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DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
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Evaluation Report on Bosnia and Herzegovina on Transparency of Party Funding

(Theme II)

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I. INTRODUCTION

1. Bosnia and Herzegovina joined GRECO in 2000. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2002) 10E) in respect of Bosnia and Herzegovina at its 14th Plenary Meeting (7-11 July 2003) and the Second Round Evaluation Report (Greco Eval II Rep (2005) 8E) at its 31st Plenary Meeting (Strasbourg, 4-8 December 2006). The aforementioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173)¹, Articles 1-6 of its Additional Protocol² (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme II (hereafter referred to as the "GET"), which carried out two on-site visits to Bosnia and Herzegovina from 22 to 24 September 2010 and on 10 February 2011, was composed of Mr Stéphane GAUVIN, deputy head of the legal department of the French national commission on campaign accounts and political party funding - CNCCFP (France) and Ms Elena MASNEVAITÉ, Vilnius University Law Faculty (Lithuania). The GET was supported by Ms Laura SANZ-LEVIA and Ms Sophie MEUDAL-LEENDERS from GRECO's Secretariat. Prior to the visit the GET was provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2010) 9E REPQUEST, Theme II) as well as copies of relevant legislation.
4. The GET met with officials from the following governmental organisation: Central Election Commission of Bosnia and Herzegovina. The GET also met representatives of the Social Democratic Party (SDP BiH), People's Party Work for Betterment (NSRzB), the Croatian Justice Party (HSP BiH), the Democratic National Party (DNZ), the Union for Better Future (SBB) and the Croatian Coalition HDZ 1990. Furthermore, it met representatives of Transparency International, the Global Organisation of Parliamentarians against Corruption (GOPAC) and the Association "BH Journalists".
5. The present report on Theme II of GRECO's Third Evaluation Round on Transparency of party funding was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the authorities of Bosnia and Herzegovina in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Bosnia and Herzegovina in order to improve its level of compliance with the provisions under consideration.

¹ Bosnia and Herzegovina ratified the Criminal Law Convention on Corruption (ETS 173) on 30 January 2002. The Convention entered into force in respect of Bosnia and Herzegovina on 1 July 2002.

² Bosnia and Herzegovina has not yet signed nor ratified the Additional Protocol to the Criminal Law Convention (ETS 191).

6. The report on Theme I – Incriminations, is set out in Greco Eval III Rep (2010) 9E-Theme I.

II. GENERAL OVERVIEW OF POLITICAL AND LEGAL STRUCTURES

7. The Dayton Agreement established Bosnia and Herzegovina as a State comprising two Entities, each with a high degree of autonomy: the Republika Srpska (RS) and the Federation (FBiH), as well as the Brčko District (BD), which functions as a single administrative unit of self-government existing under the sovereignty of Bosnia and Herzegovina. From a constitutional point of view, the current system bears the features of a very decentralised federal system, with each Entity having its own Constitution, President, Government, Parliament, judicial organisation and penal law. The legal/institutional situation in the country is the result of many compromises and ethnic/religious considerations.
8. At State level, the Head of State is the Presidency, which consists of three members who rotate as Chair of the Presidency every 8 months during their 4-year mandate. The Presidency is mainly responsible for foreign policy and for drafting the budget. The Chair of the Presidency also nominates the Chairman of the Council of Ministers, who is in turn approved by the House of Representatives and who nominates the other ministers. The Council of Ministers is responsible for carrying out policies in the fields of diplomacy, economy, inter-Entity relations and other matters as agreed by the Entities. There are three constitutional courts, one at State level and one in each Entity.
9. The FBiH is itself a federation, with three levels of administration: the Entity level, with a two-house Parliament, composed of the House of Representatives and the House of Peoples, a president, two vice-presidents and a government headed by a prime minister; the cantonal level, with governments and unicameral assemblies in each of the ten Cantons; the municipal level, with 142 municipalities (regulated by their own statute) which elect their municipal councils/assemblies headed by mayors of municipalities/cities.
10. By contrast, the RS has no cantons, only municipalities, which all have their own assemblies and administrative structures. At Entity level, the legislative power is held by a National Assembly and a Council of Peoples and the executive power by a president, two vice-presidents and a government under a prime minister.
11. As to the BD, which is currently under the supervision of an International Supervisor appointed by the High Representative, it functions with a single, multi-ethnic government under the exclusive sovereignty of the State of BiH. The other district authorities consist of a District Assembly and a mayor.
12. The Office of the High Representative (OHR) was created to oversee the implementation of the civilian arrangements under the Dayton Agreement. It was vested with executive authority (through the so-called Bonn powers) to impose legislation and remove officials. It continues to provide political and economic direction in Bosnia and Herzegovina, but in 2006 its powers were reduced and most of its tasks have been handed over to the national authorities. The High Representative simultaneously serves as the EU Representative in Bosnia and Herzegovina. Definitive closure of the OHR was foreseen by 2008, but has been delayed indefinitely pending fulfilment of a set of positive benchmarks.
13. Given the complexity of structures and laws in the country, this report presents a comprehensive overview of the theme under evaluation in Bosnia and Herzegovina. It focuses on a detailed assessment of a particular level of government, whenever necessary, to highlight differences

(whether achievements or challenges ahead) of the various institutions and legal systems within the country.

III. TRANSPARENCY OF PARTY FUNDING – GENERAL PART

Definition of political party

14. There is no comprehensive law on political parties at state level. However, the BiH Law on Financing of Political Parties (LPPF), which is the state law governing the funding of political parties, provides in its Article 2 (1) that a political party is an organisation into which citizens are freely and voluntarily organised and which is registered according to law with the relevant court in either Entity in order to carry out political activities and pursue political goals. Similar definitions exist in the Entities' laws on political organisations.
15. According to the Entities' laws on political parties, political parties may carry out economic activities.

Founding and registration

16. As there is no law on political parties at state level, political parties have to be established and registered separately in each Entity, according to the relevant Entity's law. These laws apply a principle of territoriality and provide that the registered parties may only be active within their jurisdiction (Articles 5 of the FBiH, RS and BD Laws on Political Organisations, hereafter LPOs).
17. The Entities' Laws on Political Organisations provide for different founding thresholds: in FBiH, the 1991 Law on Political Organisations (taken over by FBiH, Official Gazette of the Socialist Republic of Bosnia and Herzegovina 27/91) provides that a political party may be founded by at least 50 citizens (Article 11, FBiH LPO); in RS, Article 11 of the RS LPO (Official Gazette of the Republika Srpska 15/96 and 17/02) request at least 500 citizens for the establishment of a party, while in BD, 300 citizens are necessary (BD LPO, Official Gazette of the Brčko District 12/02 and 19/07).
18. Within 30 days after its establishment, each political party has to file a request for registration with the competent court of each Entity (Articles 16 of the FBiH and RS LPOs, Article 17 of the BD LPO) and to submit its founding decision, its statutes and its political programme in support of the request. The competent court, composed of three judges, decides on this request within 15 days of its submission. In case it does not issue its decision within this time-limit, the party is considered as registered. The decision of the competent court is subject to appeal to the Supreme Court of FBiH (Article 22, FBiH LPO) or a higher court in RS (Article 22, RS LPO). Political parties acquire legal personality upon their registration.
19. Registers of political parties are kept in the registration court of each Entity. They contain information on the party's founding, name and seat, legal status, goals, aims, activities, as well as the name(s) of the person(s) authorised to represent the party (Articles 15, FBiH and RS LPO; Article 16, BD LPO).
20. According to the latest data submitted to the Central Election Commission (hereafter CEC) by the courts in charge of the registration of political parties³, there are 190 political parties registered,

³ There are 10 registration courts in FBiH, 5 in RS and 1 in BD.

among which 120 parties took part in elections between 2004 and 2008 and submitted financial reports according to the Law on Political Party Financing⁴.

