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FOURTH EVALUATION ROUND

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FOURTH EVALUATION ROUND

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

EVALUATION REPORT

BOSNIA AND HERZEGOVINA

Adopted by GRECO at its 70th Plenary Meeting
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Secrétariat du GRECO
Conseil de l'Europe
F-67075 Strasbourg Cedex
☎ +33 3 88 41 20 00

www.coe.int/greco/fr

Direction Générale I
Droits de l'Homme et Etat de droit
Direction de la société de l'information
et de la lutte contre la criminalité

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EXECUTIVE SUMMARY

1. Corruption represents one of the most pressing challenges in Bosnia and Herzegovina. Effective implementation of the legislative and policy framework for the fight against corruption has experienced repeated delays, largely due to the fragmented and uncoordinated institutional framework of the country and, more decisively, the lack of a firm political will to push forward a far-reaching anticorruption agenda.

2. In terms of the focus of the Fourth Evaluation Round, positive measures have been taken to enhance access to information regarding parliamentary work. More steps could be taken in the future to widen opportunities for public participation in the development, implementation and revision of legislation as a key tool to further strengthen the public oversight of parliamentary activities, as well as to provide transparency regarding the interaction of parliamentarians with third parties seeking to influence the parliamentary process. Some tools are in place to promote integrity principles in the legislature and to regulate and limit those activities that may compromise the parliamentary mandate by raising conflicts of interest. It is important to ensure that the enactment of separate legislation on conflicts of interest at Entity/BD level, and the establishment of separate oversight institutions, does not lead to inconsistent standards in the respective parliaments. This situation deserves close follow-up.

3. More importantly, the monitoring and enforcement regime for integrity and conflict of interest prevention in the legislature needs to be strengthened significantly. While parliamentarians have an obligation to adhere to the ethical standards laid out in the Code of Conduct and the relevant internal Rules of Procedure, it is not clear how misconduct could trigger punishment. Likewise, the existing bodies monitoring conflicts of interest have important shortcomings regarding the effectiveness of their role: they either lack the required powers or independence to ensure abidance by the rules. Finally, the asset disclosure regime suffers from crucial shortcomings as regards the transparency and the actual control of the declarations submitted.

4. The complexity of the four judicial systems and threats to judicial independence are deeply affecting the efficiency of justice and fuelling a very negative public perception of the judiciary. The lack of certainty about available resources due to fragmented budgetary planning, as well as a large judicial backlog and poor case management, compound these difficulties. Placing the concept of judicial independence beyond doubt, ensuring a better prioritisation of cases and a more efficient use of available resources across the judicial systems would put the judiciary in a better position to rebuild public trust. The High Judicial and Prosecutorial Council, which has a key role in managing the judicial and prosecutorial professions, has been having a positive influence in strengthening the independence and professionalism of the judiciary. However, progress is fragile and the Council currently faces criticism as regards its composition, organisation and the accountability of its members. Its operation must be strengthened, notably by providing for separate judicial and prosecutorial sub-councils, avoiding an over-concentration of powers in the same hands and ensuring that its decisions are subject to appeal before a court.

5. Turning to judges and prosecutors themselves, steps must be taken to improve performance appraisals, which are the determining factor for promotion. Furthermore, awareness of ethics and integrity rules needs to be strengthened and rules on conflicts of interest have to be developed for all judges and prosecutors and properly enforced. Annual financial statements submitted by judges and prosecutors must be put to better use, at the very least by introducing an effective review system, accompanied by the necessary resources and sanctions in case of non-compliance. Strengthening the Office of the Disciplinary Counsel, along with reviewing the disciplinary procedure and sanctions in case of misconduct, are also instrumental steps towards increasing the accountability of

judges and prosecutors. Finally, these moves towards an increased efficiency and accountability of the judicial system need to be communicated to the public as part of a concerted public communication strategy. Determination and transparency, taking into account the extra effort required in Bosnia and Herzegovina to counteract the damaging divisions from recent history, need to be built into carefully thought through efforts to reform and rebuild public trust in the country's judicial system.

I. INTRODUCTION AND METHODOLOGY

6. Bosnia and Herzegovina joined GRECO in 2000. Since its accession, the country has been subject to evaluation in the framework of GRECO's First (in July 2003), Second (in December 2006) and Third (in May 2011) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (www.coe.int/greco).

