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Third Evaluation Round

Fourth Interim Compliance Report on Bosnia and Herzegovina

"Incriminations (ETS 173 and 191, GPC 2)"

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"Transparency of Party Funding"

Adopted by GRECO
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GRECO Secretariat
Council of Europe
www.coe.int/greco

F-67075 Strasbourg Cedex
☎ +33 3 88 41 20 00
Fax +33 3 88 41 39 55

Directorate General I
Human Rights and Rule of Law
Information Society and Action against Crime Directorate

I. INTRODUCTION

1. The Third Round Evaluation Report on Bosnia and Herzegovina was adopted at GRECO's 51st Plenary Meeting (27 May 2011) and made public on 17 August 2011, following authorisation by Bosnia and Herzegovina (Greco Eval III Rep (2010) 5E, Theme I and Theme II).

2. The Compliance Report was adopted by GRECO at its 61st Plenary Meeting (18 October 2013) and made public on 7 January 2014, following authorisation by Bosnia and Herzegovina. It concluded that Bosnia and Herzegovina had implemented satisfactorily or dealt with in a satisfactory manner only four of the 22 recommendations contained in the Third Round Evaluation Report. In view of this result, GRECO categorised the very low level of compliance with the recommendations as "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decided to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.

3. In the First Interim Compliance Report, which was adopted by GRECO at its 64th Plenary Meeting (20 June 2014) and made public on 1 October 2014, GRECO concluded that the level of compliance with the recommendations remained "globally unsatisfactory", considering that little tangible progress had been made as regards the recommendations found either to be only partly, or not implemented in the Compliance Report. Therefore GRECO, in accordance with Rule 32, paragraph 2 subparagraph (ii), instructed its President to address a letter to the Head of Delegation of Bosnia and Herzegovina, drawing his attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to achieving tangible progress as soon as possible. Furthermore, GRECO requested the Head of Delegation to provide a report regarding the action taken to implement the pending recommendations (i.e. recommendations ii, iii, iv, v, vi, viii, ix, x and xii regarding Theme I and recommendations i to iv and vi to ix regarding Theme II) by 31 March 2015. This report was submitted on 31 March 2015, and served as a basis for the Second Interim Compliance Report.

4. In the Second Interim Compliance Report, which was adopted by GRECO at its 68th Plenary Meeting (19 June 2015) and made public on 6 August 2015, GRECO concluded that while some progress had been achieved with respect to Theme I – Incriminations, it did not merit significantly altering the level of implementation of the recommendations found either to be only partly, or not implemented in the Third Round Interim Compliance Report. The rating of Bosnia and Herzegovina's performance as "globally unsatisfactory" was therefore maintained and, in accordance with Rule 32, paragraph 2 subparagraph (ii) b), the President of the Statutory Committee, invited by GRECO, sent a letter to the Permanent Representative of Bosnia and Herzegovina to the Council of Europe, drawing his attention to the country's non-compliance. Furthermore, GRECO requested the Head of Delegation of Bosnia and Herzegovina to provide a report regarding action taken to implement the pending recommendations by 31 March 2016. No such report was submitted, despite several reminders.

5. In the Third Interim Compliance Report which was adopted by GRECO at its 72nd Plenary Meeting (1 July 2016) and made public on 22 September 2016 following authorisation by the authorities, GRECO noted that no further progress had been achieved as regards the implementation of the fifteen recommendations found either to be only partly, or not implemented in the Third Round Interim Compliance Report (out of the twenty-two included in the Third Round Evaluation Report). The rating of Bosnia and Herzegovina's performance as "globally unsatisfactory" was therefore maintained and, in accordance with Rule 32, paragraph 2 subparagraph (ii) c), GRECO invited the Secretary General of the Council of Europe to send a letter to the Minister of Foreign Affairs of Bosnia and Herzegovina, drawing his attention to the

country's non-compliance. Furthermore, GRECO requested the Head of Delegation of Bosnia and Herzegovina to provide a report regarding action taken to implement the pending recommendations by 30 April 2017. This report was submitted on 16 March 2017, and served as a basis for the Fourth Interim Compliance Report.

6. The current Fourth Interim Compliance Report was drawn up by Mr Kevin VALLETTA (Malta) and Ms Vita HABJAN BARBORIČ (Slovenia), with assistance from the GRECO Secretariat. It assesses the further implementation of the pending recommendations (i.e. recommendations ii, iv, v, vi, viii, ix, and xii under Theme I and recommendations i to iv and vi to ix under Theme II) since the adoption of the Third Interim Compliance Report.

