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## FOURTH EVALUATION ROUND

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

### COMPLIANCE REPORT

### POLAND

Adopted by GRECO at its 66<sup>th</sup> Plenary Meeting  
(Strasbourg, 8-12 December 2014)

# FOURTH EVALUATION ROUND

## **I. INTRODUCTION**

1. The Compliance Report assesses the measures taken by the authorities of Poland to implement the recommendations issued in the Fourth Round Evaluation Report on Poland which was adopted at GRECO's 57<sup>th</sup> Plenary Meeting (15-19 October 2012) and made public on 25 January 2013, following authorisation by Poland ([Greco Eval IV Rep \(2012\) 4E](#)). GRECO's Fourth Evaluation Round deals with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. As required by GRECO's Rules of Procedure, the authorities of Poland submitted a Situation Report on measures taken to implement the recommendations. This report was received on 2 July 2014 and served, together with the information submitted subsequently, as a basis for the Compliance Report.
3. GRECO selected Portugal and the Czech Republic to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Daniel MARINHO PIRES, on behalf of Portugal and Ms Helena LIŠUCHOVÁ, on behalf of the Czech Republic. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
4. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

## **II. ANALYSIS**

5. GRECO addressed 16 recommendations to Poland in its Evaluation Report. Compliance with these recommendations is dealt with below.

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

6. The authorities of Poland indicate that soon after the adoption of the Evaluation Report, the relevant bodies of the Chancelleries of the *Sejm* and the *Senate*<sup>1</sup> prepared analyses on appropriate steps necessary to fulfil the recommendations. They forwarded them to the relevant parliamentary Commissions – namely to the Deputies' Ethics Commission, the Rules and Deputies' Affairs Commission and the Commission for Justice and Human Rights of the *Sejm*, and to the Rules, Ethics and Senatorial Affairs Commission of the *Senate* – which discussed the conclusions contained in the analyses in several meetings.
7. Based on the outcome of the discussions, the Office of Senators' Matters prepared a draft "Law amending the Act on the Exercise of the Mandate of a Deputy or Senator, the Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions and the Act on Legislative and Regulatory Lobbying".<sup>2</sup> On 7 May 2014, the above-mentioned Commissions applied to the *Marshal of the Senate* to initiate the legislative procedure concerning this bill. The draft law was forwarded to different ministries and other State authorities concerned for consultation, which presented their opinions on the draft and, in June 2014, the Regulatory Commission and the Rules, Ethics and Senatorial Affairs Commission of the *Senate* held a joint meeting devoted to the draft. The authorities indicate that further works on the draft are envisaged.

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<sup>1</sup> Namely the Office of *Sejm* Analysis and the Office of Senators' Matters.

<sup>2</sup> The draft law (Doc nr 629) is available at the internet website of the *Senate*:

<http://www.senat.gov.pl/prace/senat/inicjatywy-ustawodawcze/pozostale-inicjatywy/>

### **Recommendation i.**

8. *GRECO recommended that interactions by parliamentarians with lobbyists and other third parties who seek to influence the legislative process, be made more transparent, including with regard to parliamentary sub-committee meetings.*
9. The authorities report that according to the above-mentioned draft law, section 14(3) of the Act on Legislative and Regulatory Lobbying would be amended to provide that "the rules of performing professional lobbying activities in the *Sejm* and *Senate* and towards deputies and senators shall be determined by the Rules of Procedure of the *Sejm* and the *Senate*" (changes underlined). They explain that this amendment aims to create a legal basis for the adoption of appropriate rules on the conduct of deputies and senators vis-à-vis lobbyists. The authorities add that on this basis, the Rules, Ethics and Senatorial Affairs Committee of the *Senate* has prepared draft amendments to the Rules of Procedure concerning senators and has disseminated them among senators for their opinion in April 2014. The draft amendments foresee an obligation on senators to inform the Speaker of the Senate of the actions undertaken with regard to them by subjects that pursue a lobbying activity and what outcome is expected by these subjects, as well as the publication of this information by the Speaker at the *Senate* website. The authorities indicate that further works concerning the draft amendments to the Rules of Procedure concerning senators have been suspended until adoption of the draft law, since both drafts are interrelated.
10. GRECO takes note of the information provided, according to which a bill amending the legislation on lobbying and draft amendments to the Rules of Procedure concerning senators have been prepared. It would appear that these proposals are aimed at widening the scope of the rules on lobbying – which in their present form primarily focus on requirements on lobbyists themselves – to regulate also the conduct expected from deputies and senators vis-à-vis lobbyists. While such moves go in the direction recommended, GRECO regrets that the reform is still at a very early stage and, in addition, that no amendments to the Rules of Procedure concerning *Sejm* deputies have even been drafted. Regarding the draft amendments to the Rules of Procedure concerning senators, the authorities may wish to further refine the quite succinct draft rules (e.g. by introducing a timeframe for the disclosure requirement on senators). It is clear that much more needs to be done to fulfil the requirements of the recommendation.
11. GRECO concludes that recommendation i has not been implemented.

### **Recommendation ii.**

12. *GRECO recommended i) that the "Principles of Deputies' Ethics" be complemented in such a way so as to provide clear guidance to Sejm deputies with regard to conflicts of interest (e.g. definitions and/or types) and related areas (including notably the acceptance of gifts and other advantages, incompatibilities, additional activities and financial interests, misuse of information and of public resources, the obligation to submit asset declarations and on the attitude towards third parties such as lobbyists – and including elaborated examples); and ii) that such standards of ethics and conduct also be introduced for senators and disseminated among them.*
13. The authorities state that a draft Resolution has been prepared by the Rules, Ethics and Senatorial Affairs Commission which encompasses draft ethical rules for senators. The authorities indicate that further works concerning the draft Resolution have been suspended until adoption of the above-mentioned draft law – referred to

under recommendation i – since the relevant bodies of the *Senate* would like to consider all the drafts as one process.