Participation in elections

21. Based on the unique constitutional and institutional arrangement in the country, the legal electoral framework of Bosnia and Herzegovina is rather complex. It places a significant emphasis on ensuring a balance among the three constituent peoples – Bosniaks, Croats and Serbs and provides for restrictions to both the active and passive voting rights. Although all citizens of Bosnia and Herzegovina over 18 years have the right to vote (Article 1.4, Election Law of Bosnia and Herzegovina, hereafter “EL”), their voting rights are limited by their place of residence: RS voters can only vote for a Serb candidate for the BiH presidency, while voters in the FBiH may only vote for a Bosniak or Croat candidate. Self-identification is taken as the basis for determining ethnicity. Citizens who do not identify themselves with one of the constituent peoples, as well as citizens from other ethnic origins, are classified as “others” and are consequently barred from standing for the BiH and RS presidencies. Furthermore, a Serb registered in the FBiH or a Bosniak or Croat registered in the RS cannot stand for the BiH presidency⁵. Other limitations to the right to be elected concern certain offices and professions⁶. In addition, for all elections, there is a threshold of 3% of the valid votes for parties, coalitions and candidates in order to participate in the allocation of mandates (Article 9.5 EL).
22. At State level, BiH has a bi-cameral Parliamentary Assembly (*Skupstina*), consisting of the House of Peoples (*Dom Naroda*) and the National House of Representatives (*Predstavnički Dom*). The House of Peoples includes 15 delegates elected by indirect vote, who serve four-year terms: 10 of them – 5 Croats and 5 Bosniaks – are selected by the FBiH House of People and 5 are Serbs selected by the RS Council of Peoples. The National House of Representatives (BiH HoR) comprises 42 members elected by popular vote through a proportional system for four-year terms. Two-thirds of these members – 14 Croats and 14 Bosniaks – are chosen by voters in the FBiH and one-third – 14 Serbs – by voters in the RS. In the FBiH, 21 of the 28 deputies are elected in five multi-member constituencies (MMC), while 7 compensatory seats are allocated from political party compensatory lists⁷. In the RS, 9 of the 14 deputies are elected in three MMCs and the remaining 5 compensatory seats are allocated from political party compensatory lists³. Voters of the BD may opt to vote either as FBiH or RS voters.
23. The BiH Presidency consists of three members (one from each of the constituent people), each elected as incumbent of the Chair for an eight-month term within their four-year term as a member. The three members of the Presidency are elected directly by the people on separate lists, with voters of the FBiH voting for the Bosniak and Croat candidates and RS voters for the

⁴ The CEC recommended that the Court of First Instance of Banja Luka remove 70 parties from its register, because they had not performed any activity for a period of more than one year. The Court however failed to act upon this recommendation.

⁵ On 22 December 2009, the European Court of Human Rights, in the case of Sejdić and Finci v. Bosnia and Herzegovina (<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbBAM&action=html&highlight=27996/06&sessionid=58715741&skin=hudoc-pr-en>), ruled that the right to stand for only “constituent people” as discriminatory. Amendments to the Constitution and the Election Law are necessary to comply with this ruling, but they have not occurred yet.

⁶ Article 1.8, BiH Electoral Law: “Judges of regular and Constitutional courts, prosecutors and their deputies, attorneys and their deputies holding public office, Ombudsmen and their deputies, members of the Human Rights Courts/Chambers/Councils, members of police forces, civil servants, members of the Armed Forces of BiH, members of the Intelligence and Security Agency, and diplomatic and consular representatives of Bosnia and Herzegovina abroad who have a diplomatic status in accordance with the 1961 Vienna Convention on Diplomatic Relations, may stand as a candidate for public elected office only if they resign from their position or abide by the laws regulating their status”.

⁷ For all proportional elections in BiH (MMCs or compensatory), the Sainte-Laguë method with a three per cent threshold is applied for the allocation of mandates.

Serb candidates. The candidate with the highest number of votes from each list is considered elected.

24. In FBiH, the House of People has 58 members – 17 Bosniaks, 17 Croats, 17 Serbs, 7 others – who are delegated by cantonal assemblies to serve four-year terms and the House of Representatives (FBiH HoR) has 98 members, elected by popular proportional vote to serve four-year terms; 73 of its members are elected in 12 MMCs and 25 from compensatory, open political party lists⁸. The members of the 10 cantonal assemblies are elected in each canton on a proportional basis from party lists. The president and two vice-presidents of the Entity are elected indirectly by the members of the House of People.
25. In RS, the Council of Peoples has 28 members – 8 Bosniaks, 8 Serbs, 8 Croats, 4 others – delegated by the National Assembly (NA), whose 83 members are elected by popular vote on a proportional basis to serve four-year terms. 62 of these members are elected in 6 MMCs and the remaining 21 from compensatory open political lists⁹. The president and two vice-presidents of the Entity are elected by popular vote through a simple majority system.
26. The BD Assembly comprises 29 members elected directly in the municipal elections through a proportional system for a four-year term.
27. In order to participate in elections, political parties, coalitions and independent candidates have to certify their eligibility with the Central Election Commission, by depositing a submission form supported by signatures of registered voters at the latest 140 days before election day¹⁰. Political parties also have to submit evidence of their registration (Chapter 4, EL).

Party representation in Parliamentary Assemblies at State and Entity level:

28. The last general elections took place on 3 October 2010, with six distinct electoral races: 3 members of the BiH Presidency, members of the BiH House of Representatives, FBiH House of Representatives, RS President and Vice Presidents, RS National Assembly and ten Cantonal Assemblies in FBiH were elected. A total of 63 political subjects were certified to stand, including 39 political parties, 11 coalitions and 13 independent candidates competing at state and entity level. The results of these elections for the BiH HoR, FBiH HoR and RS NA are as follows:

BiH House of Representatives

FBiH Voters

- Social Democratic Party (SDP BiH)	- 8 seats
- Party for Democratic Action (SDA)	- 7 seats
- Union for Better Future (SBB)	- 4 seats
- Croatian Democratic Union (HDZ)	- 3 seats
- Party for BiH (SBiH)	- 2 seats
- Croatian Coalition HDZ 1990 – HSP BiH	- 2 seats

⁸ At least 4 persons from each of the constituent people (Bosniak, Serb and Croat) must be represented in the FBiH HoR. If a constituent people gets less than four mandates in the MMCs, priority is given to that group when allocating the compensatory seats until the minimum of four is reached.

⁹ As in the FBiH HoR, each of the constituent people has a four deputy minimum. If it is not achieved through the MMCs, compensatory seats will be allocated in priority to achieve this minimum.

¹⁰ Political parties must submit 3,000 signatures for the BiH Presidency and BiH HoR elections and 2,000 signatures for the FBiH HoR and RS NA elections. They are exempt from this requirement if one or more of their members hold a mandate in the same body for which the political party applies for certification. Independent candidates have to submit 1,500 signatures for the BiH Presidency and BiH HoR elections and 1,000 signatures for the FBiH HoR and RS NA elections.

- People's Party Work for Betterment (NSRzB) - 1 seat
- People's Democratic Union (DNZ) - 1 seat

RS Voters

- Party of Independent Social Democrats Milorad Dodik (SNSD) - 8 seats
- Serb Democratic Party (SDS) - 4 seats
- Party of Democratic Progress (PDP) - 1 seat
- Democratic People's Union (DNS) - 1 seat

FBiH House of Representatives

- Social Democratic Party (SDP BiH) - 28 seats
- Party for Democratic Action (SDA) - 23 seats
- Union for Better Future (SBB) - 13 seats
- Croatian Democratic Union (HDZ) - 12 seats
- Party for BiH (SBiH) - 9 seats
- People's Party Work for Betterment (NSRzB) - 5 seats
- Croatian Coalition HDZ 1990 – HSP BiH - 5 seats
- Party of Democratic Activity (A-SDA) - 1 seat
- People's Democratic Union (DNZ) - 1 seat
- Party of Independent Social Democrats (SNSD) - 1 seat

RS National Assembly

- Party of Independent Social Democrats (SNSD) - 37 seats
- Serb Democratic Party (SDS) - 18 seats
- Party of Democratic Progress (PDP) - 7 seats
- Democratic People's Union (DNS) - 6 seats
- Socialist Party and Party of United Pensioners - 4 seats
- Democratic Party - 3 seats
- Social Democratic Party (SDP BiH) - 3 seats
- Party for Democratic Action (SDA) - 2 seats
- People's Democratic Party (NDS) - 2 seats
- Serb Radical Party (SRS-RS) - 1 seat

Overview of the political funding system

Legal framework

29. The main text governing the funding of political parties is the Law on Political Parties Financing (BiH Official Gazette No 22/00, 102/09 and 54/10 (*LPPF*) adopted on 18 August 2000 and last amended on 24 June 2010), which covers the funding of the routine activities of political parties, their supervision and sanctions. The financing of electoral campaigns is mainly regulated in Chapter 15 of the Electoral Law – Campaign Finance (BiH Official Gazette No 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08 and 32/10), last amended in April 2010, which deals, inter alia, with the organisation of the campaign, access to the media, financing of the elections, financial reports and reimbursement of the election's expenses. Both texts apply to all levels of administration of the State and Entities.
30. Other relevant provisions are contained in the RS Law on Financing of Political Parties from the Budget of Republika Srpska, cities and municipalities (RS Official Gazette No 65/08) and the BD

Law on Financing of Political Parties from the Budget of the Brčko District of BiH (BD Official Gazette No 29/04). The FBiH has not yet adopted a law on the financing of political parties.