7. GRECO's current Fourth Evaluation Round, launched on 1 January 2012, deals with "Corruption prevention in respect of members of parliament, judges and prosecutors". By choosing this topic, GRECO is breaking new ground and is underlining the multidisciplinary nature of its remit. At the same time, this theme has clear links with GRECO's previous work, notably its First Evaluation Round, which placed strong emphasis on the independence of the judiciary, the Second Evaluation Round, which examined, in particular, the executive branch of public administration, and the Third Evaluation Round, which focused on the incriminations of corruption (including in respect of parliamentarians, judges and prosecutors) and corruption prevention in the context of political financing.

8. Within the Fourth Evaluation Round, the same priority issues are addressed in respect of all persons/functions under review, namely:

- ethical principles, rules of conduct and conflicts of interest;
- prohibition or restriction of certain activities;
- declaration of assets, income, liabilities and interests;
- enforcement of the applicable rules;
- awareness.

9. As regards parliamentary assemblies, the evaluation focuses on members of national parliaments, including all chambers of parliament and regardless of whether the members of parliament are appointed or elected. Concerning the judiciary and other actors in the pre-judicial and judicial process, the evaluation focuses on prosecutors and on judges, both professional and lay judges, regardless of the type of court in which they sit, who are subject to national laws and regulations.

10. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2015) 2E) by Bosnia and Herzegovina, as well as other data, including information received from civil society. In addition, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Sarajevo from 1 to 5 June 2015. The GET was composed of Mr Vladimir GEORGIEV, State Adviser, Secretariat of the State Commission for Prevention of Corruption ("The former Yugoslav Republic of Macedonia"); Ms Sheridan GREENLAND, Executive Director, Judicial College, Judicial Office (United Kingdom); Ms Anca JURMA, Chief Prosecutor, International Cooperation Service, National Anticorruption Directorate, Prosecutors' Office attached to the High Court of Cassation and Justice (Romania); and Mr Íñigo ORTIZ DE URBINA, Criminal law and criminology professor, Universitat Pompeu Fabra (Spain). The GET was supported by Ms. Sophie MEUDAL-LENDEERS and Ms Laura SANZ-LEVIA from GRECO's Secretariat.

11. The GET held interviews with representatives of the Ministry of Security, the Ministry of Justice, the Parliamentary Assembly of Bosnia and Herzegovina (including its Joint Committee for Deciding on Conflicts of Interest, the Joint Committee on Human Rights and the Selection and Monitoring Committee of the Agency for Prevention of Corruption and Coordination of the Fight against Corruption), the Commission for Deciding on Conflicts of Interest, the Agency for Prevention of Corruption and Coordination of the Fight against Corruption, the Central Election Commission. Moreover, the GET held interviews with representatives of the judiciary: judges and prosecutors from different levels of jurisdiction (State and Entities), the High Judicial and

Prosecutorial Council, the Centre for Education of Judges and Prosecutors, as well as their professional associations. The GET also spoke with representatives of the international community, including the European Union, the Office of the High Representative and the Organisation for Security and Cooperation in Europe. Finally, the GET met with NGOs (Anti-Corruption Civic Organisations' Unified Network, Centre for Investigative Reporting, Centre for Security Studies, Transparency International), media (BH Journalists and Press Council) and academia representatives.

12. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of Bosnia and Herzegovina in order to prevent corruption in respect of members of parliament, judges and prosecutors and to further their integrity in appearance and in reality. The report contains a critical analysis of the situation in the country, reflecting on the efforts made by the actors concerned and the results achieved, as well as identifying possible shortcomings and making recommendations for further improvement. In keeping with the practice of GRECO, the recommendations are addressed to the authorities of Bosnia and Herzegovina, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Within 18 months following the adoption of this report, Bosnia and Herzegovina shall report back on the action taken in response to the recommendations contained herein.

II. CONTEXT

13. The Dayton Agreement established Bosnia and Herzegovina as a State comprising two highly autonomous self-governing Entities: the Republika Srpska (RS) and the Federation (FBiH), as well as the Brčko District of Bosnia and Herzegovina (BD); each of the latter has its own constitution, president, government, parliament, judicial organisation and penal law.

