be noted that this recommendation was considered not to have been implemented in the Compliance Report as Parliament's Judicial Committee had decided not to follow it.
37. The Swiss authorities explain that in the context of the deliberations on the Justice Initiative (see paragraphs 28 to 34 above), the National Council's Legal Affairs Committee was of the opinion that judges of all federal courts should in future be selected and elected in a more objective manner by introducing a pre-selection procedure, although judges would still be elected by the Federal Assembly (sitting in joint Chambers), on a proposal from the Judicial Committee. The Judicial Committee's proposals should in future be guided by a pre-selection process carried out by a specialised committee, based exclusively on whether the candidates have the requisite professional, linguistic and personal skills (possibly by introducing a two-step procedure)<sup>16</sup>. However, it finally decided not to draw up a preliminary draft law to this effect (see paragraph 34 above).
38. Moreover, since the parliamentary term began on 2 December 2019, the Judicial Committee held a number of discussions on its procedure for selecting applications with a view to further improving its quality and objectivity. The committee decided to pursue these discussions in the first quarter of 2021, notably on the basis of the experience gained from the procedure for recruiting the Attorney General of the Confederation which, for the first time, had included two rounds of interviews and involved an external firm (to organise a full-day assessment for candidates who had passed the first round). This is to help the committee determine whether and how such a two-step procedure could be used to appoint judges. It should also be noted that, in the interests of transparency, a presentation of the composition and remit of the sub-committee responsible for pre-selecting applications has been added to the Judicial Committee's website.
39. GRECO is pleased to note the Justice Initiative has passed the first hurdle and led to ongoing reflections within the Federal Assembly and the Judicial Committee in this connection. It welcomes the fact that this work may, where appropriate, lead to greater objectivity in the recruitment of federal court judges and encourages the relevant institutions to pursue these efforts in line with the recommendation. However, this work is still at a very early stage and many uncertainties remain, in particular as to the eventuality of an indirect counter-proposal. It is therefore too early to conclude that the recommendation has been partly implemented.
40. GRECO concludes that recommendation vi remains not implemented.

### **Recommendation vii.**

41. *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.*

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<sup>16</sup> See press release of 6 November 2020 (section two):  
<https://www.parlament.ch/press-releases/Pages/mm-rk-n-2-2020-11-06.aspx>



42. GRECO points out that this recommendation was considered partly implemented in the Compliance Report. As regards the first part of the recommendation, GRECO welcomed the fact that the government acknowledged in its Message that the payments to political parties levied on judges' salaries raised questions about their independence and how this independence was perceived by the public. It was 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 called on the Swiss authorities to reconsider this position. This part of the recommendation was therefore deemed not to have been implemented. The second part of the recommendation was considered to have been partly implemented because fears about judges not being re-elected for reasons related to their decisions had not materialised during two full renewals of the federal courts. However, GRECO was of the opinion that these two renewals were not a sufficiently representative sample and wished to keep the matter under review. Lastly, in respect of the third part of the recommendation, it was deemed to have been implemented satisfactorily as the required scrutiny had taken place at the highest political level – government and Parliament – and had been documented. GRECO had, nonetheless, regretted that the government and Parliament had decided to stay with the status quo.
43. As regards the first part of the recommendation, the Swiss authorities report that the National Council's Legal Affairs Committee recognised that the payments political parties levied on judges' salaries could give the impression that they were dependent on the political authorities. A possible indirect counter-proposal to the Justice Initiative would therefore also aim at examining alternatives to the practice of judges paying part of their salaries to political parties (see above, paragraphs 28-34). Parliamentary initiative 20.468 also seeks to strengthen the independence of the judiciary by proposing to prohibit federal judges from making payments and donations to parties<sup>17</sup>.
44. With respect to the second part of the recommendation, the Swiss 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. The first Compliance Report noted that the same was true of both re-elections which had since occurred.
45. Another full renewal has since taken place. In September 2020, the Federal Assembly (sitting in joint Chambers), on the recommendation of the Judicial Committee, re-elected all the judges of the Federal Supreme Court<sup>18</sup>, including one judge whose re-election was questioned by members of his own party for failing to deliver judgments along the lines intended by that party. The comfortable re-election of this judge (by 177 votes out of 239, with an absolute majority of 120 votes) demonstrated the strength of the principle of judicial independence, which the majority of parliamentary groups were keen to defend in their speeches.
46. With regard to the first part of the recommendation, GRECO welcomes both the reflections under way on the Justice Initiative and Parliamentary initiative 20.468. However, it is still too early to establish whether these efforts will bear fruit and this part of the recommendation therefore remains unimplemented.
47. As regards the second part of the recommendation, GRECO notes that the federal courts have been fully renewed since its last report and in particular, that a judge

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<sup>17</sup> <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20200468>.