Direct public funding

31. Direct political financing in BiH is not provided to political parties, nor to election campaigns. Articles 3 (1) d. and 10 (1), LPPF only provide that parliamentary groups represented in the BiH Parliamentary Assembly are entitled to receive public funding from the BiH budget. 30% of the total amount of these funds are distributed to all parliamentary groups on an equal basis, 60% are allocated in proportion to the number of seats held by each parliamentary group and the remaining 10% are distributed to parliamentary groups in proportion to the number of parliamentary seats that belong to the less represented sex. Details of the allocation of the funds are determined by standing orders of the BiH Parliamentary Assembly.
32. Political parties and election candidates at Entity and lower levels are entitled to public funding from the Entities' and their lower units' budgets, in accordance with the Entities' laws (Article 3 (1) d., LPPF).
33. In RS, direct public financing is provided to political parties and coalitions who have members in the assemblies at Entity and lower level, as well as to political parties, coalitions and independent candidates with confirmed electoral lists. Regular financing provides for a minimum of 0.2% of budget funds to be allocated to all parties with representatives in the assemblies, as well as to independent representatives. 20% of these funds are allocated to all representatives on an equal basis, while the remaining 80% are allocated in proportion to the number of mandates won in the assembly. Public funding of election campaigns, in the proportion of 0.05% of the budget, is also allocated to political parties and candidates, in accordance with the elections regulations.
34. In BD, 0.1% of the budget or 200,000 BAM¹¹ (approx. EUR 100,000) is devoted to direct public funding of political parties, with an equal distribution of 30% of these funds to all parties represented in the Assembly and the remaining 70% allocated proportionately to the number of seats. Electoral funding up to 0.03% of the budget or 60 000 BAM¹² (approx. EUR 30,000) is also provided to political parties, each one being entitled to reimbursement of campaign expenses in the amount of 4,000 BAM (approx. EUR 2,000).
35. According to the data provided by the CEC, the following amounts of public funding were reported by the ten parties who received the highest amounts for the year 2010:
 - Party for Democratic Action (SDA): 4,335,480.73 BAM (approx. EUR 2,167,740.36)
 - Social Democratic Party (SDP BiH): 3,147,628.75 BAM (approx. EUR 1,573,814.37)
 - Party for BiH (SBiH): 2,576,484.77 BAM (approx. EUR 1,288,242.38)
 - Party of Independent Social Democrats (SNSD): 2,405,462.03 BAM (approx. EUR 1,202,731)
 - Croatian Democratic Union (HDZ): 1,644,648.63 BAM (approx. EUR 822,324.31)
 - Serb Democratic Party (SDS): 1,229,889.89 BAM (approx. EUR 614,944.94)
 - Bosnian-Herzegovinian Patriotic Party (BPS): 750,194.58 BAM (approx. EUR 375,097.59)
 - Croatian Coalition HDZ 1990 – HSP BiH: 730,322.37 BAM (approx. EUR 365,161.18)
 - Party of Democratic Progress of RS (PDP): 664,880.18 BAM (approx. EUR 332,440.09)
 - People's Party Work for Betterment (NSRzB): 645,686.61 BAM (approx. EUR 322,843.30)

¹¹ Depending on which amount is lower.

¹² See footnote 10.

Indirect public funding

36. The Electoral Law foresees some forms of indirect public funding of election campaigns: the public electronic media has to provide free broadcast time for direct access by political subjects for 30 days prior to the election day. Details on broadcast time, duration and geographic regions covered are determined by regulations of the CEC (Article 16.14, EL).

Private funding

37. Pursuant to Article 3 of the LPPF, political parties may only receive private funding in the form of:
- membership fees;
 - cash or in-kind contributions from natural and legal persons, including foreign sources;
 - income generated by property owned by the political party;
 - profit from enterprises owned by the political party – which may only carry out culture-related or publishing activities.
38. Only the regular amounts paid by party members in accordance with the statute of their political party are qualified as membership fees. Any amount they give in excess of these fees is considered as a private contribution (Article 3 (3), LPPF). However, the LPPF does not indicate any minimum or maximum amount for membership fees.
39. As regards the amount/size/periodicity of private contributions, the latest amendments to the LPPF, adopted in June 2010, doubled the caps on donations from legal entities to a political party, while maintaining the caps on donations from natural persons at the same level. Accordingly, a natural person may donate up to 8 average net wages¹³ to a political party during a calendar year (approximately 3,260 EUR), while legal persons may donate up to 15 average net wages (approx. 6,120 EUR) (Article 5, LPPF). Donations from anonymous sources are expressly forbidden by the LPPF (Article 8 (1), LPPF).
40. Income generated by properties or enterprises owned by a political party must not exceed 20% of the total annual income of the party. Any excess amount must be donated by the party to one or several charitable organisations within 30 days of submission of its financial report (see paragraph 49) (Article 3 (4), LPPF).
41. The LPPF does not mention loans as a possible source of financing of political parties. However, the GET learned during the visit that loans to political parties were allowed by the Law on Obligations.
42. A number of restrictions apply to the sources of private funding. According to Article 8 of the LPPF, political parties may not receive funding from:
- state, entity and cantonal bodies, bodies of the BD, municipal and local community bodies, public institutions, humanitarian organisations, anonymous donors, religious communities, as well as economic associations in which public capital has been invested in the amount of at least 25%;
 - private enterprises performing public services through a contract with the government;
43. There are no specific rules or caps on private funding to political parties or candidates in the context of election campaigns other than those already mentioned in the LPPF, which also apply in that context.

¹³ The average salary is determined according to the official data gathered by the BiH Statistics Agency.

Taxation regime

44. According to tax laws passed at the level of the Entities, private donations to political parties are not tax-deductible.

Expenditure

45. There are no restrictions on the expenditure of political parties other than in the context of election campaigns, as laid out by Article 15.10 of the Election Law. This article establishes expenses ceilings for political subjects – political parties, coalitions and candidates – taking part in election campaigns. These ceilings are calculated on the basis of the number of voters in each electoral unit¹⁴, as announced by the CEC within seven days of completion of the Central Voters Register, as follows: each political entity may spend for election campaign purposes a maximum amount¹⁵ corresponding to the result of the multiplication of the number of voters in all electoral units where the entity has a list of candidates by:
- 0.30 convertible Marks (BAM) (approx. 0.15 EUR) for the elections of Head of municipality/city mayor and members of the municipal council/assembly;
 - 0.20 BAM (approx. 0.10 EUR) for the elections of members of cantonal assemblies;
 - 0.30 BAM for the elections of members of the RS NA and the FBiH HoR;
 - 0.30 BAM for the elections of members of the BiH Parliamentary Assembly;
 - 0.30 BAM for the elections of members of the BiH Presidency;
 - 0.30 BAM for the elections of the RS President and Vice-Presidents.
46. According to the data contained in the 2010 political parties' audit reports provided by the CEC, the following expenses amounts were declared by the six parties who spent the most for the campaign:

Party	Allowed expenses	Declared expenses
Party for BiH (SBiH)	3,164,004 BAM ¹⁶	1,682,955 BAM
Social Democratic Party (SDP BiH)	3,196,681 BAM	1,357,012 BAM
Party of Independent Social Democrats (SNSD)	2,309,198 BAM	1,175,491 BAM
Party for Democratic Action (SDA)	3,164,004 BAM	977,471 BAM
Union for Better Future (SBB)	3,131,889 BAM	700,677 BAM
Croatian Democratic Union (HDZ)	3,021,555 BAM	591,326 BAM

¹⁴ For the purpose of these calculations, the minimum number of voters is 3,000 voters. Municipalities with less voters are deemed to have 3,000 (Article 15.10, EL).