14. Corruption remains a crucial issue in Bosnia and Herzegovina. The policy framework for the fight against corruption was prioritised by the international community as a key element for the effective implementation of the Dayton Peace Agreement. Since the international community has begun to withdraw, the pace and scope of reform has slowed down and there is strong criticism, arising from both abroad and at domestic level, that the proposed reforms generally remain a dead letter. The European Commission has stated, in its latest report on Bosnia and Herzegovina, that, although the country has some level of preparation in the fight against corruption and some progress has been achieved in 2014, its legal and institutional framework remains weak and inadequate[1]. Effective implementation of the Anticorruption Strategy, covering the period 2009-2014, experienced repeated delays, largely due to the fragmented and uncoordinated institutional framework of the country and, more decisively, the lack of a firm political will to push forward a far-reaching anticorruption agenda. A new Strategy was issued recently to cover the period 2015-2019; it consists of five pillars: (i) institutional strengthening; (ii) preventive activities; (iii) effectiveness and efficiency of the judiciary and law enforcement agencies; (iv) public participation and awareness raising measures; (v) coordination and monitoring throughout the national territory. Time and experience will prove how successfully the latter will be implemented in practice. The Agency for Prevention of Corruption and Coordination of the Fight against Corruption (APIK) began its operation in 2011[2]; it is yet to establish a track record in its functioning.

15. In its three preceding Evaluation Rounds, GRECO has issued a total of 56 recommendations to Bosnia and Herzegovina to bolster its capacity to fight corruption; only 27 – less than half – have been implemented. GRECO has reiterated in its different reports that, while the legal framework is mostly in place, its implementation is weak and inconsistent. Bosnia and Herzegovina is currently undergoing a non-compliance procedure in the framework of GRECO's Third Round, which deals with the criminalisation of corruption offences and the transparency of party funding.

16. The prospect of EU accession, which has been a catalyst for reform in other countries in the area, has not proved successful enough in the case of Bosnia and Herzegovina. The talks on candidacy for accession have stalled since the country signed its Stabilisation and Association Agreement in 2008. In November 2014, a British-German initiative was launched to revitalise the long-delayed EU membership process; the initiative has a primarily socio-economic focus, which is closely linked to the EU Compact Growth and Jobs[3]. It was only on 1 June 2015 that the Stabilisation and Association Agreement entered into force; it sets the country on an EU-accession path.

17. According to the 2014 Transparency International report on the perception of corruption, Bosnia and Herzegovina stands at 80th position out of 175 countries (where 1 = least corrupt). Findings from the latest available Transparency International

[1] European Commission's 2015 Report on Bosnia and Herzegovina.
[2] The Law on the Agency for Prevention of Corruption and Coordination of the Fight against Corruption (APIK) was adopted in December 2009. In July 2011, the Management Board of the APIK was established. In 2013, a total of nine civil servants were recruited; today, APIK has 31 employees.
[3] Compact Growth and Jobs (2014): http://ec.europa.eu/europe2020/pdf/compact_en.pdf.

Global Corruption Report Barometer (2013)[4], which is also a perception-based survey carried out by Transparency International, offer a rather gloomy picture: 34% of respondents believe that corruption has significantly increased in the previous two years, 63% are of the opinion that corruption is a serious problem in the country, and 31% assert that the government is very ineffective in the anticorruption struggle. The UN reports that, in 2013, around 5% of the GDP of Bosnia and Herzegovina went on bribes[5].

18. In terms of the focus of the Fourth Evaluation Round, the Global Corruption Report Barometer above-quoted also presents some disquieting figures. The judiciary is widely perceived as corrupt by 65% of respondents; around 16% of respondents who came into contact with the judiciary in the previous year also reported paying a bribe. The Parliament shares similar levels of mistrust as the judiciary: 67% of the citizens surveyed did not trust parliamentarians. The authorities of Bosnia and Herzegovina highlight that these are just perception indexes which are not backed up by hard facts.

19. Given the complexity of structures and laws in the country, this report presents a comprehensive overview of the systems 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 arrangements within the country.

[4] Global Corruption Report Barometer (2013): http://www.transparency.org/gcb2013/country//?country=bosnia_and_herzegovina.
[5] Business, Corruption and Crime in Bosnia and Herzegovina: http://www.unodc.org/documents/data-and-analysis/statistics/corruption/UNODC_BiH_Business_corruption_report_2013.pdf.