<sup>18</sup> <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20200204>.

was re-elected despite instructions given by members of his own party. It takes the view that this, together with the fact that all the judges have been re-elected en bloc three times since the adoption of the evaluation report, is sufficient to dispel the fears it had expressed in that report. However, it regrets that the career development of judges is still subject to a vote in the Federal Assembly. This part of the recommendation may therefore be considered as having been dealt with satisfactorily.

48. GRECO concludes that recommendation vii remains partly implemented.

**Recommendation viii.**

49. *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.*
50. It will be noted that this recommendation was considered not to have been implemented in the Compliance Report. More specifically, the Federal Supreme Court was in the process of finalising a document about the practices FSC judges must follow when performing their duties, safeguards for their independence, and their public conduct. GRECO believed this could satisfy the requirements of the first part of the recommendation. However, it was not able to review the document. The Federal Administrative Court had made no reference to any new measures taken in response to the recommendation. The Federal Criminal Court was still considering whether to adopt a charter of ethics. As for the Federal Patent Court, it only referred to directives issued concerning independence – a practice that was already in place when the Evaluation Report was adopted – and training activities focusing on the subject of judicial independence. GRECO had therefore called on the Federal Patent Court to deal with ethics in the wider sense.
51. The Swiss authorities report, with regard to the Federal Supreme Court (FSC), that the work mentioned in the Compliance Report has led to the adoption of a document entitled “Practices within the panel of judges of the Federal Supreme Court” at the FSC plenary sessions of 12 November 2018 and 13 June 2019. This document has been published on the FSC’s website in the Confederation’s three official languages (French, German and Italian)<sup>19</sup>.
52. These “Practices”, adopted by – and for – the FSC judges, relate to the exercise of their duties, safeguards for their independence, and their public conduct. They also explicitly provide for the members of the Federal Supreme Court to discuss at regular intervals, in plenary sessions, the appropriate conduct required by their office, the scope of current practices and the need to adapt them. This discussion regularly held in plenary sessions is an appropriate and suitable way of ensuring the implementation of these practices and illustrating their practical significance on a day-to-day basis, in view of the status of the Federal Supreme Court, the extensive judicial experience of its members and the small and select number of judges who must abide by them. In addition, both ordinary and substitute judges joining the Court are made aware of these rules when they take office and are invited to comply with them.

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<sup>19</sup> [https://www.bger.ch/files/live/sites/bger/files/pdf/Publikationen/Gepflogenheiten\\_d\\_f\\_i\\_2019-11-12\\_version\\_internet.pdf](https://www.bger.ch/files/live/sites/bger/files/pdf/Publikationen/Gepflogenheiten_d_f_i_2019-11-12_version_internet.pdf)

53. 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. During their induction training, newly appointed judges follow a module on the rules of professional conduct to make this code of ethics perfectly clear and illustrate its practical application on a day-to-day basis. On this occasion, the rules of ethics and conduct are discussed in workshops with more experienced judges. In addition, workshops are regularly organised to allow judges to meet and discuss ethics and professional conduct. The theme of the 2020 Conference of Judges, for example, was to have been “The sought-after ethics charter - Bringing the charter to life”. Owing to the coronavirus pandemic, however, the conference had to be postponed until June 2021. It will be an opportunity for judges to really get to grips with the implementation of the charter and the tensions and challenges they may face.
54. Furthermore, the issue of direction (in the sense of management) has been addressed at length by the FAC since 2018, in discussions within the Court’s management teams, between judges and with registrars. For example, the 2018 Conference of Judges and 2019 Registrars’ Day both focused on this issue. The lessons learned from these events are regularly channelled into structured exchanges between judges and registrars (sometimes also accompanied by external experts).
55. Finally, it should be noted that, in the interests of transparency, the Court now publishes information online about any secondary activities carried out by FAC judges and/or any public offices they hold.
56. With regard to the Federal Criminal Court (FCC), the exploratory process mentioned in the Compliance Report has yielded tangible results. The FCC has adopted a “Code of Good Conduct” for judges which is available in the three official languages. This code was drawn up, initially in German, by a working group of three judges, then discussed and adopted by the plenary session on 25 August 2020. The Italian and French versions were approved by the plenary session on 19 November 2020. The document has been published on the Court’s website<sup>20</sup> in the three official languages.
57. With the Court being so small (20 ordinary judges and 13 substitute judges), the discussion about the Code in plenary session ensured that each judge was aware of the various aspects it dealt with and understood its practical significance on a day-to-day basis. The Swiss authorities also point out that the FCC has an official ombudsman service.
58. As regards the Federal Patent Court (FPC), the Swiss authorities point out that directives concerning independence and specifically dealing with the issue of conflicts of interests have already been put in place at the FPC. The evaluation report also noted that conflicts of interest are the most acute problem facing the FPC, owing to the large number of substitute judges that make up the court. In 2020, the FPC had planned to discuss the adoption of a charter of ethics that would go beyond these guidelines. Unfortunately, the coronavirus pandemic made it impossible to convene all the judges in a plenary session for this purpose.
59. Generally, the Swiss authorities add that a great deal of awareness-raising and training also takes place on an ad hoc basis, since each court has its own code and the very small size of each court means that even informal measures are effective.
60. GRECO takes note of the information provided. With regard to the FSC, it welcomes the adoption of the “Practices within the panel of judges of the Federal Supreme Court” and their subsequent publication online. This document, and the regular