14. GRECO takes note of the information provided. Given the very early stage of the reform process, and noting that no measures concerning *Sejm* deputies have been initiated, GRECO cannot conclude that the recommendation has even been partly implemented. Regarding the – quite succinct – draft ethical rules for senators, the authorities are invited to take account of the detailed requirements of the recommendation and the underlying reasoning in the Evaluation Report during the planned further works on the draft.
15. GRECO concludes that recommendation ii has not been implemented.

#### **Recommendation iii.**

16. *GRECO recommended both in respect of Sejm deputies and senators, the development of a clearly defined mechanism to declare potential conflicts of interest of parliamentarians – also taking into account interests of close family members – with regard to concrete legislative (draft) provisions.*
17. The authorities again refer to the draft amendments to the Rules of Procedure concerning senators – see above under recommendation i – and state that they also include proposals aimed at fulfilling the requirements of recommendation iii.
18. GRECO takes note of the information provided. Given the very early stage of the reform process, and noting that no measures concerning *Sejm* deputies have been initiated, GRECO cannot conclude that the recommendation has even been partly implemented.
19. GRECO concludes that recommendation iii has not been implemented.

#### **Recommendation iv.**

20. *GRECO recommended that consideration be given to widening the scope of asset declarations by parliamentarians to include information on assets of spouses, dependent family members and, as appropriate, other close relatives (it being understood that such information would not necessarily need to be made public).*
21. The authorities state that the above-mentioned Commissions of the *Sejm* and the *Senate* – see paragraph 6 above – have discussed and analysed the possibility of widening the scope of information in the asset declarations to include information on assets of close relatives, but they did not agree to widen the scope of declarations in that direction. The Commissions took into account, in particular, 1) the “Law on amendments to the law on regional self-government and to other laws” of 23 November 2002 and the corresponding judgment of the Constitutional Tribunal of 13 July 2004 (K 20/03), according to which a requirement on (local government) officials to include information on close family members would result in a breach of the Constitution; 2) several draft laws prepared in the past which were aimed at revealing information on assets of family members in the declarations to be submitted by public officials, as well as the opinions of several institutions on those draft laws, including the Chancellery of the *Sejm*, the Legislative Council of the Prime Minister’s Office and the Government Plenipotentiary for the Preparation of the Programme of Prevention of Irregularities in Public Institutions. The requirement on officials to submit information on the assets of family members, included in the law of 23 November 2002 and the different legislative proposals, was assessed by the Constitutional Tribunal and the

above institutions as breaching the constitutional principles of proportionality, right to private life and rule of law.

22. For this reason, the relevant parliamentary Commissions – while considering the recommendation – discussed possible adjustments to the previous drafts, in particular with regard to possible limitations as to the scope of information to be provided on family members' assets, the range of family members to be included and the public disclosure of the information to be submitted. However, they came to the conclusion that gathering information from officials' family members would be very difficult in practice, given that family ties have become increasingly weaker, and officials might be exposed to disciplinary or even criminal proceedings if they do not manage to provide complete information. Moreover, it was argued that any possible restrictions on public disclosure of asset declarations – although justified for privacy reasons – would meet with public criticism and could have a negative effect on public confidence in state authorities.
23. GRECO takes note of the information provided, according to which the relevant parliamentary Commissions have discussed the possibility of widening the scope of asset declarations by parliamentarians to include information on assets of close relatives but have rejected such a possible reform, mainly for privacy reasons and due to practical difficulties. While GRECO takes due account of the arguments advanced by the authorities, it regrets this decision and wishes to recall the concerns it expressed in the Evaluation Report that the existing transparency regulations may be circumvented by transferring property to close family members. GRECO therefore encourages the authorities to keep this matter under review, bearing in mind that other European countries have found ways to balance the conflicting rights and interests (transparency versus privacy and practical considerations). However, bearing in mind that the recommendation only required that "consideration" be given to widening the scope of asset declarations, GRECO has to conclude that recommendation iv has been dealt with in a satisfactory manner.

#### **Recommendation v.**

24. *GRECO recommended that the monitoring mechanism in respect of compliance by parliamentarians with standards of ethics and conduct - including rules on conflicts of interest and related areas - be reviewed in order to increase its effectiveness, in particular by simplifying the system of various bodies involved and by providing it with the necessary financial and personnel resources.*
25. The authorities indicate that consultations have been conducted among the Ministry of Justice, the General Prosecutor's Office, the Ministry of Finance and fiscal authorities, the Central Anti-Corruption Bureau and the National Council of the Judiciary in order to elaborate a co-ordinated model of analysis and co-operation between the bodies involved in the examination of asset declarations. Subsequently, several measures have been initiated, in particular, the Ministry of Justice has prepared a draft "Law on asset declarations of officials performing public functions" which is aimed at unifying the rules concerning asset declarations as well as at simplifying and making the system of their control more transparent and effective.<sup>3</sup> The draft is currently at the governmental consultation phase, the ministries and some other State authorities concerned have presented their opinions.
26. GRECO notes that the only measure reported concerns the check of asset declarations; draft legislation amending the control system has been prepared but

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<sup>3</sup> For more details, see below under recommendation ix.

has not yet been approved by Government. Given the much broader scope of the recommendation, which was aimed at reforming the entire monitoring mechanism with respect to standards of ethics and conduct for MPs, GRECO cannot conclude that the recommendation has even been partly implemented.