II. ANALYSIS

Theme I: Incriminations

7. It is recalled that GRECO, in its Evaluation Report, addressed 13 recommendations to Bosnia and Herzegovina in respect of Theme I. In the compliance procedure, until the preparation of the present report, Bosnia and Herzegovina had implemented satisfactorily i, iii, vii, x, xi and xiii had been implemented satisfactorily and partly implemented recommendations ii, iv, v, viii and xii. Recommendations vi and ix had not been implemented.

8. It is furthermore recalled that, it was noted in the Compliance Report that Republika Srpska (hereafter RS) had amended its Criminal Code in 2013 (Law No. 67/13), the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) had been ratified and draft amendments to the Criminal Code of Bosnia and Herzegovina (State level, hereafter BiH) had been prepared which, at the time of adoption of the Compliance Report, were awaiting discussion in Parliament. By contrast, no (draft) amendments to the Criminal Codes in use at the level of the Federation of Bosnia and Herzegovina (hereafter FBiH) and of the Brčko District (hereafter BD) had been presented. Furthermore, according to the Second Interim Compliance Report, a draft law on amendments to the BiH Criminal Code – which was built on the previous bill presented in the Compliance Report and included some additional amendments – had been adopted on 18 May 2015 and entered into force on 27 May 2015. GRECO concluded that the amendments to the BiH Criminal Code were in line with recommendations ii, iii, iv, v, viii and xii. However, bearing in mind that amendments to the FBiH and BD Criminal Codes were still not under preparation, GRECO could not conclude on full implementation of those recommendations – except for recommendation iii, given that all offences of bribery and trading in influence of foreign jurors and arbitrators for which the country has jurisdiction are covered by the BiH Criminal Code. No further developments had been reported in the Third Interim Compliance Report.

9. The authorities now report on the adoption of the Law on Amendments to the Criminal Code of the Federation of BiH which entered into force on 16 June 2016[1] and of the Law on Amendments to the Criminal Code of the Brcko District of BiH which entered into force on 19 April 2017.[2] The text of the amended corruption-related provisions, which are examined under the specific recommendations below, has been submitted to GRECO's Secretariat.

[1] The law was published on 15 June 2016 in the "Official Gazette of the Federation of BiH" No. 46/16.
[2] The law was published on 11 April 2017 in the "Official Gazette of the Brcko district of BiH" No. 13/17.

Recommendation ii.

10. *GRECO recommended (i) to ensure that the definition of foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies, as well as judges and officials of international courts is not limited in scope to those persons serving in Bosnia and Herzegovina/its Entities or Brčko District; (ii) to ensure that bribery of the aforementioned categories of foreign and international officials is explicitly criminalised in the Criminal Code of the Republika Srpska, in accordance with Articles 5, 6, 9, 10 and 11 of the Criminal Law Convention on Corruption (ETS 173).*

11. GRECO recalls that the recommendation was considered partly implemented. The BiH Criminal Code had been amended to address the first part of the recommendation, by deleting the terms "serving in Bosnia and Herzegovina with or without remuneration" in the definition of foreign and international officials (article 1(7) CC); however, no (draft) amendments to the FBiH and BD Criminal Codes had been prepared. Furthermore, Law No. 67/13 amending the RS Criminal Code provided for a reworked definition of foreign and international public officials covering the different categories of persons enumerated in the Criminal Law Convention on Corruption (ETS 173), as required by the second part of the recommendation.

12. The authorities now refer to the above-mentioned legal reforms. Namely, the 2016 Law on Amendments to the Criminal Code of the Federation of BiH deleted the terms "who is on duty in the Federation and works with or without compensation" from the definition of foreign and international officials (article 2(8) of the FBiH Criminal Code) and the 2017 Law on Amendments to the Criminal Code of the Brcko District of BiH deleted the corresponding terms in article 2(7) of the BD Criminal Code.

13. GRECO is pleased to acknowledge that following the amendments to the FBiH and BD Criminal Codes, all the four Criminal Codes explicitly criminalise bribery of foreign and international officials, without any unjustified limitations.

14. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iv.

