1. **The draft act implements the judgment of the Court of Justice of the European Union (CJEU) of 19 November 2019. The judgment of the CJEU does not give grounds for a general questioning of the effectiveness of the judge's appointment and status.** **The CJEU judgment shaped the European standard according to which European Union courts are competent to assess the independence of the judges and the courts, but in specific, individual cases and on the basis of national law.** The draft act creates instruments enabling this competence to be exercised and preventing the status of a judge appointed on the basis of the Constitution of the Republic of Poland from being undermined, which is not allowed by the CJEU judgment.
2. **The draft act in no way restricts the independence of the judges, who are an important element of a democratic rule of law. On the contrary, it aims to strengthen the constitutionally guaranteed position of judges, i.e. being independent from other authorities as well as being immune to internal influence and unlawful disqualification from adjudication by other judges and judicial officers.** **In addition, the draft act is intended to strengthen the constitutional imperative of apoliticism of judges and implements the principle of transparency of judicial power and judges, which is a fundamental guarantee of a democratic state of law.**
3. The obligations set out in the draft act for the judges to submit declarations on their public activities are in public interest, and at the same time essential for its protection. The obligations imposed on the judges to submit information on their public activity outside of their judicial functions, in particular on whether they belonged to the communist party during the communist dictatorship, serve to assess both their independence and the independence of the courts, to which the Court of Justice of the European Union points, particularly in cases where the communist past has to be confronted. Civil society and parties to judicial proceedings also have a right to know about the judges' careers and previous appointments.
4. According to Article 8(1) of the Constitution of the Republic of Poland, "the Constitution shall be the highest law of the Republic of Poland". Courts and judges are not competent to challenge constitutional norms and the effects of the operation of constitutional bodies (the President's prerogatives) and to challenge constitutional state bodies, including the National Judicial Council and the appointment of judges by the President of the Republic of Poland at the request of said Council. Any attempt to challenge the nomination of the judges is clearly contrary to the Constitution and the resulting principle of stability of the judges' status and their irrevocability.
5. Pursuant to Article 178(1) of the Constitution of the Republic of Poland, judges are bound by the Constitution and acts of law. When in doubt as to the constitutionality of a provision of a given act of law, they are obliged to refer a legal question to the Constitutional Tribunal. The Constitution does not allow a refusal to apply an act of law without a prior judgment of the Constitutional Tribunal. This also applies to cases where an act of law is found to be in conformity with an international agreement, as confirmed by the Constitutional Tribunal's existing case-law.
6. In order to guarantee the independence of courts and to prevent any obstructions in their operation, specific disciplinary offences have been laid down:

– questioning and refusing to apply the provisions of the act;

– acts or omissions that may prevent or significantly hinder the functioning of the judiciary;

– actions that question the existence of the official position of a judge or the effectiveness of his or her appointment;

– actions of political nature.

1. **The indicated solutions in the scope of disciplinary liability are modelled on French and German solutions, where such actions are subject to more severe liability than in the proposed act, i.e. criminal liability (in Germany, incarceration of up to 5 years).**