27. GRECO concludes that recommendation v has not been implemented.

**Recommendation vi.**

28. *GRECO recommended both in respect of Sejm deputies and senators, (i) the establishment of a dedicated confidential counsellor with the mandate to provide parliamentarians with advice on ethical questions and possible conflicts of interests in relation to specific situations; and (ii) the provision of specific and periodic training for all parliamentarians on ethical questions and conflicts of interests.*
29. The authorities again refer to the draft amendments to the Rules of Procedure concerning senators – see above under recommendation i – and state that they also include proposals aimed at fulfilling the requirements of recommendation vi.
30. GRECO takes note of the information provided. Given the very early stage of the reform process and in the absence of any concrete information on the draft amendments to the Rules of Procedure concerning senators, and noting that no measures concerning *Sejm* deputies have been initiated, GRECO cannot conclude that the recommendation has even been partly implemented.
31. GRECO concludes that recommendation vi has not been implemented.

*Corruption prevention in respect of judges*

**Recommendation vii.**

32. *GRECO recommended that the "Collection of principles of professional ethics for judges" be complemented in such a way as to offer proper guidance specifically with regard to conflicts of interest (e.g. definitions and/or types) and related areas (including notably the acceptance of gifts and other advantages, incompatibilities and additional activities).*
33. The authorities report that the National Council of the Judiciary (NCJ), which is responsible for the adoption of principles regulating the professional ethics of judges and exercising control over compliance by judges with such rules, has discussed possible ways of meeting the requirements of the recommendation. The NCJ came to the conclusion that supplementing the "Collection of principles of professional ethics for judges" with a definition or examples of conflict of interest would not be advisable, because the procedural codes already regulate, *inter alia*, exclusion of judges from examination of cases in situations of conflict of interests or ban on certain additional activities or functions, and because it would not be feasible to predict all the possible examples of unethical conduct within this context. Therefore, the NCJ examined other possibilities to meet the aim of the recommendation, such as publication on its website of disciplinary courts' judgments on questions relating to conflicts of interest. However, given that the Supreme Court – which acts as the court of second instance in disciplinary proceedings – already publishes such decisions in its annual Collection of judgments in disciplinary cases of judges and on its website, the NCJ came to the conclusion that there was no need to duplicate such disclosure and that it would confine itself to informing the public on its own website about the above publication by the Supreme Court.

34. GRECO notes that the NCJ has examined possible measures aimed at offering guidance with regard to conflicts of interest and that it has decided to draw attention on its website to the publication of judgments in disciplinary proceedings concerning judges by the Supreme Court. GRECO wishes to stress that the recommendation more specifically required the provision of guidance with respect to a range of issues such as conflicts of interest, the acceptance of gifts and other advantages, incompatibilities and additional activities – which are regulated in different legal acts but not complemented by practical guidance in a document such as the existing “Collection of principles of professional ethics for judges” or another supplementary instrument. The authorities are invited to persist in their efforts and to take the above requirements into account. In the absence of any concrete measures taken, GRECO cannot conclude at this stage that the recommendation has even been partly implemented.

35. GRECO concludes that recommendation vii has not been implemented.

### **Recommendation viii.**

36. *GRECO recommended that consideration be given to widening the scope of asset declarations by judges to include information on assets of spouses, dependent family members and, as appropriate, other close relatives.*

37. The authorities report that the possibility of widening the scope of asset declarations by judges to include information on their relatives’ assets has been examined by the relevant departments of the Ministry of Justice but that no viable solution has been found. Similar to the analysis carried out with respect to MPs, as described under recommendation iv above, the experience from the past has been taken into account, namely the law of 23 November 2003 and the corresponding decision of the Constitutional Tribunal,<sup>4</sup> as well as several draft laws which also concerned asset declarations to be submitted by judges. The authorities stress that the Constitutional Tribunal (with respect to disclosure obligations on local government officials) questioned the feasibility of providing comprehensive information on relatives’ assets and stated that requiring officials to gather such information would violate article 31(3) of the Constitution concerning the proportionality of measures applied in a democratic society. The authorities also refer to statements by the Constitutional Tribunal that practice of public life in Poland proves that disclosure of unethical or illegal conduct does not limit the latter, and they conclude that the preventive character of broadening the scope of judges’ asset declarations would be very limited, if any.

38. For these reasons, the authorities have sought for other ways of making the current system of asset declarations more operational and effective, on the basis of the present resources and structures. These reflections resulted in the preparation of draft legislation aimed at strengthening the current regime, *inter alia*, by unifying the declaration system for all categories of officials concerned, clarifying terms used in the relevant provisions, making public all asset declarations and strengthening control and enforcement.<sup>5</sup>

39. GRECO takes note of the information provided, according to which the possibility of widening the scope of asset declarations by judges to include information on assets of close relatives has been examined and has been answered in the negative, due to constitutional concerns and practical difficulties. While GRECO takes due account of the arguments advanced by the authorities, it regrets this decision and encourages the authorities to keep this matter under review, bearing in mind that

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<sup>4</sup> Decision of the Constitutional Tribunal of 13 July 2004 (K 20/03).

<sup>5</sup> For more details, see below under recommendation ix.

other European countries have found ways to balance the conflicting rights and interests. However, given that the recommendation only required that "consideration" be given to widening the scope of asset declarations, GRECO has to conclude that recommendation viii has been dealt with in a satisfactory manner.