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

20. At State level, there is a bi-cameral Parliament (*Skupstina*) consisting of the House of Representatives (42 members elected by popular vote through a proportional system for four-year terms) and the House of Peoples (15 delegates appointed by Entity parliaments). There are 12 women elected in Parliament (10 in the House of Representatives and 2 in the House of Peoples, respectively).

21. The Entities and the Brčko District have their own parliaments (unicameral Assembly of the Republika Srpska - RSNA; bicameral Parliament of the Federation of Bosnia and Herzegovina - PFBiH; and unicameral Assembly of the Brčko District - BDA). In addition, each of the 10 cantons of the FBiH has its own assembly. There are 22 women elected in the PFBiH (22.4%), 13 women in the RSNA (15.6%), and 3 women in the BDA (9.7%).

22. The latest parliamentary elections were held in October 2014. These were the second elections held in violation of the *Sedjić-Finci* judgement of the European Court of Human Rights which condemns the current ethnicity-based restrictions on the right to stand and to vote and constitutes a stumbling block in EU negotiations[6]. The division of political parties along ethnic lines is a feature of the BiH Parliament.

BiH House of Representatives composition (2014 elections)

-	Party for Democratic Action (SDA)	- 10 seats
-	Alliance of Independent Social Democrats (SNSD)	- 6 seats
-	Serbian Democratic Party (SDS)	- 5 seats
-	Democratic Front	- 5 seats
-	Union for a Better Future (SBB)	- 4 seats
-	Coalition of HDZ-HSS-HKDU-HSP- AS BiH-HSP HB	- 4 seats
-	Social Democratic Party (SDP)	- 3 seats
-	Coalition PDP-NDP	- 1 seat
-	Croatian Coalition (HDZ 1990)	- 1 seat
-	BiH Patriotic Party – Sefer Halilovic	- 1 seat
-	Democratic People's Alliance	- 1 seat
-	Party of Democratic Activity	- 1 seat

23. The mandate of an elected representative ends if s/he resigns; if recalled in line with the law; if convicted by final judgment to imprisonment for a period of more than six months; if deprived of legal capacity (declared mentally incompetent); if s/he has cancelled his/her permanent residence in the territory of the electoral unit in which s/he has been recorded as a voter in the Central Voters Register and from which s/he was elected, after the end of a six-month period following the date of cancellation; if, upon appointment, s/he continues to perform activities or functions which are incompatible with the office of elected representative; if s/he loses his/her right to be elected; and finally, in the event of death (Article 1(10), Election Law BiH)[7].

Transparency of the legislative process

24. The information held by Parliament falls under the Freedom of Access to Information Act and is regulated in the respective Rules of Procedure of the Houses. Meetings of Parliament (whether plenary sessions or committee meetings) are invariably

[6] See *Sedjić-Finci v. Bosnia and Herzegovina* (ECtHR, 2009, Applications No. 27996/06 and 34836/06).

[7] The Election Law of Bosnia and Herzegovina regulates the election of the members and the delegates of the Parliamentary Assembly of Bosnia and Herzegovina and of the members of the Presidency of Bosnia and Herzegovina and stipulates the principles governing the elections at all levels of authority in Bosnia and Herzegovina (Article 1(1), Election Law BiH).

open to the public and can be followed live-stream on its website; the only exception being the sessions of the Joint Committee Meeting on Supervision of the work of the Intelligence-Security Agency of BiH.

25. Information on bills proposed, laws adopted and other parliamentary activity (e.g. opinions of experts, public consultation documents, schedules, minutes and resolutions taken at both plenary and committee meetings, information about how individual MPs vote, etc.) is provided upon request, and is, in any case, published on the Parliament's website (www.parlament.ba). All decisions made by Parliament are published in the Official Gazette both in hard copy and electronically. Further steps have been taken to open Parliament to citizens and civil society organisations through group study visits in the framework of the project Open Parliament, which was launched in 2005. The GET was informed during the on-site visit that, since 2005, Parliament has recorded over 18 000 visitors.