15. *GRECO recommended to ensure that the provisions concerning active and passive bribery in the public sector cover all acts/omissions in the exercise of the functions of an official person, whether or not within the scope of his/her official powers or authority.*

16. GRECO recalls that the recommendation was considered partly implemented. Amendments had been introduced to the RS Criminal Code to provide for a broader notion of breach of duty by referring to direct or related official duties. Moreover, the words "his/her official powers" in the bribery provisions of articles 217 and 218 of the BiH Criminal Code had been replaced by the words "his/her function". This was designed to ensure that these provisions cover all acts or omissions by an official in the performance of an official function, regardless of whether they are part of his/her official duties. By contrast, no measures had been initiated to also revise the bribery provisions of the FBiH and BD Criminal Codes.

17. The authorities now report that the words "his/her authority" in the bribery provisions of articles 380 and 381 of the FBiH Criminal Code have been replaced by the words "during his/her term in office". Identical amendments to articles 374 and 375 of the BD Criminal Code have been introduced by the 2017 reform.

18. GRECO is pleased to acknowledge that following the recent amendments to the FBiH and BD Criminal Codes, it is clear from the text of the bribery provisions of all four Criminal Codes that they cover all acts or omissions by an official in the performance of an official function, regardless of whether they are part of his/her official duties.

19. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

20. *GRECO recommended to ensure that the bribery offences are construed in such a way as to cover, unambiguously, instances of bribery committed through intermediaries, as well as instances where the advantage is not intended for the official himself/herself but for a third party.*

21. GRECO recalls that the flaws in the bribery provisions of articles 217 and 218 of the BiH Criminal Code had been adjusted. By contrast, no steps had been taken in this respect with regard to the bribery provisions of the FBiH, BD and RS Criminal Codes.

22. The authorities now report, firstly, that the 2016 Law on Amendments to the Criminal Code of the Federation of BiH added the terms "or who intercedes in such bribery of an official or a responsible person" in the passive bribery provisions of article 380 of the FBiH Criminal Code in order to cover cases of bribery committed through intermediaries. Identical amendments to the passive bribery provisions of article 374 of the BD Criminal Code have been introduced by the 2017 Law on Amendments to the Criminal Code of the Brcko District of BiH. Secondly, the latter law added the terms "for him/herself or another person" in the active and passive bribery provisions of articles 374 and 375 of the BD Criminal Code in order to include bribery cases where the benefit is not intended for an official but for a third party.

23. GRECO notes that, with respect to the issues of intermediaries and third parties, the deficiencies in the bribery provisions of the BD Criminal Code have been adjusted. Furthermore, the passive bribery provisions of the FBiH Criminal Code have been amended in order to cover cases of bribery committed through intermediaries. However, GRECO regrets that the legal reform has not introduced the concept of third party beneficiaries in the active bribery provisions of the FBiH Criminal Code. Moreover, that concept is still missing in the active bribery provisions of the RS Criminal Code (article 352), as is the concept of indirect commission of the offence through intermediaries in the passive bribery provisions of the RS Criminal Code (article 351).

24. GRECO concludes that recommendation v remains partly implemented.

Recommendation vi.

25. *GRECO recommended to (i) clarify beyond doubt that bribery in the private sector is criminalised; and (ii) consider, for the sake of clarity, criminalising bribery in the public and the private sector in separate provisions.*

26. GRECO recalls that the recommendation had not been implemented. The Compliance Report notes that the authorities had intended to criminalise bribery in the private sector via an autonomous provision but the plans had not yet been coupled with concrete legislative steps. In the ensuing interim compliance reports, no progress on that matter was reported.

27. The authorities now reiterate their position as expressed in the Evaluation Report which is that private sector bribery is covered by the provisions of the four Criminal Codes on public sector

bribery. In addition, they refer to existing specific provisions in articles 267 and 268 of the RS Criminal Code ("Unlawful Accepting of Gifts or Presents" and "Unlawful Giving Gifts or Presents") and to similar new provisions in articles 246a and 246b of the BD Criminal Code ("Unauthorised Accepting Rewards, Gifts or Other Forms of Benefits" and "Unauthorised Giving a Reward, Gift or Other Forms of Benefit").[3]

28. GRECO notes that the provisions of the RS Criminal Code referred to by the authorities (articles 267 and 268) were adopted in 2003 and therefore already in place when the Evaluation Report was adopted. Those provisions, as well as those recently introduced in the BD Criminal Code (articles 246a and 246b), criminalise certain forms of private sector bribery but are much narrower in scope than Articles 7 and 8 of the Criminal Law Convention on Corruption.[4] GRECO wishes to stress that the recommendation was aimed at clearly and broadly criminalising private sector bribery under the four criminal Codes, in keeping with the Convention. This has not been achieved.