#### **Recommendation ix.**

40. *GRECO recommended that appropriate legal, institutional and/or operational measures be put in place or strengthened to ensure a more in-depth scrutiny of judges' asset declarations and to enhance the preventive dimension of asset declarations. This should include greater co-ordination of all relevant control bodies.*
41. The authorities indicate that consultations have been conducted among the Ministry of Justice, the General Prosecutor's Office, the Ministry of Finance and fiscal authorities, the Central Anti-Corruption Bureau and the National Council of the Judiciary in order to elaborate a co-ordinated model of analysis and co-operation between the bodies involved in the examination of asset declarations.<sup>6</sup> These bodies made a review of relevant binding legislation and its application in practice and they explored different possibilities to meet the requirements of the recommendation. They decided that pending legislative amendments, written guidelines be prepared in order to clarify existing rules on asset declarations and to achieve uniform practice. They came to the conclusion, furthermore, that it would be more adequate to strengthen co-operation among the bodies involved in the examination of asset declarations rather than entrusting a single central authority with that responsibility.
42. The authorities state that on the basis of the above considerations, the Ministry of Finance in March 2014 prepared a document entitled "The Rules on how to deal with property declarations of persons obliged to submit ones, subject to revenue office review" and disseminated it among fiscal authorities.<sup>7</sup> The Rules are based on binding legislation and relate to asset declarations of parliamentarians, judges, prosecutors as well as other categories of officials concerned. They deal with the categories of persons obliged to submit asset declarations, the scope of information to be included in them, the submission of declarations, their analysis by revenue offices and procedural questions, as well as the storage of asset declarations and related documents. The Rules contain an explanation of relevant terminology and contain guidelines on the analysis of declarations by fiscal authorities, which explain the aim of different stages of the analysis and their scope, specify sources of information to be used (including specified data bases, data from territorial self-government authorities and information from banks) as well as documents and information<sup>8</sup> to be taken into account for the comparison of data included therein and in the assets declarations. Finally, the Rules indicate the actions to be taken by fiscal authorities in cases of serious doubts as regards the legality of property revealed in the declarations.
43. Moreover, the authorities refer to the draft "Law on asset declarations of officials performing public functions" – mentioned above under recommendation v – which was prepared by the Ministry of Justice and is currently at the governmental

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<sup>6</sup> See above under recommendation v.

<sup>7</sup> The General Prosecutor has also prepared guidelines concerning asset declarations, see below under recommendation xiv.

<sup>8</sup> Including registration data (in particular participation in companies, business activity, personal or business bank accounts) information on sources and amounts of income (in particular tax returns, taxpayer statements and annual information, annual information of remitters) and information on property items (in particular information on purchased or sold immovable properties (PCC declarations), data and information concerning possessed securities, possessed, purchased or sold immovable properties (CZM, returns on inheritance and donation tax), VAT-24 applications etc.).



consultation phase.<sup>9</sup> The explanatory report to the draft law includes an explicit reference to GRECO's recommendations and makes it clear that the aim of the draft is to unify the system of asset declarations of all the categories of professions, as regards the submission of declarations, their analysis and questions of liability. *Inter alia*, the draft law regulates the analysis of asset declarations, including documents to be taken into account for the comparison of data, the co-ordination of the analysis and co-operation of relevant authorities with the Central Anti-Corruption Bureau and fiscal offices. In that respect the draft obliges the authority or person entitled to obtain asset declarations to send copies of asset declarations submitted in a given year to the Central Anti-Corruption Bureau and fiscal offices in case of doubt as regards the truthfulness of information submitted and, in addition, to send copies of 5% of other declarations selected on a random basis to the Bureau, for further in-depth analysis.

44. GRECO welcomes these various measures which have been taken, with the involvement of various authorities concerned, to reform the monitoring system with respect to asset declarations to be submitted by judges and other categories of persons concerned. GRECO accepts the approach chosen by the authorities to strengthen co-operation among the bodies involved rather than entrusting this task to one leading body. It would appear that the Rules on review of asset declarations by fiscal authorities developed by the Ministry of Finance provide several tools for significantly strengthening in-depth control of the declarations – *inter alia*, by defining a wide range of sources of information to be taken into account – and co-operation with other bodies concerned. Moreover, GRECO notes that the draft legislation prepared by the Ministry of Justice provides, *inter alia*, that a number of asset declarations selected on a random basis be sent annually to the Central Anti-Corruption Bureau, for further in-depth analysis, and thus directly responds to suggestions made in the Evaluation Report. GRECO invites the authorities to make every effort to have such legislation adopted as soon as possible and to ensure that the new regulations are effectively applied in practice.
45. GRECO concludes that recommendation ix has been partly implemented.

#### **Recommendation x.**

46. *GRECO recommended (i) that criminal liability be introduced for the intentional provision of false information by judges in asset declarations; and (ii) that measures be taken to ensure that disciplinary cases concerning improper conduct by judges are decided before the expiry of the statute of limitations, such as adequately extending the limitation period or providing for the interruption or suspension of the period of limitation under specified circumstances.*
47. The authorities report that the Ministry of Justice has prepared a draft law amending the "Law on the Common Courts' System" (LCCS)<sup>10</sup> in order to, *inter alia*, address the recommendation (both parts). The explanatory report to the draft law expressly refers to GRECO's recommendations. The draft was submitted to Parliament on 14 August 2014 and is under parliamentary scrutiny.
48. More particularly, in relation to the first part of the recommendation, the authorities state that article 1, item 28 of the draft law would amend section 87 LCCS in order to explicitly provide for criminal liability in case of intentional provision of false information by judges in asset declarations. In accordance with the draft law, section 87(9) LCCS would read as follows: "False statement or concealment of the

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<sup>9</sup> The draft law is available at the following website of the Governmental Center of Legislation: <http://legislacja.rcl.gov.pl/lista/2/projekt/230491>

<sup>10</sup> The draft law is available at the following website of the Governmental Center of Legislation: <http://legislacja.rcl.gov.pl/docs/2/199291/199299/199300/dokument99446.pdf>

truth in the asset declaration, referred to in § 1, shall result in criminal liability on grounds of article 233(1) of the Criminal Code.” Pursuant to the latter provision, “whoever in giving testimony which is to serve as evidence in court proceedings or other proceedings conducted on the basis of a law, gives false testimony or conceals the truth shall be subject to the penalty of deprivation of liberty for up to 3 years.”