26. Regulations regarding consultations in legislative drafting were adopted by the Council of Ministers of BiH in 2006, as subsequently amended[8]. The GET was told that around 90% of the legislative initiatives come from the Government. Prior to submitting the draft to the BiH Council of Ministers, each institution must comply with some minimum consultation obligations, notably, (i) draft legislation must be posted on the institution's website with a platform to submit comments online by interested organisations and individuals, and (ii) a period for comments follows for those interlocutors included in the relevant contact list of the respective institution, which is accessible upon written request, within a deadline no shorter than 21 days (or 30 days if in writing). Enhanced consultation obligations are prescribed for legislation with significant public impact (e.g. effecting a change of legal or economic status, conforming to international standards, environment-related, containing novel provisions, etc.). This enhanced process entails broader consultation – with not only interested organisations, but also the general public – and can be implemented through different channels, e.g. notice or publication of draft legislation in print media, information on radio and TV, public meetings, roundtables, working groups, etc. Exceptions to the aforementioned enhanced consultation obligations may apply, for example, in the event of urgent procedures, unanticipated international obligations, etc. The Council of Ministers is entitled to refuse to place a draft on its agenda if the public consultation procedure is lacking; however, to date, it has never resorted to this possibility. The latest Report on the Implementation of the Rules on Consultations in Legislative Drafting, which was published in March 2014, points at a deficient application of the law by the obliged institutions (with the sole exception of the Ministry of Justice, which has fulfilled most of the obligations arising from the aforementioned Rules and is, therefore, specifically presented as a good model in this area).

27. Once a draft is approved by the Council of Ministers, it is sent to Parliament. The Rules of Procedure of the respective Houses provide procedures for public hearings. That said, the decision on whether to open a public debate or not falls to the discretion of the relevant committee and there is no consistent policy regarding the organisation of public hearings and consultation processes (when commenting on this specific point, the authorities themselves could not agree as to whether these consultations were periodically convened, or rather occurred from time to time). Moreover, the GET was told that, lately, the drafting and adoption process of proposed laws took place under the so-called "urgent procedures" thereby waiving public consultation altogether (and even pre-empting debate in Parliament). A recent, and rather controversial example, related to the latest amendments to the Law on Conflicts of Interest which did not involve proper consultations with relevant institutions (including institutions with a key role in this domain, namely, the Agency for Prevention of Corruption and the Central Election

[8] Unified Rules for legislative drafting in the institutions of BiH (Official Gazette of BiH No. 11/05, 58/14, 60/14 – unofficial consolidated version), Article 75.

Commission), nor did they reach out to the wider public and members of civil society with expertise in conflict of interest issues. This lack of consultation, including discussion in Parliament, triggered sharp criticism from the international community[9]. Other examples of laws which have followed this type of "urgent procedure" are the Election Law and the Freedom of Access to Information Act. The authorities later indicated that these remarks are also of relevance at Entity/BD level. The BiH Anticorruption Strategy and Action Plan 2015-2019 (Strategic Programme 1.11) specifically foresees defining procedures to obtain the opinion of the APIK and other bodies with corruption prevention responsibilities prior to adopting anticorruption legislation.

28. A broad number of initiatives aimed at enhancing institutional capacity and increasing public awareness of, and participation in, the legislative process have been developed in close cooperation with the Organisation for Security and Cooperation in Europe (OSCE) through its Parliamentary Support Project (PSP). The project has now expanded to the three lower level parliaments (RSNA, PFBiH and BDA) to (i) improve their working efficiency by strengthening their technical capacities and human resources; (ii) increase transparency; and (iii) enhance accountability[10]. It emerged from the information collected that the RSNA, PFBiH and BDA have regulations and technical arrangements in place to guarantee transparency in their internal functioning (websites with information on legislative proposals and adopted legal acts, details on composition of committees, agendas, online streaming of plenary sessions, etc.). The same remarks made for the State level Parliament with regard to public consultation procedures apply to Entity/BD levels.