29. GRECO concludes that recommendation vi remains not implemented.

Recommendation viii.

30. *GRECO recommended to (i) criminalise active trading in influence; (ii) review the provision on passive trading in influence to unambiguously cover a) the request of the offer or the promise of an undue advantage by the influence peddler; b) the direct and indirect commission of the offence; c) those instances where the advantage is not intended for the briber him/herself but for a third party; and d) instances of alleged influence.*

31. GRECO recalls that the recommendation was considered partly implemented. Amendments had been introduced to the RS Criminal Code which now includes an offence of active and passive trading in influence (article 353) covering all aspects of recommendation viii. Moreover, amendments to the BiH Criminal Code comprised a reworked criminalisation of trading in influence. In particular, active trading in influence had been addressed in a separate provision (article 219a CC) and the offence of passive trading in influence (article 219 CC) had been reworded to explicitly refer to requests, intermediaries, third party beneficiaries and instances of alleged influence. However, no steps had been taken in this respect with regard to the bribery provisions of the FBiH and BD Criminal Codes.

32. The authorities now indicate that the 2016 reform of the FBiH Criminal Code introduced separate provisions on active trading in influence (article 382a) and amended the provisions on passive trading in influence (article 382). Corresponding amendments have been introduced by the Law on Amendments to the Criminal Code of the Brcko District of BiH (articles 376 and 376a). All those provisions are now identical to those already in place in the BiH Criminal Code.

[3] The authorities also mention the new article 237a of the BD Criminal Code on "Receiving and Giving a Bribe in the Bankruptcy Proceeding".

[4] For example, articles 246a and 246b of the BD Criminal Code are restricted to persons "representing property interests of a legal entity", whereas the Convention refers to "any persons who direct or work for, in any capacity, private sector entities"; moreover, under articles 246a and 246b the corrupt act must be directed at "making sure that an agreement is signed or not signed, or that some other action is performed or not performed to the detriment of the legal entity, thus causing a major material damage to the legal entity", whereas the Convention does not contain any such restrictive elements and merely requires a breach of duty.

33. GRECO welcomes the amendments to the FBiH and BD Criminal Codes, which are identical to those already introduced into the BiH Criminal Code and assessed positively by GRECO in the Compliance Report.

34. GRECO concludes that recommendation viii has been implemented satisfactorily.

Recommendation ix.

35. *GRECO recommended to fully harmonise the existing sanctions for bribery and trading in influence offences.*

36. GRECO recalls that the recommendation had not been implemented. In the Compliance Report, the authorities had reported on their intention to harmonise the existing sanctions for bribery and trading in influence offences across the national territory but the intended plans had not yet been coupled with concrete legislative steps. In the subsequent interim compliance reports, no progress on that matter was reported.

37. The authorities refer to the sanctions available under the current bribery provisions of the four Criminal Codes, some of which have been changed since the adoption of the Evaluation Report.

38. GRECO notes that the sanctioning regime still varies slightly at the different levels of Government, as was the case at the time of adoption of the Evaluation Report. While a quite limited number of changes have occurred in the meantime, they have not clearly led to further harmonisation of the sanctions available. For instance, the sanctions provided by the passive bribery provisions of article 351 of the RS Criminal Code have been changed (paragraph 1: two to 10 years' imprisonment; paragraph 2: one to eight years' imprisonment; paragraph 3: three months' to three years' imprisonment) but are still different from those provided by the passive bribery provisions of the three other Criminal Codes, i.e. articles 217 BiH CC, 380 FBiH CC, 374 BD CC (paragraph 1: one to ten years' imprisonment; paragraph 2: six months' to five years' imprisonment; paragraph 3: the situation varies in the different CCs which foresee either one to ten years' imprisonment or six months' to five years' imprisonment). The situation is similar with regard to the passive trading in influence offences. As GRECO stressed in the Evaluation Report, it is essential that the applicable sanctions for bribery and trading in influence offences are the same throughout the national territory. No clear progress has been made in this respect.