49. Regarding the second part of the recommendation, the Ministry of Justice carried out an analysis covering *inter alia* statistical data on disciplinary proceedings against judges. According to the information provided by the President of the NCJ there were 208 disciplinary proceedings during the period 2011-2013 and only in five of those cases – which concerned neither misdemeanours nor criminal offences – were the proceedings terminated because of the statutes of limitation. The Ministry of Justice concluded from this information that the question of statutes of limitation does not constitute a major problem for disciplinary proceedings in practice. It therefore decided not to propose the prolongation of the statutes of limitation but rather the elimination of the possibility not to impose disciplinary sanctions in cases where disciplinary proceedings have not been terminated within three years. Article 1, item 31 of the above-mentioned draft law would therefore abrogate section 108(2), second sentence LCCS which stipulates: “If, however, before the expiry of the time limit referred to in § 1 (three years), the case is not concluded by valid and final decision, a disciplinary court shall pass a decision on committing a disciplinary misconduct and discontinuing the proceedings as regards the imposition of a disciplinary penalty.” The authorities state that this provision does not find a reasonable justification and has no corresponding provisions in regulations on other groups of professionals, and that its abrogation would contribute to increasing the effectiveness of the proceedings since there would be no more opportunity to escape the disciplinary sanction.
50. GRECO takes note of the information provided with regard to the preparation of draft legislation amending the LCCS, which would explicitly provide for criminal liability of judges for false statements or concealment of the truth in asset declarations – as required by the first part of the recommendation – and eliminate the opportunity to escape disciplinary sanctions if a case before the disciplinary court is not concluded within three years. It would appear that the latter arrangement would address the concerns underlying the second part of the recommendation, namely with respect to delays in disciplinary proceedings. GRECO encourages the authorities to make every effort to have the draft legislation adopted as soon as possible.
51. GRECO concludes that recommendation x has been partly implemented.

#### **Recommendation xi.**

52. *GRECO recommended (i) the provision of on-going training to judges on conflicts of interest, rules concerning gifts, prohibition or restriction of certain activities and declaration of assets and private interests, by way of dedicated courses referring to practical examples; and (ii) the provision of proper dedicated counselling within the judiciary, in order to raise judges’ awareness and provide them with confidential advice on questions of ethics and conduct – particularly with regard to the areas mentioned under (i) – in relation to specific facts, taking into account the need for common, nationwide solutions.*
53. As regards the first part of the recommendation, the authorities report that according to the 2013 training plan of the National School of the Judiciary and Public Prosecution (NSJP), two training activities on rules of professional ethics of judges and prosecutors in connection with performing their professional duties as

well as outside the context of professional duties were organised (on 25-27 October 2013 and on 4-6 November 2013): 120 judges and prosecutors participated in these sessions which were devoted to issues connected with the profession of judge and prosecutor on the basis of the applicable laws and ethical rules. They also covered the question of disciplinary liability and conduct in line with dignity of the office. Jurisprudence of the disciplinary courts was presented and discussed during the training. There are no draft programmes available for the coming years, but the NSJP has declared its will and confirmed the need to further disseminate knowledge on ethical standards among judges and prosecutors. Moreover, as in previous years, in 2013 and 2014 the NSJP included the theme of ethical conduct in the training programme for newly nominated judges, and it is planned to continue such training in the coming years. The authorities add that the NSJP also seeks to raise judges' (and prosecutors') awareness on ethical conduct in the form of publications devoted to the subject which are available on its website. Since the adoption of the Evaluation Report in 2012, the NSJP has published three quarterlies which include articles aimed at identifying the boundaries of the expected conduct of judges in the light of binding laws, ethical rules as well as jurisprudence of the Supreme Court and legal doctrine.

54. Regarding the second part of the recommendation, the NCJ has examined the possibility of providing appropriate counselling for judges. It came to the conclusion that the judges who are members of the Commission for Professional Ethics of the NCJ would be predestined to advise judges in the sphere of conflict of interests. Consequently, 10 members of the Commission have been assigned to perform that task. They provide answers to questions presented by judges and advise on what conduct can constitute a breach of ethical rules. The authorities indicate that in addition to such individual counselling, the NCJ organises each year a conference addressed to the deputies of disciplinary commissioners of the common courts, where a dedicated lecture on ethical rules is envisaged. Moreover, the NCJ issues quarterlies which also address the question of ethical rules and which are available at the NCJ website.
55. GRECO takes note of the information provided. It would appear that some training on ethics and conduct has been provided to judges and prosecutors, which also included examination of practical cases decided by the disciplinary courts. In addition, several publications concerning ethical rules for judges have been issued and made available at the NSJP website. However, as altogether only 120 judges and prosecutors attended the training and given that it was only organised in 2013, GRECO cannot conclude that the first part of the recommendation has been fully implemented. With respect to the second part of the recommendation, GRECO welcomes it having been decided to entrust judges sitting in the Commission for Professional Ethics of the NCJ with counselling functions relating, in particular, to questions on conflicts of interest. To conclude, GRECO expects training on ethics and conduct to be continued on a regular basis and it very much hopes that full use will be made of the new counselling services offered to judges.
56. GRECO concludes that recommendation xi has been partly implemented.