29. At the start, the GET wishes to acknowledge the positive efforts taken so far to facilitate public access to parliamentary work. Much has been done to improve the technical capabilities of Parliament in order to render information easily and timely accessible (e.g. the development of a dedicated website for increased accessibility, the provision of live video streaming of sessions, the installation of the equipment necessary to audio record committee sessions and video record plenary and public debates, the issue of publications, the organisation of study visits, conferences and debates, etc.). The GET positively values the disclosure practices of Parliament, which enable access to proposed and then adopted legislation, and allow for follow-up to committee and plenary sessions. That said, there are several important areas where further improvement is still needed, including regarding public consultation processes. In this connection, the GET heard that decision-making in BiH is not yet fully transparent and problems arise at the level of adoption of regulations (inconsistent practice regarding the holding of public debates or insufficient involvement of interested stakeholders), concealment of influence on decision-making (lobbying), etc. The GET also notes that the issue of transparency in relation to the interaction between parliamentarians and third parties (e.g. lobbies, interest groups, associations, etc.) seeking to influence the legislative process is an area which has not yet been regulated in BiH. The GET was told that there is very little influence which may occur at the stage of legislative voting in Parliament, since most contacts would be made in the preliminary drafting process (as conducted by the responsible ministries) and, once the draft is in Parliament, individual parliamentarians have almost no room for manoeuvre given that they vote according to a party line. The GET is, however, convinced that additional steps must be taken as to the shortcomings identified. The BiH Anticorruption Strategy and Action Plan 2015-2019 (Strategic Programme 4.2) foresees further measures to better enable public participation in anticorruption policy making, including by providing additional information online on the preparation of laws and the relevant decisions to adopt or reject amendments, and establishing clear channels for public participation in the process of adopting and

[9] A letter was co-signed by the Council of Europe, the European Union, the Office of the High Representative, the Organisation for Security and Cooperation in Europe and the Department of State of the United States of America; this letter was sent to Parliament on 9 July 2013.
[10] OSCE extra-budgetary project "Modernising Entity Parliaments and the Brčko District Assembly", funded by the UK Government.

implementing anticorruption activities. Public participation in the process of adopting other legislation can also provide an important element of public oversight of parliamentary activities. **GRECO recommends (i) introducing precise rules defining and facilitating public consultation processes of legislation in Parliament, and assuring effective compliance thereafter; and (ii) enhancing the transparency of the parliamentary process by introducing rules for parliamentarians on how to interact with third parties seeking to influence the legislative process.**

Remuneration and economic benefits

30. The average gross monthly salary in 2013 in BiH was 1 291 KM (660 EUR)[11].

31. MPs receive a salary and have the right to receive benefits and compensation for expenditure in connection with their duties; they do not enjoy any tax exemption. In particular, they receive a basic salary of 3 996 KM (2 042 EUR) per month. They also receive additional allowances, including (i) a lump sum in the amount of 713 KM (364 EUR); if the MP lives more than 80 kilometres away from Sarajevo, s/he is entitled to (ii) a reimbursement for accommodation expenses of up to 476 KM (243 EUR); (iii) a separation allowance of 300 KM (153 EUR); (iv) a travel allowance (amounting to the equivalent of up to eight public transport tickets from the place of residence to Sarajevo). MPs are also covered by a pension scheme. Additionally, MPs are entitled to an "end of term" allowance until they start a new job, but for no longer than a period of 12 months, amounting to the MP's full net salary. The Joint Committee on Administrative Affairs oversees the correct use of the aforementioned allocations. The level of payments made to representatives at Entity/BD level is set at comparable terms.

32. Representatives and delegates' caucuses have their running costs secured through the public funds allocated to the Parliament's budget; this funding cannot be supplemented by external sources. The budget of Parliament is controlled by the State Audit Office.

Ethical principles and rules of conduct

33. In 2006, the Parliament established a Working Group within the Joint Committee on Human Rights (JCHR) to draft a code of conduct for MPs. The Working Group was composed of MPs from both Houses and was assisted by the OSCE. The Code of Conduct was adopted in December 2008, and subsequently amended in 2011, to review sanctions and complaints procedures. An Implementation Package, including detailed information on procedures for complaints, adjudication, sanctions and appeals, was disseminated to all MPs at the time to help raise awareness about the content and benefits of the code. The GET was told that the aforementioned package was also disseminated to the 2014 legislature.

34. The Code includes general ethical principles (e.g. accountability, honesty, integrity, objectivity, openness), rules on decorum and behaviour (as complemented by the Rules of Procedure of the Houses), obligations and bans on conflicts of interest and corruption, etc. The Code is reportedly established as a tool to strengthen trust in and credibility of the institution in so far as citizens are made aware of the conduct they can expect from their elected representatives, as well as to enhance integrity in-house by stressing that members must place, at all times, the public interest ahead of their private interests. The Code is published on the website of Parliament[12].

[11] Source: UNECE Statistical Database, compiled from national and international (OECD, EUROSTAT, CIS) official sources.
[12] https://www.parlament.ba/sadrzaj/about/ustav/docs/default.aspx?id=18817&langTag=sr-SP-Cyrl&pril=b.