39. GRECO concludes that recommendation ix remains not implemented.

Recommendation xii.

40. *GRECO recommended to abolish the possibility provided by the special defence of effective regret to return the bribe to the bribe-giver who has reported the offence before it is uncovered.*

41. GRECO recalls that the recommendation had been partly implemented. While the possibility provided by the special defence of effective regret to return the bribe to the bribe-giver who has reported the offence before it is uncovered was abolished in the BiH Criminal Code, the effective regret provisions of the FBiH, BD and RS Criminal Codes had remained unchanged.

42. The authorities now indicate that the Law on Amendments to the Criminal Code of the Brcko District of BiH removed the possibility provided in the effective regret provisions under article 357 of the BD Criminal Code to return the bribe to the bribe-giver (i.e. paragraph 4 of that article was repealed).

43. GRECO welcomes the information provided with regard to the amendments to the effective regret provision of the BD Criminal Code. The authorities are urged to also amend the FBiH and RS Criminal Codes accordingly.

44. GRECO concludes that recommendation xii remains partly implemented.

Theme II: Transparency of Party Funding

45. It is recalled that GRECO, in its Evaluation Report, addressed nine recommendations to Bosnia and Herzegovina in respect of Theme II. In the compliance procedure, until the preparation of the present report, Bosnia and Herzegovina had implemented satisfactorily recommendation v and partly implemented recommendation ii. Recommendations i, iii, iv, vi, vii, viii and ix had not been implemented.

46. It is furthermore recalled that in the First Interim Compliance Report it is noted that, following a decision by the Council of Ministers of 16 April 2014, the Central Electoral Commission (CEC) was setting up an Interdepartmental Working Group tasked with preparing a draft proposal on amendments to the Law on Financing of Political Parties (LFPP) in order to revise the law in line with the outstanding recommendations. In the Second Interim Compliance Report it is noted that the Agency for Prevention of Corruption and Coordination in Fight against Corruption had submitted to the Council of Ministers the initiative for the appointment of the working group for drafting amendments to the LFPP in line with GRECO's recommendations. No further developments had been reported in the Third Interim Compliance Report.

47. The authorities now refer to legal reforms which had already been carried out shortly before the adoption of the Third Interim Compliance Report but which had not been communicated to GRECO at that stage. Those reforms were based on the work of the above-mentioned Interdepartmental Working Group and were aimed at implementing GRECO's recommendations. The authorities refer in particular to the Law on Amendments to the LFPP which entered into force on 4 June 2016.[5] Furthermore, the Law on Amendments to the Election Law (EL) which came into force on 5 May 2016[6] includes new provisions relevant to one of GRECO's recommendations (ii).

Recommendation i.

48. *GRECO recommended 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.*

49. GRECO recalls that it concluded in the Compliance Report and in the ensuing interim compliance reports that the recommendation had not been implemented. GRECO had welcomed the intention of the authorities to prepare a unified Law on Political Parties at state level, the absence of which had been criticised in the Evaluation Report. It appeared, however, that work on this issue was still at a very preliminary stage. Moreover, it did not appear that the required clarification and consolidation of the different legal acts (LFPP and EL) had been carried out.

[5] The law was published on 27 May 2016 in the "Official Gazette of BiH" No. 41/16.
[6] That law was published on 27 April 2016 in the "Official Gazette of BiH" No. 31/16.

50. The authorities now refer to the above-mentioned amendments to the LFPP which have been in force since 4 June 2016. In their view, the fact that party and election campaign financing are regulated by several laws does not affect or diminish the quality of the work and efficiency of the relevant institutions. While the authorities are of the opinion that current legislation represents a good basis for political financing and its supervision, they are aware that it needs to be further improved in the future.

51. GRECO recalls the concerns expressed in the Evaluation Report about inconsistencies in the various legal acts and the lack of clarity of some provisions which gave rise to uncertainties for political parties and to allegations of uneven interpretation of the law by the CEC. Against this background, it was made clear that the recommendation required an overhaul of the LFPP, but also of the EL and the relevant laws at the level of the Entities. Such a broad reform aimed at establishing a consistent, comprehensive and workable legal framework for political financing has not been achieved. Recent legal amendments to the LFPP are to be welcomed in so far as they have the potential to increase transparency in party finances to some (limited) extent (see below under recommendations iv, vi, viii and ix); however, GRECO cannot see how those amendments would contribute to harmonising the overall legal framework governing political finances. It furthermore regrets the absence of any new information following up on the intention declared by the authorities to prepare a unified Law on Political Parties at state level. The authorities are urged to continue the reform process so as to provide for a clear and consolidated legal framework for party and campaign funding.