¹⁵ If elections have to be repeated in an electoral unit or polling station, the expenses of the election campaign per voter may be increased by up to 30% of the costs of the annulled elections in that unit or polling (Article 15.10, EL).

¹⁶ 1 BAM equals approximately 0.50 EUR.

IV. TRANSPARENCY OF PARTY FUNDING – SPECIFIC PART

(i) Transparency (Articles 11, 12 and 13b of Recommendation Rec(2003)4)

Books and accounts

47. According to Article 11 of the LPPF, political parties have to keep a record of their income and expenditure. As regards book keeping and accounting obligations, all parties, as legal persons established in BiH, have to apply the provisions of the Accounting and Audit Law (BiH Official Gazette 42/04), as well as International Accounting Standards. Records include data about property (fixed assets and current assets, including money), all income, including income from domestic and foreign donations, as well as all outcome and data about liabilities. Different book-keeping timeframes are established depending on the type of accounting document involved, which may vary from a minimum period of two years to an indefinite period and until termination of the legal entity. For example, the annual financial reports submitted to the CEC are kept for at least six years after their submission (Article 12 (3) of the LPPF).
48. The LPPF and the EL require political parties to keep records of donations and to disclose in their annual or campaign financial report the identity of donors having contributed in excess of 100 BAM (approx. EUR 50). (Articles 6 (1) LPPF and 15.1, EL). However, this information does not have to be disclosed to the public.

Reporting obligations

49. Political parties have to prepare and submit to the CEC, by 31 March every year, an annual report on their operations during the previous calendar year (Article 11, LPPF). The CEC is responsible for enacting the rules implementing these provisions, including the content, form, manner and other details of reporting. These rules, as well as the standard formats to be used by political parties for their reports, are contained in a Rule Book on annual financial reports of political parties (BiH Official Gazette No 61/06).
50. Besides, political parties, coalitions and independent candidates participating in elections at all levels have to file with the CEC, at the time of submission of their application for eligibility certification (see paragraph 27), a pre-election financial report covering the period of three months prior to the date of submission of their application¹⁷ (Article 15.1, EL). Then, within 30 days of publication of the election results in the BiH Official Gazette, they have to submit to the CEC a post-election financial report covering the period between the submission of the certification application and the publication of the election results. The form and details of these reports are prescribed in a Rule Book adopted by the CEC (BiH Official Gazette No 61/06).
51. The pre-election and post-election financial reports, as well as the political parties' annual reports must contain the following information (Article 15.1, EL):
- cash available;
 - all income and expenses based on: memberships, foreign contributions, contributions from natural and legal persons, in-kind contributions, income from the party's and the candidate's own assets and entrepreneurial activities, credits, loans, donations, rebates, refunds, other operating expenses, as well as other sources for the reporting period, as determined by the CEC;
 - identification of the person or source of any payment and in-kind contribution (including by party members), as well as the identification of the person who received that payment, for all

¹⁷ Applications for certification must be submitted at the latest 135 days before election day (art. 4.6 and 4.10 EL)

amounts above 100 BAM (approx. 50 EUR), together with the date and amount of any such receipt;

- total amount of all outstanding balance and total amount of disbursements in the following categories: costs for the printing and distribution of posters, printing costs for pre-election announcements, statements and so on in the public media, organisational and operational costs for rallies, costs for printing, reproducing and delivering pre-election materials directly to voters;
- amount and nature of outstanding debts and obligations owed by or to the person who files a report and, where such debts and obligations are settled for less than their reported amount or value, a statement as to the circumstances and conditions under which such debts and obligations were extinguished.

Access to accounting records

52. Competent Entity agencies authorised to monitor the accounts of political parties according to the Accounting and Audit Law¹⁸, as well as tax authorities, may send a request to the CEC to obtain information collected by the CEC Audit Department during its audit of financial reports of political parties (see below).

Publication requirements

53. The CEC is required by Article 12 (4), LPPF, to make all reports it receives available to the public and to take appropriate measures to provide to all citizens access to the information contained in these reports. Consequently, it publishes on its website¹⁹ the financial reports it receives from political parties and which contain a summary and aggregated data. According to the Law on Freedom of Information, the public may ask for all information submitted by the parties and the CEC has to grant their access to that information.

(ii) Supervision (Article 14 of Recommendation Rec(2003)4)

Internal supervision

54. The Law on Political Party Financing and the Electoral Law do not contain any provisions regarding internal supervision of political parties. Consequently, it is up to each party to establish in their internal documents the mechanisms and procedures for internal supervision. During the on-site visits, the GET was informed however that, according to the laws on accounting and auditing at Entity level, political parties with a turnover of more than 2 Million BAM or employing more than 50 employees had to hire external auditors – at the time of the visit, this obligation consequently applied to 4 political parties.

External supervision

55. External supervision of the financing of political parties and candidates for election is carried out by the BiH Central Election Commission (CEC), through its Audit Department (Article 14, LPPF).
56. The CEC is an independent body which reports only to the BiH Parliamentary Assembly (Article 2.9, EL). It consists of 7 members – 2 from each constituent people and 1 “other” - who must be legal experts with experience in the administration of elections and/or electoral experts and may

¹⁸ The BiH Agency for Financial, Information and Agency Services and the RS Agency for Agency, Information and Financial Services.

¹⁹ www.izbori.ba

not hold any office in a political party or entity related to a political party, nor be involved in any political party activity. They are elected for a seven-year term, renewable once, by the BiH HoR, from a list of candidates established by the Commission for Selection and Nomination²⁰ (Article 2.5, EL). The President of the CEC is appointed among its members and rotates every 15 months according to the nationality principle. The CEC is assisted by a Secretariat.

57. Employees of the Audit Department are auditors, hired and dismissed by the CEC, taking into account their professional qualifications and their independence from political parties²¹. At the time of the on-site visit, the Audit Department employed 7 auditors. They carry out the audit of the annual reports submitted by political parties, as well as the pre-electoral and post-electoral reports submitted by political parties, coalitions and independent candidates according to a Rule Book on administrative procedures for checking, controlling and auditing financial reports of political parties, issued by the CEC (BiH Official Gazette No. 103/08).
58. The audit of financial reports of a political party must include reports from its state and entity headquarters (including BD) and from at least two regional offices selected by the Audit Department (Article 14 (2), LPPF).
59. The purpose of the audit is to “prove that the state of the financial transactions is in accordance with the provisions” of the LPPF, “on the basis of the party’s books and documents, as well as information and evidence filed by the executive boards” (Article 14 (3), LPPF). In the course of its work, the Audit Department may carry out detailed financial investigations on the party’s premises, to which it is entitled access for that purpose (Article 14 (7), LPPF).
60. The auditors establish a written report on their findings, which is submitted to the political party for comments. Reports established during election years contain both the analysis of the parties’ annual and election reports. If there are no objections from the party on the content of the report, the auditor officially confirms the findings of the audit by a certificate, which must be appended to the financial report when it is published in the BiH Official Gazette. If a party objects to the findings of the report, the auditor may modify its report or refuse to confirm its findings (Article 14 (3), LPPF).
61. Any irregularity established by the Audit Department must be submitted to the CEC, which may carry out further investigations – acting either *ex officio* or upon a complaint – by ordering persons to answer written questions, to testify or to provide documentary and other evidence (Article 15.6, EL).
62. The audit reports are published on the website of the CEC and in the BiH Official Gazette.