35. Implementation and oversight of the Code, as well as enforcement, is entrusted to the JCHR; appeals against the decisions of the JCHR may be lodged before the Joint Committee on Administrative Affairs of Parliament. As to particular enforcement of the Code, no single infringement procedure has ever been launched. Likewise, the issuing of implementing guidelines is a task pending since its initiation in 2008. While the activity of the JCHR on these matters is to be reviewed, at least annually, by the House as a whole, this has never happened to date.

36. The Law on the Agency for Prevention of Corruption and Coordination of the Fight against Corruption, stipulates in Article 10 that the Agency is to define a uniform methodology and guidelines for developing integrity plans in public institutions, and to provide assistance in implementation thereafter[13]. The BiH Anticorruption Strategy and Action Plan 2015-2019 (Strategic Programme 2.6) foresees that all public institutions in BiH have to adopt code of ethics and integrity plans. In 2013, the Secretariat of the BiH Parliament issued its own Anticorruption Action Plan. The main goals of the Action Plan are: (a) to eliminate causes that could lead to corruption (with specific measures for establishing communication channels and procedures for internal reporting of corruption and for establishing e-management mechanisms); (b) to develop education, training and awareness-raising activities, and (c) to increase transparency and regular reporting. The Collegium of the Secretariat of the BiH Parliament is entrusted with the monitoring of the Anticorruption Action Plan and is to submit annual reports on its implementation to the APIK[14].

37. As per Entity/BD parliaments, the BDA issued a Code of Conduct in 2008; its monitoring is entrusted to a parliamentary Commission for the Implementation of the Code of Conduct. The PFBiH and the RSA have not developed internal codes of conduct, but their respective Rules of Procedure include provisions on general standards for ethical conduct in-house, decorum and behaviour requirements, etc.

38. The information gathered by the GET clearly suggests that more has to be done to promote the Code and to monitor and effectively ensure adherence to its principles. While it was envisaged at the time of adoption of the Code, in 2008, that procedures would be developed to better assure the implementation of its provisions, this is something still pending[15]. The GET wishes to acknowledge the constructive and participative environment that preceded the adoption of the Code; at that time, there was an active discussion of ethical issues in the plenary, which subsequently led to the enactment of a set of deontological standards broadly accepted by the legislature. The composition of Parliament has changed since then, and it remains vital to ensure that ethical and integrity matters within each House stay current and at the top of the agenda. Putting values into effect needs communication of core standards, as well as guidance and regular training to raise awareness and to develop skills which will assist in confronting and then resolving ethical dilemmas. The GET encourages parliamentarians to think expansively regarding opportunities to engage in individual and institutional discussions of integrity and ethical issues related to parliamentary conduct. Likewise, adequate channels must be brought into effect to ensure that, if and when misconduct

[13] APIK has made available on its website a toolkit for developing integrity plans, including a Model Integrity Plan, Guidelines for Self-Assessment of Integrity and a Questionnaire for Self-Assessment of Integrity. Additionally, from February to June 2015, APIK has carried out several training events on the matter in cooperation with the Civil Service Agency. To date, APIK has coordinated the process of developing and adopting integrity plans in 60 BiH institutions, two FBiH institutions and one municipal body, thereby giving 63 opinions in total; this coordination process is structured through consultative working meetings with representatives of the institutions concerned, or/and through targeted advice (suggestions, proposals, opinions) of the proposed integrity plans.

[14] The GET was informed, after the on-site evaluation visit, that the BIH Parliament Secretariat had submitted to APIK, in April 2015, an annual report on the implementation of its Anticorruption Action Plan. The Secretariat of the BiH Parliament subsequently issued its Integrity Plan in May 2015.