52. GRECO concludes that recommendation i remains not implemented.

Recommendation ii.

53. *GRECO recommended (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.*

54. GRECO recalls that the recommendation had been partly implemented. It had acknowledged in the Compliance Report that articles 5 and 6 LFPP had been amended to require that funds received by a political party – both in the form of voluntary contributions (donations) and membership fees – are deposited by an authorised person on a party's account. However, GRECO noted that the law still left room for possible manipulations, for instance by only issuing receipts for and depositing a fraction of the money received. Payment of voluntary contributions and membership fees directly and exclusively onto parties' accounts would be a much more straightforward and transparent solution. Moreover, it did not appear that the other issues behind the recommendation, namely the use of the banking system also by election candidates and the payment of expenditure by political parties, as well as the introduction of the principle of a single bank account, had been resolved.

55. The authorities now report that the amended article 4.4, paragraph 1 EL provides that the application for the certification of a political party or an independent candidate "must include the account number for the financing of the election campaign."

56. GRECO takes note of the new information provided with regard to the amended article 4.4 EL. The obligatory indication by electoral subjects of the account number for the funding of the election campaign is to be welcomed as a step towards more transparency in campaign finances. However, GRECO takes the view that much more needs to be done to promote the use of the

banking system, both with regard to the funding of election campaigns and of parties' routine activities, in order to prevent the circulation of flows of money that are not accounted for – e.g. by requiring that voluntary contributions and membership fees be paid directly and exclusively onto parties' accounts. Furthermore, the reform has failed to clearly introduce the principle of a single campaign account for the financing of election campaigns. It would appear that under the new legislation, it is still possible for electoral subjects to use several bank accounts and to use them also for purposes other than the financing of election campaigns.

57. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

58. *GRECO recommended (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.*

59. GRECO recalls that the recommendation had not been implemented. In the Compliance Report, GRECO had noted the introduction in the LFPP of new provisions in article 4 LFPP stating the purposes of political parties' expenses. It took the view, however, that the definition of allowed expenses was not sufficiently precise to fulfil the objectives of the first part of the recommendation. No link seemed to be made between this provision and the relevant articles of the EL on election campaign expenditure ceilings. Specific categories of permitted expenditure were not defined, which clearly hampers obtaining an accurate picture of the use made of funds by political parties and the detection of possible circumvention of the rules on campaign expenses. Moreover, no mention was made of an extension of the CEC's mandate to supervise the expenditure of political parties outside election campaigns, as required by the second part of the recommendation.

60. The authorities, for the purposes of the present report, do not refer to any new developments.

61. GRECO concludes that recommendation iii remains not implemented.

Recommendation iv.

62. *GRECO recommended 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.*

63. GRECO recalls that the recommendation had not been implemented. In the Compliance Report, the authorities had referred to the new article 8 LFPP which contained a list of prohibited sources of funding for political parties. However, GRECO recalled that this recommendation was given to provide for more transparency and/or the consolidation of political party accounts so as to reflect the income and expenditure of entities related to them, such as non-governmental organisations which may be involved in indirect campaigning for political parties by organising events or producing promotional materials, or by shouldering expenses for political parties. GRECO failed to see how article 8 of the new LFPP contributed to this aim, and was concerned to note that the new article 8 was less stringent than the former one.

64. The authorities now indicate that a new paragraph 2 has been introduced into article 12 LFPP according to which "a political party shall include all benefits acquired from activities of the entities that are in any way related to the political party or are under its control in its financial report."

65. GRECO notes that the reported legal amendments address part of the concerns underlying the recommendation, by requiring political parties to include benefits received from related entities in their financial accounts. That said, GRECO wishes to stress that the recommendation was aimed at including more comprehensive information on the finances of such entities, covering both their income and expenditure. Moreover, it is not clear from the text of article 12, paragraph 2 LFPP whether indirect support to parties – such as the examples mentioned in the Evaluation Report, i.e. 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 – will have to be reflected in party accounts.

66. GRECO concludes that recommendation iv has been partly implemented.

Recommendation vi.