*Corruption prevention in respect of prosecutors*

#### **Recommendation xii.**

57. *GRECO recommended that the "Collection of Ethical Principles governing the Prosecutors' Profession" (i) be disseminated among all prosecutors and made easily accessible to the general public; and (ii) that they be complemented in such a way so as to offer proper guidance specifically with regard to conflicts of interest (e.g.*

*definitions and/or types) and related areas (including in particular the acceptance of gifts and other advantages, incompatibilities and additional activities).*

58. Regarding the first part of the recommendation, the authorities indicate that after its adoption the "Collection of Ethical Principles governing the Prosecutors' Profession" was distributed among the appellate prosecutor's offices with the aim of forwarding it to all subordinate prosecutors. Moreover, an article concerning the Collection was issued in "Prosecutor's Office and the Law" (Prokuratura i Prawo, Nr. 1/2013), a monthly magazine for prosecutors. The attention of the public was also drawn to the Collection, which was presented on Polish television (TVP 24) on 20 September 2012, a day after the adoption of the Collection. Finally, the National Prosecution Council (NPC) published the Collection on its website.<sup>11</sup>
59. As regards the second part of the recommendation, the authorities report that the NPC, as the body responsible for the elaboration and adoption of ethical principles for prosecutors, examined the issue of supplementing the "Collection of Ethical Principles governing the Prosecutors' Profession" with a definition and types of conflicts of interest and guidance for prosecutors in questions of conduct, in particular with respect to the acceptance of gifts, incompatibilities and additional activities. However, the NPC came to the conclusion that such measures were not advisable. It took the view that the issue of conflicts of interest could neither be generalised in a definition nor exemplified in a representative manner, and that there was no need to repeat already existing regulations on connected issues such as the acceptance of gifts and restrictions on performing other functions or activities in the Collection. The authorities will examine other possibilities to meet the aim of the recommendation.
60. GRECO notes that the "Collection of Ethical Principles governing the Prosecutors' Profession" has been distributed among prosecutors and made available to the public – *inter alia*, on the internet – as required by the first part of the recommendation. Regarding the second part of the recommendation, GRECO is of the firm opinion that further guidance, referring to practical examples – as already exist in other countries – would be beneficial to raising prosecutors' awareness of corruption risks and offering solutions to resolving conflicts of interest.
61. GRECO concludes that recommendation xii has been partly implemented.

### **Recommendation xiii.**

62. *GRECO recommended that consideration be given to widening the scope of asset declarations by prosecutors to include information on assets of spouses, dependent family members and, as appropriate, other close relatives.*
63. The authorities indicate that the General Prosecutor's Office and the Ministry of Justice have examined the question of whether the scope of asset declarations by prosecutors could be widened to include information on assets of close relatives. The analysis and discussions on this matter were held together with the discussions on judges' asset declarations, because the Ministry of Justice is the body empowered with legislative initiative concerning both judges and prosecutors<sup>12</sup> and the questions discussed were identical for both professions. Therefore, the information provided above under recommendation viii is also relevant for prosecutors' asset declarations. As for judges, the authorities came to the conclusion that such an extension of such declarations in the direction

<sup>11</sup> See <http://krp.gov.pl/zbior-zasad/uchwala-nr-468-2012-krajowej-rady-prokuratury-z-dnia-19-wrzesnia-2012-r-w-sprawie-uchwalenia-zbioru-zasad-etyki-zawodowej-prokuratorow.html>

<sup>12</sup> Any draft laws regarding prosecutors are prepared by the Ministry of Justice after consulting the General Prosecutor's Office.

recommended would not be possible, given the constitutional requirements and the judgment by the Constitutional Tribunal referred to above – which stressed the principles of proportionality, privacy and rule of law.<sup>13</sup>

64. GRECO takes note of the information provided, according to which the possibility of widening the scope of asset declarations by prosecutors to include information on assets of close relatives has been examined and has been answered in the negative, due to constitutional concerns and practical difficulties. While GRECO takes due account of the arguments advanced by the authorities, it regrets this decision and encourages the authorities to keep this matter under review, bearing in mind that other European countries have found ways to balance the conflicting rights and interests. However, given that the recommendation only required that “consideration” be given to widening the scope of asset declarations, GRECO has to conclude that recommendation xiii has been dealt with in a satisfactory manner.

#### **Recommendation xiv.**

65. *GRECO recommended (i) that the competences of the National Prosecution Council for supervising compliance with ethical principles for prosecutors be clearly defined by law and that the Council be provided with adequate tools and powers for effectively performing this function; and (ii) that appropriate legal, institutional and/or operational measures be put in place or strengthened to ensure a more in-depth scrutiny of prosecutors’ asset declarations and to enhance the preventive dimension of asset declarations. This should include greater co-ordination of all relevant control bodies.*
66. In relation to the first part of recommendation, the authorities report that discussions on the competences of the NPC were held within the Ministry of Justice and the General Prosecutor’s Office, which resulted in the preparation of draft legislation on the Prosecutor’s Office. It is envisaged that the draft law will replace the current “Law on the Prosecution Service” of 25 June 1985. Following its adoption by the Council of Ministers’ Committee, the draft law has been approved by the Minister of Justice and submitted to the Government. Currently, the draft is at the governmental consultation phase.<sup>14</sup>
67. The draft law foresees new competences for the NPC, *inter alia*, the power to examine complaints concerning the infringement of a prosecutor’s independence and to adopt resolutions which would oblige the disciplinary commissioner to forward a motion on the initiation of disciplinary proceedings.<sup>15</sup> The authorities explain that the infringement of a prosecutor’s independence constitutes a serious violation of ethical conduct and can, for example, result from a situation involving a conflict of interest. According to the explanatory report to the draft law, complaints will be examined by a team of three to five members of the NPC authorised to conduct the investigation in order to determine the fact of a violation of the prosecutor’s independence, which includes *inter alia* the right to hear witnesses. Given that those proceedings can be considered as a preliminary phase of the disciplinary proceedings, it is proposed that it will be conducted in accordance with the rules of the Code of Criminal Procedure, thus ensuring that participants will have an appropriate level of protection of their rights. According to the draft law, the results of the examination will then be presented to the NPC which may adopt a resolution as indicated above.