²⁰ “The Commission for Selection and Nomination shall have seven members out of whom two shall be appointed by the President of the High Judicial and Prosecutorial Council from amongst members of the Council, three members shall be appointed by the Administrative Commission of the BiH HoR from amongst members of the Commission and two shall be appointed by the President of the BiH CEC from amongst members of the CEC.” (Article 2.5, EL)

²¹ “a person appointed as auditor may not be a member of the executive board, a member of the main party committee, or an appointed accountant, or work for the party being the subject of the audit and/or for any of the regional offices of that party, or a person who performed the aforementioned functions in the period of three years preceding the mentioned appointment.” (Article 14 (6), LPPF)

(iii) **Sanctions (Article 16 of Recommendation Rec(2003)4)**

63. The CEC is competent to impose fines or take administrative measures in case of violation by a political party, a coalition or an election candidate of the provisions of the LPPF or the EL. Before imposing such sanctions or measures, however, the CEC has to seek voluntary compliance by the party, coalition or candidate who has committed the violation (Articles 13, LPPF and 15.6, EL).
64. Fines may be imposed if political parties fail to correct financial irregularities detected by the Audit Department: in case a political party receives funds from its properties or entrepreneurial activities in excess of the allowed amount of 20% of its total annual income (see paragraph 40) or in excess of the allowed caps on donations (see paragraph 39) or if it receives funds from forbidden sources (see paragraph 37), it is liable to a fine of up to three times the illegally acquired sum (Article 15, LPPF). In addition, Article 15.1 states that if a political party fails to act in compliance with the provisions of the LPPF, the CEC shall be authorised to impose a financial penalty in accordance with the Election Law.
65. The CEC may reject a party/coalition/candidate's application for certification to stand for elections or withhold a party's, coalition's or candidate's right to participate in the next elections in the case of failure to submit a financial report or for refusal of access to the party's premises for inspection purposes (Articles 14 (7), LPPF, 4.6, 4.10 and 4.12, EL).
66. Aside from these sanctions, Article 15.6 of the Election Law gives the CEC a general power to enforce the Law's chapter on campaign finance, determine violations, "assess civil penalties against any political party, coalition, list of independent candidates or independent candidate for non-compliance with the above-mentioned provision, or to take appropriate administrative action within its general authority under this law".
67. Decisions of the CEC are subject to appeal, through the CEC, before the Appellate Division of the BiH Court within two days of the receipt of that decision. The Appellate Division has to decide on the appeal within three days of its receipt (Articles 16, LPPF and 6.9, EL).

Immunities

68. There are no immunities foreseen by legislation for offences committed in connection with the funding of political parties and/or election campaigns.

Statutes of limitation

69. The LPPF and the EL do not provide for time limits after which violations of the provisions on political financing are considered prescribed and barred from prosecution and sanction.

Statistics

70. The authorities provided the following statistics regarding the number of processed cases and sanctions imposed by the CEC for the period 2004-2010:

2004

- Number of parties in the records of the CEC: 70
- Number of parties sentenced to fines: 49 (which is 70 % of the total number of registered parties)
 - o Out of these 49 parties:

- 40 parties were sanctioned for failing to submit financial reports with monetary fines from BAM 1,000 to BAM 3,000 (approx. EUR 500 to EUR 1,500) depending on the number of reports that were not submitted (Articles 11 (2) and (3) and Article 20, LPPF),
- 9 parties were sanctioned for violation of Articles 5 (1), 6, 3 (4) and 8 (1), LPPF
- Monetary fines are from BAM 500 to BAM 20,000 (approx. EUR 250 to EUR 10,000).
- Out of 49 sentences, the Appellate Division of the BiH Court accepted appeals of 7 political parties and stopped the procedures.

2005

- Number of parties in the records of the CEC: 72.
- Number of parties sentenced to fines: 8 (which is 11 % of the total number of registered parties)
- Parties were sanctioned for violation of Articles 5 (1); 11 (1), (3) and (4); 6 and a few were sanctioned for violation of Articles 3 (2) and 8 (1), LPPF.
- Monetary fines ranged from BAM 1,000 to BAM 5,000 (approx. EUR 500 to 2,500).
- Out of 8 decisions, the Appellate Division of the BiH Court accepted 1 appeal of a political party and returned the subject matter to the CEC to take a new decision.

2006

- Number of parties in the records of the CEC: 80.
- 11 political parties (or 13,75 %) were sanctioned with administrative measures denying them the right to stand for next elections.
- Number of parties sentenced to fines: 30 (which is 37,5% of the total number of registered parties).
- Parties were sanctioned for violation of Articles 11 (1), (2), (3) and (4); 5 (1); 6; 3 (2); and 8 (1), LPPF.
- Monetary fines were from BAM 500 to BAM 16,600 (approx. EUR 250 to EUR 8,800).
- 8 political parties appealed about the CEC's decisions to the Appellate Division of the BiH Court. The court did not accept any of these appeals and it confirmed the CEC's decisions.

2007

- Number of parties in the records of the CEC: 79.
- Number of parties sentenced to fines: 28 (35,44 % of the total number of registered parties).
- Parties were sanctioned for violation of: Articles 11 (1), (3) and (4); 6; 8 (1); 5 (1); 4 (2) and 3 (1) and (4), LPPF, as well as Article 15.1 of the Election Law.
- Monetary fines were from BAM 200 to BAM 11,700 (approx EUR 100 to EUR 5,850).
- There were 6 complaints about the CEC's decisions, 5 of which were transferred to the Court by the Commission. For one of these complaints, the fine was reduced. For the other complaints, the court confirmed the CEC's decisions.

2008

- Number of parties in the records of the CEC: 114.
- 8 parties were sanctioned with administrative measures preventing them from standing in the next elections.
- Number of parties sentenced to fines: 38 (33,33 % of the total number of registered parties).
- Parties were sanctioned for violation of: Articles 3 (2); 6; 8 (1); 11 (1), (3) and (4) and 14 (7), LPPF, as well as Article 15.1 of the Election Law.
- Monetary fines were from BAM 500 to BAM 10,000 (approx EUR 250 to EUR 5,000).
- There were 7 complaints about the CEC's decisions, 6 of which were transferred to the Court by the Commission and one for which the fine was reduced. For the other complaints, the court confirmed the CEC's decisions.

2009

- Number of parties in the records of the CEC: 108.
- The Audit Department has issued annual audit reports for 90 political parties.
- On the basis of its findings, the CEC has initiated sanction procedures against 35 political parties.
- 11 parties failed to grant access to their premises for inspection purposes.

2010

- Number of parties in the records of the CEC: 120.
- A total of 70 political entities took part in the 2010 general elections, out of which 46 political parties, 11 coalitions and 13 independent candidates.
- 40 political parties (86.96% of the total number of parties which took part in the elections) submitted a post-election financial report to the CEC. 8 of the independent candidates (61.54% of the total number of candidates who took part in the elections) submitted a post election financial report.
- 88 political parties submitted their annual financial reports for 2010.

71. The authorities also submitted the following survey of imposed fines and collected payments according to decisions by the CEC:

Year of imposing fine and number of decisions made	Year when Law was violated	Imposed fines	Paid fines	Unpaid fines
2005 - 40 decisions	2004	54,000	35,000	19,000
2007 - 7 decisions	2004	46,200	46,200	0
2008 - 5 decisions	2005	11,000	7,000	6,000
2009 - 63 decisions ^{22 *}	2005	179,670	113,982	65,688
	2006			
	2007			
2010 - 38 decisions	2008	93,500	46,000	47,500
Total		385,370	252,322	133,048
Percentage of payment collection		100%	65,48%	34,52%

V. ANALYSIS

72. The legal framework for the financing of political parties and election campaigns in Bosnia and Herzegovina dates back to the early 2000's and, partly because of the support of the international community in its development, it has a number of strong features, the main one being the key position and action of the Central Election Commission (hereafter CEC). Thanks to the active role of this body in enforcing the applicable legislation, political parties and candidates to elections in Bosnia and Herzegovina are accountable to some degree as regards their finances. This does not preclude the system of supervision and sanctions from suffering from a number of flaws affecting its efficiency. It is in the transparency area, however, that

²² Note: in 2009, sanctions were pronounced for violations of the LPPF by some parties in 2005, as well as all violations that occurred in 2006 and 2007:

- For violations of the Law in 2005, monetary fines in the amount of BAM 13.600,00,
- For violations of the Law in 2006, monetary fines in the amount of BAM 98.800,00 and
- For violations of the Law in 2007, monetary fines in the amount of BAM 69.270,00

improvements are most necessary. Too little information about political parties and election campaign financing is available to the public and the publication of the results of the supervision often happens too late to be sufficiently meaningful.