67. *GRECO recommended (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.*

68. GRECO recalls that the recommendation had not been implemented. In the Compliance Report, the authorities had made reference to article 11 of the LFPP, which obliges political parties to keep their books in accordance with accounting regulations, the Law on Accounting and Auditing and the International Accounting Standards. However, the Evaluation Report had already established that political parties have to apply those standards, and no new developments were reported in the Compliance Report and in the subsequent interim compliance reports.

69. The authorities now state that article 11 of the LFPP has been complemented by a new paragraph 2 which provides that "a political party shall be obliged to use its internal documents to set in place an internal financial control system over lower organisational units aimed at preventing incorrect record of incomes and expenditures and abuse of funds."

70. GRECO takes note of the recent obligation on political parties to establish mechanisms of internal financial control, which goes in the direction recommended. That said, it is concerned that the new provision does not regulate such control in more detail; it leaves it completely to the different parties to determine the level of internal accountability. Even if the need for a degree of flexibility (in accordance with the parties' means) had been recognised in the Evaluation Report, it had also been made clear that the recommendation was aimed at countering the heterogeneous practices of various parties. The legal amendments to article 11 LFPP appear insufficient to ensure this. Moreover, no further measures have been taken to develop specific rules on the audit requirements applicable to political parties and to ensure the necessary independence of auditors.

71. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

72. *GRECO recommended 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.*

73. GRECO recalls that in the absence of any new developments, it had concluded in the Compliance Report and in the subsequent interim compliance reports that the recommendation had not been implemented.

74. The authorities now indicate that the CEC has developed an application for electronic submission by political parties of their financial reports in order to ensure rapid supervision and, at the same time, public access to the data published on the CEC website.

75. GRECO is very concerned that no measures have been taken to increase the financial and personnel resources allocated to the Audit Department of the CEC. It had been made clear in the Evaluation Report that adequately equipping the Audit Department would be essential for ensuring effective, swift and substantial supervision of the financial reports of political party and election campaigns. The only positive action taken, i.e. the introduction of electronic reporting by political parties, may be a measure that goes in the right direction, but it has not been substantiated that it would compensate for the absence of the measures recommended.

76. GRECO concludes that recommendation vii remains not implemented.

Recommendation viii.

77. *GRECO recommended (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.*

78. GRECO recalls that the recommendation had not been implemented. No specific provision requiring the CEC or its Audit Department to report suspicions of criminal offences had been included in the LFPP, and no new action had been taken to strengthen cooperation between the CEC and the tax and law enforcement authorities.

79. The authorities now report that a new paragraph 4 has been added to article 14 LFPP which reads as follows: "The CEC shall report any suspicion of a criminal offence that can be brought into connection with the financing of political parties and election campaigns to the competent prosecutor's office and other law enforcement agencies."

80. GRECO acknowledges that a specific provision obliging the CEC to report suspicions of criminal offences to law enforcement authorities has been included in the LFPP, as required by the first part of the recommendation. No measures have been taken in response to the second part of the recommendation.

81. GRECO concludes that recommendation viii has been partly implemented.

Recommendation ix.

82. *GRECO recommended 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.*

83. GRECO recalls that the recommendation had not been implemented. In the Compliance Report, note was taken of the provisions on sanctions in the area of party funding, *inter alia*, under articles 19 and 20 LFPP. However, it appeared that some of the sanctions referred to already existed in the previous version of the LFPP (in force when the Evaluation Report was adopted); that other types of violations (e.g. failure to submit a financial report, the obligation to report contributions and the identity of donors, failure to provide invoices for in-kind services etc.) still lacked corresponding sanctions in the law; that the dissuasive character of fines available (ranging from 500 to 5 000 KM) remained doubtful; that no sanctions applicable to entities other than political parties had been designed; and that the EL had not been amended to comply with this recommendation.

84. The authorities now refer to further amendments to articles 19 and 20 LFPP. Namely, the catalogue of violations subject to sanctions has been extended to also cover the following situations:

- receipt by a political party of funds from sources other than those listed in article 3 LFPP;
- violation by a political party of the provisions of article 9 LFPP (prohibition on putting pressure on any persons regarding contributions to a party and financing a party through bank loans);
- failure by a political party to keep records on its income and expenditure in line with the regulations;
- failure by a political party to submit financial reports in line with the LFPP and the EL (cf. article 12, paragraphs 3 to 5 LFPP);
- failure by a political party to appoint a person authorised to submit reports and to contact the CEC (cf. article 13 LFPP) and failure to inform the CEC about the appointment within 15 days or about later changes of the authorised person's status.