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<sup>13</sup> See above under recommendations iv and viii with respect to MPs and judges.

<sup>14</sup> The draft law is available at the following website of the Governmental Center of Legislation: <http://legislacja.rcl.gov.pl/lista/2/projekt/52748>

<sup>15</sup> Section 59.1 point 1 of the draft law.

68. Regarding the second part of the recommendation, the authorities refer to the information submitted with respect to judges, see under recommendation ix above. In particular, in 2014, the Ministry of Finance developed Rules on review of asset declarations by fiscal authorities which provides several tools for strengthening in-depth control of the declarations and co-operation with other bodies concerned, and a draft "Law on asset declarations of officials performing public functions" was prepared by the Ministry of Justice which provides, *inter alia*, that a number of asset declarations selected on a random basis be sent annually to the Central Anti-Corruption Bureau, for further in-depth analysis.
69. The authorities add that on 21 October 2013, the General Prosecutor also issued guidelines concerning asset declarations which were addressed to all appeal prosecutors (to whom prosecutors have to submit their declarations). In particular, the General Prosecutor drew attention to formal requirements for asset declarations and to the obligation to submit them in due time. With regard to the checking of declarations, he stressed the need to also analyse the content of the declarations submitted, *inter alia*, by comparing the data with those contained in previous declarations, and to ask prosecutors for written explanations in case of any doubts concerning their state of property. Finally, he asked the appeal prosecutors to analyse the declarations within the date prescribed by law and to forward their copy to the fiscal authorities immediately after the analysis.
70. GRECO very much welcomes the elaboration of draft legislation entrusting the NPC with clear powers to supervise prosecutors' compliance with ethical principles, as required by the first part of the recommendation, and it invites the authorities to make every effort to have such legislation adopted as soon as possible. GRECO furthermore acknowledges the various measures initiated in order to reform the monitoring system with respect to asset declarations to be submitted by prosecutors and other categories of persons concerned (second part of the recommendation), including the rules and guidelines developed by the Ministry of Finance and by the General Prosecutor as well as a draft "Law on asset declarations of officials performing public functions". GRECO refers to its further comments made under recommendation ix above, in relation to judges, and it invites the authorities to make every effort to have the draft legislation adopted as soon as possible and to ensure that the new regulations are effectively applied in practice.
71. GRECO concludes that recommendation xiv has been partly implemented.

#### **Recommendation xv.**

72. *GRECO recommended (i) that criminal liability be introduced for the intentional provision of false information by prosecutors in asset declarations; and (ii) that measures be taken to ensure that disciplinary cases concerning improper conduct by prosecutors are decided before the expiry of the statute of limitations, such as adequately extending the limitation period or providing for the interruption or suspension of the period of limitation under specified circumstances.*
73. The authorities refer to the preparation of draft legislation on the Prosecutor's Office which should replace the current "Law on the Prosecution Service" of 25 June 1985, see under recommendation xiv above. They report that the draft law includes provisions aimed at addressing both parts of the recommendation.
74. More particularly, regarding the first part of the recommendation, the explanatory report to the draft law expressly refers to GRECO's recommendation and makes it clear that article 125 § 8 of the draft law would explicitly provide for criminal liability in case of intentional provision of false information by prosecutors in asset declarations. In accordance with the above draft provision, "false statement or

concealment of the truth in the asset declaration, referred to in § 1, shall result in criminal liability on grounds of article 233(1) of the Criminal Code.” Pursuant to the latter provision, “whoever in giving testimony which is to serve as evidence in court proceedings or other proceedings conducted on the basis of a law, gives false testimony or conceals the truth shall be subject to the penalty of deprivation of liberty for up to 3 years.”

75. With respect to the second part of the recommendation, the authorities indicate that the above draft law is set to introduce a new system of disciplinary courts, in order to decentralise the disciplinary proceedings, increase the number of disciplinary courts and bring about more efficient adjudication by the latter. The authorities expect that this reform will lead to an acceleration of disciplinary proceedings and ultimately prevent situations where proceedings are terminated because of the limitation period – in contrast to the present situation which suffers from several weaknesses such as understaffed disciplinary courts. According to the explanatory report to the draft law, the most important change is the introduction of a mixed model of disciplinary court system – in the first instance, decisions would be passed by professional disciplinary courts, while appellate courts and the Supreme Court would have a role of appellate disciplinary courts. The draft law suggests a range of additional measures to streamline disciplinary proceedings regarding prosecutors and ensure their efficiency, such as the obligation to inform on the reasons for not complying with a three-month time limit for concluding disciplinary proceedings in the first instance and the rule that in case of proceedings for extending the suspension in the discharge of professional duties, the failure to appear by the prosecutor concerned does not hamper the hearing of the motion.
76. GRECO takes note of the information provided with regard to the preparation of draft legislation on the Prosecutor’s Office, which would explicitly provide for criminal liability of prosecutors for false statements or concealment of the truth in asset declarations – as required by the first part of the recommendation – and introduce a profound reform of the disciplinary court system aimed at ensuring efficient adjudication of disciplinary cases regarding prosecutors. It would appear that this reform has the potential to prevent delays in disciplinary proceedings and eliminate opportunities to escape disciplinary sanctions if a case before the disciplinary court is not concluded within three years, thus addressing the concerns underlying the second part of the recommendation. GRECO invites the authorities to make every effort to have such draft legislation adopted as soon as possible.
77. GRECO concludes that recommendation xv has been partly implemented.