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<sup>20</sup> <https://www.bstger.ch/en/il-tribunale/codice-comportamento.html>

discussions between judges on the scope of these practices and the need to adapt them, are an appropriate response to both parts of the recommendation, although the Practices could be supplemented by further explanations and/or illustrative examples. Although GRECO encourages the FSC to consider adding these elements to the regular discussions between its judges, the recommendation may now be regarded as fully implemented by the FSC.

61. As regards the FAC, GRECO notes that, while it did indeed describe the FAC's Charter of Ethics as "substantial" in the Evaluation Report, it also called for the document to be further developed and supplemented through the addition of explanatory comments and/or concrete examples. No reference has been made to any measures of this kind and as a result, the first part of the recommendation remains unimplemented by the FAC. On the other hand, GRECO welcomes the awareness-raising and training activities that have been carried out or are scheduled to take place, as well as the publication on the internet of the activities and public offices of FAC judges – although such publication is not included in the recommendation, it is nevertheless a good practice to be noted. The second part of the recommendation has therefore been implemented by the FAC.
62. The GRECO also welcomes the adoption and publication by the FCC of its "Code of Good Conduct" which enables the implementation of the first part of the recommendation by the FCC. The discussions leading to the adoption of this code, the regular debates on possible ways of updating it which are provided for in the code, and the official ombudsman service, which deals in particular with ethical issues, mean the second part of the recommendation may be deemed to have been implemented by the FCC. As in the case of the FSC, GRECO calls on the judges of the FCC, during their regular discussions, to consider adding illustrations or further explanations to the code.
63. Lastly, as regards the FPC, GRECO notes that its plans to discuss the adoption of a charter of ethics going beyond the measures currently in place were postponed in 2020 due to the coronavirus pandemic. The recommendation has therefore still not been implemented by this court.
64. GRECO concludes that recommendation viii is partly implemented.

#### **Recommendation ix.**

65. *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.*
66. It will be noted that this recommendation was considered not to have been implemented in the Compliance Report, as no measures had been taken to comply with it.
67. 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.

68. The authorities also point out 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.
69. Furthermore, the reflections under way on the Justice Initiative (see paragraphs 28 to 34) also deal with the possibility of removing judges of the Federal Supreme Court from office without having to wait for them to stand for re-election.
70. GRECO notes that, with the exception of the reflections under way on the Justice Initiative, about which it has already concluded that they were still too early to be regarded as a first step towards implementing the recommendations to which they relate, no reference has been made to any tangible measures concerning the situation described in the Evaluation Report.
71. GRECO concludes that recommendation ix has still not been implemented.

### **III. CONCLUSIONS**

**Based on the conclusions contained in the Fourth Round Compliance Report on Switzerland and in the light of the above, GRECO concludes that Switzerland has only 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, five have now been partly implemented and two have not been implemented.

72. 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.
73. Regarding *members of parliament*, GRECO welcomes the adoption of the “MPs’ Guide to Receiving Benefits, Complying With Disclosure Requirements and Handling Information” by the Bureaux of the two chambers of the Federal Assembly and the possibility of imposing disciplinary measures if MPs violate reporting requirements. However, GRECO calls on the Federal Assembly to be more proactive in raising awareness, providing advice and checking that MPs comply with their obligations. It also calls for the introduction of quantitative data on the financial interests and liabilities of members of parliament.
74. With regard to *judges*, GRECO is pleased to note that the Justice Initiative has passed the first hurdle and led to ongoing reflections within the Federal Assembly and the Judicial Committee in this connection. This work is still at an early stage, however, and GRECO calls for it to be continued with a view to achieving greater objectivity in the recruitment of federal court judges, abolishing the practice of judges of these courts paying part of their salaries to political parties and introducing a system of disciplinary measures. GRECO also welcomes the development of rules of conduct and activities to raise awareness of these rules in the federal courts, although some of these efforts still need to be continued. Lastly, GRECO notes that all the recommendations concerning *prosecutors* were implemented at the time of the last report.
75. 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 invites 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 March 2022.

76. 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.