73. The two main laws in this field are the Law on Political Parties Financing (hereafter LPPF), adopted in 2000, but enacted as late as 2006, which governs the routine activities of political parties and Chapter 15 of the 2001 Election Law (hereafter EL) on parties' and candidates' election finances. They provide for a mixed system of public and private financing, with caps on private donations that apply outside the context of election campaigns and caps on expenditure that apply only during election campaigns. These texts contain some positive features, such as a list of permitted and forbidden sources of private funding, as well as detailed rules on in-kind donations and their valuation. Both texts apply to all levels of state administration and, although they are meant to be aligned, they do contain some inconsistencies: for instance, foreign contributions and loans are authorised expressly by Article 15.1 EL, but are not mentioned in Article 3 LPPF which lists the allowed sources of funding of political parties. Furthermore, some elements of the legal framework applicable to political parties are regulated at the level of the Entities. This is the case for the establishment and registration of political parties, which is regulated by the Entities' respective laws on political organisations. This implies the need for political parties to register separately – under different conditions – in each Entity, leading to unnecessary complications, as different political parties may be registered under the same name in different Entities. Another example is the public funding of political parties, which represents the main source of income of those parties with elected representatives, and which is regulated both at state and entity levels. The LPPF foresees that public funding from the BiH budget is provided to parliamentary groups represented in the BiH Parliamentary Assembly, while in Republika Srpska (RS) and in the Brčko District (BD), public funding from these entities' budget is granted to political parties²³. The Federation of BiH (FBiH) has not even adopted a law on the financing of political parties and consequently, any level of administration in the FBiH may adopt whichever regulations it sees fit as regards the allocation of public funds from the FBiH budget to political parties. During the on-site visits, the GET was informed that a draft state law on political parties, as well as amendments to the LPPF, were proposed to the BiH House of Representatives, in order to regulate the legal framework of political parties in a harmonised manner, including as regards public funding. However, because of a lack of political consensus, these texts could not be adopted. In this connection, it was also pointed out to the GET that, as a result of this lack of harmonisation of the rules on public funding, there had been over the past years a steady increase in the allocation of public funds to political parties.
74. Another element of complexity in the legal framework lies in the fact that both the LPPF and the EL have been subject to numerous amendments over the past years. Although the CEC uses consolidated versions of these laws in its daily work, the political parties which the GET met during the on-site visits were unaware of some of the latest amendments that occurred in April 2010 as regards the EL and June 2010 as regards the LPPF. This seems to indicate that consolidated versions of the LPPF and the EL have not been made available to political parties, nor to the public. The GET is also concerned that some provisions of these texts are unclear or incomplete, which has led the CEC to interpret them extensively and apply them in a sometimes uneven manner. This state of affairs has given rise to complaints by some political parties about double standards being applied by the CEC as regards supervision and sanctions. Whether or not these allegations are substantiated, the GET wishes to stress that it is important for the CEC's legitimacy, not only to act impartially, but to be seen to do so. At the very least, the current

²³ Law on Financing of Political Parties from the Budget of Republika Srpska, cities and municipalities and Law on Financing of Political Parties from the Budget of the Brčko District of BiH.

legal framework creates legal uncertainties for political parties, which are unsure about the applicable rules as regards for instance foreign donations²⁴ or the sanctions applicable to some infringements (see paragraph 83). The CEC and the political parties that the GET met during the visits are aware of the need to clarify and consolidate the current legislation in this field. The CEC is in favour of bringing together in a single piece of legislation all rules pertaining to political parties, party and campaign funding and, as stated above, proposed, in 2008, a draft law to that effect, which unfortunately only passed one chamber of the BiH Parliament. Against this background and in order to enhance the accessibility and efficiency of the rules applicable to political parties, the GET recommends **to review the provisions applicable to political parties, in particular as regards party and election campaign funding, which are currently dispersed in different legislative texts, with a view to ensuring that they are consistent, comprehensive and workable for practitioners and political parties, in particular by considering their consolidation within a single piece of legislation.**

Transparency

75. As a result of the patchy legal framework, the overall picture of the financing of political parties and election campaigns in Bosnia and Herzegovina is rather blurred. The general perception of the public, as relayed by civil society, is that transparency is low in practice and that it is difficult to get a complete and timely picture of the funding received and spent by political parties, both as regards their routine activities and election campaigns. Political parties are under a clear obligation to keep proper books and accounts, following a Rulebook and common format established by the CEC, and to appoint a person in charge of record-keeping – all these elements are to be welcomed. Donations also have to be reported, along with the identity of donors, for those exceeding 100 BAM (approx. 50 EUR). Yet, in a country where the cash economy still plays an important role, the general public's perception is that political parties and candidates for elections receive and spend much more money than appears in their financial reports. In this context, the GET cannot but note that the current legal framework lacks provisions encouraging the use of the banking system for receiving and dispatching funds. Nothing therefore prevents unaccounted flows of money from circulating – especially during election campaigns when the financial needs of the parties and candidates are at their peak – thereby creating opportunities to circumvent the rules on donations and the bookkeeping requirements. The possibility of using several bank accounts also makes supervision more difficult. The GET takes the view that additional measures are needed in order to ensure a greater traceability of resources and expenses of political parties and consequently recommends **(i) to promote the use of the banking system for the receipt of donations and other sources of income, as well as for the payment of expenditure, by political parties and election candidates, in order to make them traceable, and (ii) to introduce the principle of a single campaign account for the financing of election campaigns.**
76. The LPPF in particular, fails to generate a full picture of the financial movements concerning political parties. Unlike the Election Law, it does not contain any rules or restrictions on the expenditure of political parties. This makes it very easy to circumvent the expenditure ceilings applicable during election campaigns, simply by effecting campaign-related expenses prior to the campaign reporting period, which starts 135 days before the elections. The GET, along with

²⁴ Article 3, LPPF, which lists the political parties' allowed sources of funding, does not mention foreign donations. In two cases in which political parties had received donations from foreign governments for the implementation of specific projects, the CEC interpreted Article 3, LPPF in a restrictive manner and assimilated the donations received to donations from legal persons, as such subject to certain limits. This interpretation was later overruled by the Court of BiH, which found that, since the political parties had applied for and received these funds through specific projects, they should not be considered as donations under Article 3 LPPF.

many interlocutors met during the on-site visits, finds this situation unsatisfactory, all the more since the major part of political parties' resources comes from public funding, provided either directly to political parties (at Entity level) or through parliamentary groups (at State level), which are not themselves subject to any financial control. Aware that this gap is due in part to the lack of a political consensus around a planned harmonisation of the rules governing political parties and their public funding at state level (see paragraph 73), the GET nevertheless strongly believes that granting public funding to political parties – for the sake of ensuring public trust in the system – needs to go hand in hand with establishing rules on the use of these funds and monitoring compliance. Yet, as the aim of the CEC's supervision is to “prove that the state of the financial transactions [of the political parties] is in accordance with the provisions [of the LPPF]” (Article 14 (3)), it follows from the lack of rules governing political parties' routine expenditure in the LPPF that the CEC has no competence to supervise the expenditure of political parties outside election campaigns. The GET consequently recommends **(i) to take measures to prevent the rules on ceilings on expenses during election campaigns from being circumvented by effecting these expenses outside the campaign reporting period and (ii) to give the Central Electoral Commission a mandate to supervise the expenditure of political parties also outside election campaigns.**