#### **Recommendation xvi.**

78. *GRECO recommended (i) the provision of on-going training to all prosecutors on conflicts of interest, rules concerning gifts, prohibition or restriction of certain activities and declaration of assets and private interests, by way of dedicated courses referring to practical examples; and (ii) the provision of proper dedicated counselling in prosecutors’ offices, in order to raise prosecutors’ awareness and to provide them with confidential advice on questions of ethics and conduct – particularly with regard to the areas mentioned under (i) – in relation to specific facts, taking into account the need for common, nationwide solutions.*
79. Regarding the first part of the recommendation, the authorities refer to the above-mentioned information on two training activities in 2013 on rules of professional ethics of judges and prosecutors in connection with performing their professional duties as well as outside the context of professional duties, which were organised by the NSJP and in which 120 judges and prosecutors participated (see above under recommendation xi). The NSJP has declared its will and confirmed the need

to further disseminate knowledge on ethical standards among judges and prosecutors.

80. In relation to the second part of the recommendation, the authorities state that the General Prosecutor's Office has examined the feasibility of introducing a solution similar to that adopted by the NCJ in relation to confidential counselling for judges (see above under recommendation xi). Until now the General Prosecutor's Office has not yet found a proper way of implementation.
81. GRECO notes that some training on ethics and conduct has been provided to judges and prosecutors, and it expects such training to be continued on a regular basis (first part of the recommendation). Regarding the provision of dedicated counselling in prosecutors' offices (second part of the recommendation), GRECO urges the authorities to step up their efforts to put in place an adequate solution which, according to the Evaluation Report, is clearly needed in order to raise prosecutors' awareness about questions of ethics and conduct, provide for confidential advice and develop a general understanding of and a unified practice with regard to preventing and resolving conflicts of interest.
82. GRECO concludes that recommendation xvi has been partly implemented.

### **III. CONCLUSIONS**

83. **In view of the foregoing, GRECO concludes that Poland has implemented satisfactorily or dealt with in a satisfactory manner only three of the sixteen recommendations contained in the Fourth Round Evaluation Report.** Of the remaining recommendations, seven have been partly implemented and six have not been implemented.
84. More specifically, recommendations iv, viii and xiii have been dealt with in a satisfactory manner, recommendations ix, x, xi, xii, xiv, xv and xvi have been partly implemented and recommendations i, ii, iii, v, vi and vii have not been implemented.
85. With respect to members of parliament, draft laws have been prepared which respond to some of the concerns underlying the recommendations aimed at increasing the transparency of MPs' interactions with lobbyists and at strengthening the monitoring mechanism, as far as checks of MPs' asset declarations are concerned. However, full compliance with the recommendations would furthermore require amendments to the Rules of Procedure of both chambers of Parliament. GRECO regrets that such amendments have not as yet been prepared for *Sejm* deputies but only with regard to senators, in the form of draft proposals. It is clear that much more needs to be done in order to adequately address the recommendations and thus to enhance the prevention of conflicts of interest and to ensure ethical conduct by MPs. The authorities are invited to step up their efforts to carry through the reforms initiated.
86. As far as judges and prosecutors are concerned, Poland has entered into a substantial reform process: Draft laws have been prepared by the Ministry of Justice which, if adopted, would amend the "Law on the Common Courts' System", replace the current "Law on the Prosecution Service" and introduce a "Law on asset declarations of officials performing public functions" and which take into account GRECO's recommendations. *Inter alia*, they would entrust the National Prosecution Council with clear powers for supervising prosecutors' compliance with ethical principles; harmonise the system of asset declarations to be submitted by judges, prosecutors and other categories of persons; strengthen the control of such declarations; introduce criminal liability for provision of false information in judges'



or prosecutors' asset declarations; and provide for measures aimed at preventing delays in disciplinary proceedings. The legislative process is coupled with further measures such as the development of guidelines on asset declarations developed by the Ministry of Finance and by the General Prosecutor, the organisation of training for judges and prosecutors on questions of ethics and conduct, and the introduction of counselling functions for judges by members of the National Council of the Judiciary, in particular, with regard to questions on conflicts of interest; GRECO is hopeful that a similar solution can be found for prosecutors as well. It appears that the Polish authorities have the clear intention to comply with the large majority of the recommendations issued by GRECO in due course, and they can only be encouraged to persist in their efforts to reach this goal.

87. In view of the above, GRECO notes that in the present absence of final achievements, further significant material progress in respect of members of parliament and continuation of the actions taken in respect of judges and prosecutors are necessary to demonstrate that an acceptable level of compliance with the recommendations within the next 18 months can be achieved. Bearing in mind that several substantial reforms are underway and on the understanding that the Polish authorities will further pursue their efforts, GRECO concludes that the current low level of compliance with the recommendations is not "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of GRECO's Rules of Procedure. GRECO invites the Head of delegation of Poland to submit additional information regarding the implementation of recommendations i, ii, iii, v, vi, vii, ix, x, xii, xiv, xv and xvi by 30 June 2016.
88. Finally, GRECO invites the authorities of Poland to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.