85. Moreover, the maximum amount of fines available under article 19 LFPP has been increased from 5 000 KM (approx. 2 550 €) to 10 000 KM (approx. 5 100 €). Finally, fines are to be imposed not only on political parties themselves but also on natural persons who commit the offences under articles 19 and 20 LFPP; in the case of natural persons, fines range from 200 (approx. 102 €) KM to 2 000 KM (approx. 1 020 €).

86. GRECO notes that offences in the area of party financing have been more clearly defined, maximum fines have been increased and the sanctioning provisions have been extended to also cover natural persons. Several parts of the recommendation have thus been – at least partly – addressed by the recent reform. That said, GRECO maintains its serious doubts about the dissuasive nature of the fines available (now ranging from 500/approx. 2 55 € to 10 000 KM/ approx. 5 100 €), since it was already noted in the Evaluation Report that such fines had no deterrent effect on political parties. It had therefore been suggested in the Evaluation Report that other measures be considered such as suspending public funding. Moreover, sanctions applying to donors have not been developed and the EL has not been amended to comply with this recommendation.

87. GRECO concludes that recommendation ix has been partly implemented.

III. CONCLUSIONS

88. In view of the above, GRECO notes that Bosnia and Herzegovina has made progress by fully implementing three recommendations and partly implementing four recommendations since the last interim report of July 2016. In total, ten of the twenty-two recommendations have been implemented satisfactorily to date. Seven recommendations have been partly implemented and five have not been implemented.

89. More specifically, it is recalled that with respect to Theme I – Incriminations, recommendations i, iii, vii, x, xi and xiii had been implemented satisfactorily at the time of adoption of the Third Interim Compliance Report. In addition, recommendations ii, iv and viii have now been implemented satisfactorily. Recommendations v and xii remain partly implemented and recommendations vi and ix not implemented.

90. With respect to Theme II – Transparency of Party Funding, it is recalled that recommendation v had been implemented satisfactorily at the time of adoption of the Third Interim Compliance Report. Recommendations iv, vi, viii and ix can now be added to recommendation ii which had already been partly implemented. Recommendations i, iii and vii have still not been implemented.

91. Concerning incriminations, GRECO welcomes that the corruption-related provisions of the Criminal Codes of the Federation of Bosnia and Herzegovina and of the Brcko District of Bosnia and Herzegovina were amended in 2016 and 2017 respectively. Bearing in mind previous reforms in Bosnia and Herzegovina (State level) and in the Republika Srpska, the requirements of several recommendations have now been fulfilled, for example, as regards bribery of foreign and international officials and trading influence. On the other hand, some deficiencies remain, for example, with respect to the criminalisation of private sector bribery and the harmonisation of sanctions throughout the national territory. The authorities are urged to continue the reform process so as to provide a fully harmonised and consistent legal framework for the criminalisation of corruption offences throughout the national territory, in keeping with the Convention.

92. Concerning transparency of party funding, GRECO acknowledges that the recent legislative reform of the Law on Financing of Political Parties, enacted on 4 June 2016, was explicitly aimed at implementing GRECO's outstanding recommendations. Some progress has been achieved, for example, by introducing electronic reporting by political parties on their finances and amending the regime of sanctions available for violations of the rules. That said, GRECO is concerned that the reform only presents partial solutions to the shortcomings identified in the Evaluation Report. Much more needs to be done, *inter alia*, to harmonise the complex legal framework, promote the use of the banking system for contributions to political parties and increase the financial and personnel resources allocated to the Central Electoral Commission for the supervision of political financing.

93. In view of the above, GRECO concludes that the current level of compliance with the recommendations is no longer "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides not to continue applying Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.

94. In accordance with paragraph 8.2 of Rule 31 of its Rules of Procedure, GRECO asks the head of the delegation of Bosnia and Herzegovina to submit to it by 31 March 2018 a report on the

measures taken for the purposes of implementing the outstanding recommendations (recommendations v, vi, ix and xii of Theme I and recommendations i to iv and vi to ix of Theme II).

95. Finally, GRECO invites the authorities of Bosnia and Herzegovina to authorise as soon as possible, the publication of the present report, to translate it into the national language and to make the translation public.