77. Another area where transparency needs to be improved concerns the consolidation of party accounts so as to reflect income and expenditure, assets and debts of entities which are related directly or indirectly to political parties or otherwise under their control, as referred to by Article 11 of Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and election campaigns. While the Law on Political Parties Financing contains provisions regarding the financial control of political parties' entity headquarters and regional offices (Article 14 LPPF), it makes no reference to the accounts of entities related directly or indirectly to political parties or otherwise under their control. During the on-site visits, it was explained to the GET that some non-governmental organisations are linked with political parties and that some of them are headed by politicians or high ranking officials. The GET is concerned that little information is publicly available about these organisations and that there is a risk of them serving to shoulder expenditure by the political parties or being indirectly involved in election campaigns, for example, by organising conferences or producing materials to draw the attention of the public to the party's programme and ideas or by carrying out activities, such as paid political advertisement, which are forbidden to political parties and election candidates outside the official election campaign period. Moreover, the GET has misgivings about the possible effects of Article 3 (4) LPPF, which foresees that income from the property and business activities of a political party may not exceed 20% of that party's annual income and that excess sums are to be donated to charitable organisations. Even though this provision is well meant, it could be used to channel money back to organisations linked to political parties or performing services for them. Such possibilities for circumventing the rules would go unsanctioned as the relevant texts do not address the possible involvement of third parties in election campaigns. Therefore, the GET recommends **to increase the transparency of the accounts and activities of entities related, directly or indirectly, to political parties – or otherwise under their control – and to include, as appropriate, the accounts of such entities in the accounts of political parties.**
78. The legal framework regulating political parties and campaign financing also falls short of the standards established by Recommendation Rec(2003)4 as regards publication requirements. Political parties and candidates to elections have to report to the CEC on their accounts and donations, as well as on the identity of donors that have donated more than 100 BAM (about 50 EUR), but they are not under any obligation to make this information available to the general public. The onus of publication rests solely on the CEC, which publishes on its website financial reports received from political parties and has to answer information requests by citizens.

However, the reports published are in summary form: they contain aggregated data and lack detail especially as regards the routine expenses of political parties which the CEC has no competence to supervise, as explained above. These summary reports are therefore of limited interest. Moreover, no information about the identity of donors, even those having contributed large amounts, is disclosed to the public. Interviews held on-site also showed that the public seems unaware of the few possibilities that do exist for accessing financial information about political parties. The GET is of the firm opinion that the current publication system needs to be improved for the sake of transparency and it therefore recommends **to take measures to ensure that more meaningful information from the annual party accounts and the accounts of election campaigns, including on private donations above a certain threshold and the identity of donors, is published in a way which provides for easy and timely access by the public.**

Supervision

79. The audit reports established by the CEC and the sanctions imposed on political parties over past years, show cases of funds raised at local level and incorrectly or not reflected in the annual reports and of contributions received from forbidden sources, such as local government authorities. According to the information gathered during the on-site visits, the central organs of the parties concerned were in some instances unaware of the irregularities occurring at local level. These examples and the discussions held on-site revealed that the financial discipline of political parties gives rise to legitimate concern and that practices of internal supervision are very heterogeneous. The political parties are not under any obligation to establish mechanisms of internal supervision of their accounts, nor to hire auditors or use professional accountants for keeping their books and accounts – with the exception of the few political parties with a turnover of more than 2 Million BAM (approx. 1 Million EUR) or employing more than 50 employees which, according to the entities' laws on accounting and auditing, have to hire external auditors. The GET believes that a more robust audit system would undoubtedly reinforce the financial discipline of political parties and facilitate the supervision task of the CEC, while acknowledging that such a system needs to have a degree of flexibility in order to avoid imposing cumbersome procedures on parties with limited means. It consequently recommends **(i) to strengthen the mechanisms for internal financial control of political parties, in close cooperation with the parties' local and regional branches; (ii) to establish clear, consistent and specific rules on the audit requirements applicable to political parties and (iii) to ensure the necessary independence of the professionals who are to audit their accounts.**
80. External supervision of the financing of political parties and candidates for election is carried out by the CEC, through its Audit Department. As stated above, the powers and active role of this body are among the main assets of the current system and the CEC has been instrumental in ensuring compliance by the political parties with their reporting obligations. The CEC appears to enjoy a reasonable level of institutional independence – its members are elected by the House of Representatives of BiH – and provisions are in place to ensure that CEC members and employees of its Audit Department do not have links with the political parties that they have to supervise. The CEC's and its Audit Department's action however is hampered by a number of factors. First, the CEC has a very wide mandate that covers not only supervision of the financing of political parties and election campaigns, but also of the provisions on conflicts of interest and the conduct of elections. The budgetary and human resources at its disposal are clearly not sufficient, however, to allow it to carry out all of its tasks in a sufficiently effective manner. In particular, its Audit Department, composed of only 7 employees to certify the accounts of over 100 political parties, is severely understaffed and the low salaries induce difficulties in hiring and keeping qualified staff. As a result, the CEC's review is mostly of a formal nature, seeking only to

verify that the income and expenditure reported in the documents submitted by the political parties and candidates correspond to their books and records. The CEC does seem to possess adequate powers of investigation; it is entitled to request access to the political parties' headquarters to conduct inspections and it may order individuals to testify or provide documentary and other evidence. However, its workload prevents it from using these powers to their full extent in order to uncover potentially sophisticated improper funding practices by the political parties and election candidates. Moreover, the lack of staff and material resources also induces an excessive slowness in the supervision process. The publication of audit reports by the CEC happens too late – sometimes up to two years after the election or the submission of parties' annual reports relating to routine activities²⁵ – to be of real significance and interest to the public and the media. Considered alongside the scant information available in the political parties' and election candidates' summary financial reports published earlier in the process, it is clear that the current provisions and material arrangements are insufficient to ensure transparency in this field. In the GET's view, the CEC clearly needs to be allocated more financial and personnel resources in order to carry out its tasks more efficiently. It could also be given the possibility to resort to external professionals when a heavier workload renders it necessary, for example during and after election campaigns. In view of the above, the GET recommends **to increase the financial and personnel resources allocated to the Audit Department of the Central Electoral Commission so that it is better equipped to perform effectively its monitoring and enforcement tasks concerning political financing, including by ensuring a more swift and substantial supervision of the political party and election campaigns financial reports.**

81. The enforcement of the legislation on political financing is also affected by the lack of co-operation between the CEC and law enforcement authorities. Although the LPPF and the EL empower the CEC, as explained above, to request information and documents from anyone – including other state authorities – and to take the administrative measures deemed necessary for the enforcement of the provisions under its jurisdiction, they do not contain any explicit provisions requiring the CEC or its Audit Department to report to the competent authorities suspicions of criminal offences that it may come across in the course of its supervision. In turn, these bodies are not required to provide any feedback to the CEC on cases that it might – and sometimes does – report. The GET takes the view that an enhanced and institutionalised cooperation between the CEC and the law enforcement and tax authorities would certainly be beneficial to the overall compliance of political parties and election candidates with financial regulations and enable the CEC to obtain a more complete and accurate picture of possible financial irregularities by performing cross-checks between information obtained directly from political parties and from other sources, such as tax authorities, which may have information on possible contributions to political parties made by individuals or legal persons. It would also help uncover and sanction irregularities which the GET was told occur frequently during election campaigns, namely the abuse of public resources, such as official cars and offices. The GET consequently recommends **(i) to introduce a requirement for the Central Electoral Commission to report suspicions of criminal offences to the law enforcement authorities and (ii) to strengthen the co-operation and coordination of efforts on an operational and executive level between the Central Electoral Commission and the tax and law enforcement authorities.**

²⁵ As an illustration, the audit report on campaign financing for the 2008 municipal elections was published only in June 2010.

Sanctions

82. A positive element of the political financing legal framework in BiH is that both the LPPF and the EL give the CEC the power to impose fines or take the administrative measures it deems necessary in case of violation by the political parties or the election candidates of the provisions of both laws and the CEC has not shied away from using this power (see paragraphs 70 and 71). That said, the sanctions available under both texts are limited, insufficiently precise and sometimes lacking proportionality. Moreover, because of the slowness of the supervision process highlighted above, they are generally imposed too long after the violations to have a deterrent effect. The GET expects that a more robust and swift supervision by the CEC, as recommended above, will help ensure that sanctions are imposed at an earlier stage.
83. The only specific sanctions foreseen by the LPPF (Articles 14 and 15) are a fine of three times the amount of illicit contributions received by political parties (contributions received from forbidden sources, funds received from the party's properties or entrepreneurial activities in excess of the allowed amounts, or contributions received in excess of the caps on donations) and a disqualification of the right to participate in the next election in case of refusal by the party to grant the Audit Department access to its premises²⁶. Article 14 (7) LPPF specifies that in the latter case, "it shall be deemed that the party in question failed to submit a financial report". Yet, the LPPF does not contain a specific sanction for the failure to submit a financial report, nor for other violations of this law, such as the obligation to report contributions and the identity of donors, the fact that political parties may only own enterprises carrying out culture-related or publishing activities, the failure to provide invoices for in-kind services etc. Instead, Article 15 (1) LPPF provides for a blanket provision authorising the CEC "to impose a financial penalty in accordance with the Election Law of Bosnia and Herzegovina". Turning to the sanctions foreseen in this text, even though the Election Law contains an entire Chapter 19.A dedicated to penalties, none of its quite detailed provisions concern violations of Chapter 15 of the Election Law on campaign financing. Such violations are dealt with by means of another blanket provision, which gives the CEC "power to assess civil penalties against any political party, coalition, list of independent candidates or independent candidate for non-compliance with the [above-] mentioned provisions [of this Chapter], or to take appropriate administrative action within its general authority under this law" (Article 15.6 EL). Because of this lack of specificity of the available sanctions, the range of civil penalties or administrative actions actually available to the CEC remains unclear. A review of the penalties imposed by the CEC in practice leads the GET to think that the CEC might base its decisions on Article 6.7 EL which gives it the power to impose fines up to 10,000 BAM (approx. 5,000 EUR), to remove a candidate from a candidates' list when it is determined that he/she is personally responsible for the violations or to de-certify a political party, coalition or list of independent candidates. However, this sanction is part of the Election Law's Chapter on "Protection of the Electoral Right", which contains no reference to campaign financing. This again points at a blatant lack of specificity in the sanctions for violations of the campaign financing provisions. This lack of specificity has led the CEC to make a very liberal interpretation of the existing provisions of the LPPF and EL when imposing sanctions on political parties and, as mentioned above, the GET heard in this connection allegations according to which the CEC would sometimes apply double standards and be more severe towards opposition parties. Some of the discussions held on site also revealed an additional element of difficulty stemming from the multi-ethnic character of Bosnia and Herzegovina: according to some of the GET's interlocutors, whenever a party was sanctioned, a concern for ethnic balance would lead

²⁶ Regarding this sanction, the Venice Commission underlined that "it must be taken into account that the barring of a political party from elections may lead to the demise of the party concerned. A sanction of such severity can be considered only under very exceptional circumstances and only if this measure is not disproportionate to the goal which is to be achieved" (CDL(2008)017).

the CEC to seek similar infringements committed by parties related to other ethnic groups. The GET could not, however, substantiate these claims.

84. That said, there is a clear need to improve the legislative framework pertaining to sanctions in order to give the decision-making of the CEC a sound basis. More particularly, current sanctions in both the LPPF and the EL currently lack specificity and their range is insufficient. They currently consist of either low fines in the EL – the interlocutors met on site were unanimous in considering that a fine of 10,000 BAM (approx. 5,000 EUR) had no deterrent effect on political parties – or drastic measures, namely the disqualification of the right to participate in elections, which is not always proportionate to the nature of the infringement. Other measures, such as a suspension of public funding, could usefully be considered. Another problem is that, currently, the sanctions only apply to political parties. It is therefore not possible to sanction donors – for example private enterprises under contract to the state making illicit contributions to political parties or local government officials making illicit use of public resources, instances that reportedly happen frequently in practice. The GET consequently recommends **to clearly define infringements of political finance rules and to introduce effective, proportionate and dissuasive sanctions for these infringements, in particular, by extending the range of penalties available and by enlarging the scope of the sanctioning provisions to cover all persons/entities (including donors) upon which the Law on Financing of Political Parties and the Election Law impose obligations.**

VI. CONCLUSIONS

85. The legal framework for the financing of political parties and election campaigns in Bosnia and Herzegovina contains a number of strong features, the main one being the key position and action of the Central Electoral Commission in ensuring that political parties and candidates to elections are accountable to some degree as regards their finances. It is however complex and patchy, since the relevant texts, the Law on Political Parties Financing, adopted in 2000, but enacted as late as 2006, and the 2001 Election Law have been imperfectly consolidated. Furthermore, because of the lack of a political consensus, some important elements of the legal framework, namely the establishment and registration of political parties, as well as their public funding are regulated by legislation at the level of the Entities. As a result of this legal situation, the overall picture of the financing of political parties and election campaigns is rather blurred and incomplete. Even though the relevant laws contain some positive elements, such as a list of permitted sources of private funding, detailed rules on in-kind donations and their valuation, more transparency and accountability are required as regards the routine expenditure of political parties, as well as of entities related, directly or indirectly, to political parties or otherwise under their control. Current publication arrangements also need to be revisited to ensure meaningful and more timely access by the public to information on the finances of political parties, notably as regards private donations above a certain threshold and the identity of donors, as well as about the results of the supervision carried out by the Central Electoral Commission. The institutional independence of this body, its powers and its active role are among the main assets of the system, but its financial and human resources must be reinforced in order to allow it to carry out a more substantial supervision and to respond, in a timely manner, to the infringements by political parties of the rules on political financing. Moreover, the arsenal of sanctions under both the Law on Political Parties Financing and the Election Law needs to be reviewed as it is limited in scope and not sufficiently precise.

86. In view of the above, GRECO addresses the following recommendations to Bosnia and Herzegovina:

- i. **to review the provisions applicable to political parties, in particular as regards party and election campaign funding, which are currently dispersed in different legislative texts, with a view to ensuring that they are consistent, comprehensive and workable for practitioners and political parties, in particular by considering their consolidation within a single piece of legislation (paragraph 74);**
- ii. **(i) to promote the use of the banking system for the receipt of donations and other sources of income, as well as for the payment of expenditure, by political parties and election candidates, in order to make them traceable, and (ii) to introduce the principle of a single campaign account for the financing of election campaigns (paragraph 75);**
- iii. **(i) to take measures to prevent the rules on ceilings on expenses during election campaigns from being circumvented by effecting these expenses outside the campaign reporting period and (ii) to give the Central Electoral Commission a mandate to supervise the expenditure of political parties also outside election campaigns (paragraph 76);**
- iv. **to increase the transparency of the accounts and activities of entities related, directly or indirectly, to political parties – or otherwise under their control – and to include, as appropriate, the accounts of such entities in the accounts of political parties (paragraph 77);**
- v. **to take measures to ensure that more meaningful information from the annual party accounts and the accounts of election campaigns, including on private donations above a certain threshold and the identity of donors, is published in a way which provides for easy and timely access by the public (paragraph 78);**
- vi. **(i) to strengthen the mechanisms for internal financial control of political parties, in close cooperation with the parties' local and regional branches; (ii) to establish clear, consistent and specific rules on the audit requirements applicable to political parties and (iii) to ensure the necessary independence of the professionals who are to audit their accounts (paragraph 79);**
- vii. **to increase the financial and personnel resources allocated to the Audit Department of the Central Electoral Commission so that it is better equipped to perform effectively its monitoring and enforcement tasks concerning political financing, including by ensuring a more swift and substantial supervision of the political party and election campaigns financial reports (paragraph 80);**
- viii. **(i) to introduce a requirement for the Central Electoral Commission to report suspicions of criminal offences to the law enforcement authorities and (ii) to strengthen the co-operation and coordination of efforts on an operational and executive level between the Central Electoral Commission and the tax and law enforcement authorities (paragraph 81);**

- ix. **to clearly define infringements of political finance rules and to introduce effective, proportionate and dissuasive sanctions for these infringements, in particular, by extending the range of penalties available and by enlarging the scope of the sanctioning provisions to cover all persons/entities (including donors) upon which the Law on Financing of Political Parties and the Election Law impose obligations (paragraph 84).**
87. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Bosnia and Herzegovina to present a report on the implementation of the above-mentioned recommendations by 30 November 2012.
88. Finally, GRECO invites the authorities of Bosnia and Herzegovina to authorise, as soon as possible, the publication of the report, to translate the report into the national languages and to make these translations public.