[15] The GET was told, after the on-site evaluation visit that, on 14 October 2015, the BiH Parliament adopted a new Code of Conduct, which was reportedly aimed at introducing simplified appellate and penalty procedures in order to improve its effectiveness.

occurs, it triggers sanctions. The Code itself establishes three types of sanctions depending on the seriousness of the wrongdoing (written warning, fine and public reprimand with publication in the media); but, as mentioned before, no single case has ever been brought to light. The GET welcomes the recent adoption of internal rules to protect whistle blowers in the Secretariat of the Parliament; this can be a positive measure if they are implemented effectively and do not merely remain words on paper. **GRECO recommends that internal mechanisms be further articulated to promote and enforce the Code of Conduct for parliamentarians and thereby safeguard integrity within the legislature, including by (i) providing tailored guidance, counselling and training regarding ethical, integrity and corruption-prevention related provisions, as well as (ii) developing effective oversight and compliance tools on these critical matters.**

Conflicts of interest

39. The Law on Conflicts of Interest of Governmental Institutions in Bosnia and Herzegovina (hereinafter LCI) was passed in 2002; it has undergone five different amendments since then, the last of which dates from November 2013. One of the key changes in the latest amendment of the LCI refers to the transfer of the mandate for deciding on conflicts of interest from the Central Election Commission to a newly established parliamentary commission, the Commission for Deciding on Conflicts of Interest (see paragraph 67 for further details on this transfer of responsibility).

40. According to the LCI, a conflict of interest is defined as a situation in which the private interests of elected officials, executive officeholders and advisors collide with public duties and call into question the principles of legality, transparency, objectivity and impartiality. In exercising their public duties, elected officials must act legally, efficiently, impartially and honourably, and must adhere to the principles of responsibility, fairness, consciousness, transparency and credibility. They must act in the interest of citizens; accordingly, they cannot put their private interest above the public interest, nor can they avail themselves of any relationship that puts their independence at risk (Article 2, LCI). The GET notes that the definition of "conflict of interest" in the LCI and that included in the Law on APIK are not fully harmonised, with the latter supplementing the definition of the LCI, i.e. (i) when private interests collide with public duties and call into question the required legality, transparency, objectivity and impartiality of public administration; (ii) in situations where private interests are prejudicial or may be prejudicial for public interests.

41. The LCI explicitly bans a series of actions by officials which can lead to subsequent criminal pursuits on corruption grounds, particularly: (a) accepting or demanding a gift/undue advantage for the performance of public duties; (b) receiving an additional remuneration for the performance of public duties; (c) demanding, accepting or receiving a value or service in order to vote or influence a decision; (d) promising an employment or any other right in exchange for a gift or a promise of a gift; (e) clientelism and nepotism; (f) obstructing public inspection; (g) influencing public procurement processes; (h) using privileged information for personal gain; (i) abuse of office (Article 9, LCI).

42. The LCI specifically bans elected officials (including MPs) from voting on any matter that directly affects a private enterprise in which the elected official, or an affiliated person[16], has a financial interest. In such situations, the MP must refrain from voting and announce, in an open session, the reasons for his/her abstention from voting. Infringement of the self-exclusion requirement results in the MP's vote or decision being deemed null and void (Article 7, LCI).

[16] An affiliated person is defined as a relative or a person who has personal, political, economic or other connections with the elected official which could affect the latter's work objectivity.

43. Prior to the latest amendments of the LCI in 2013, the Central Election Commission was competent to implement the LCI not only at State level, but also in FBiH and the BD. The RS has its own conflict of interest regime in place: in 2013, it adopted its own Strategy for Combating Corruption for the period 2013-2017 and established a dedicated corruption prevention body in April 2015. Likewise, prior to the latest amendments, the legislative framework for conflicts of interest in the FBiH and the BD was the LCI; with the latest amendments, the FBiH and the BD are left to develop their own conflict of interest system. During the on-site visit, the GET was told that the BD had developed its own legislation and intended to set in place its own oversight mechanism which would be entrusted to the Brćko Election Commission; the latter has claimed that it has no resources to implement this new set of responsibilities. At the time of the on-site visit, the FBiH (the Entity with the largest number of public officials) had not yet adopted its own legislation on conflicts of interest and had expressed a preference to stay within the designated State oversight structures. The LCI of the RS is undergoing amendment; it currently includes some differences as to its *personae* scope (exclusion of kinship relations by marriage), applicable bans (shorter deadlines for taking over incompatible functions upon expiration of the mandate; higher value of gifts that may be accepted without reporting), independence of oversight body (elected by the RSNA), sanctioning regime (no possibility to contest decision in a court of law).

44. The GET considers that the LCI sets in place a comprehensive framework to prevent conflicts of interest through the prohibition or restriction of certain activities, e.g. bans on gifts, prohibition on serving in management or advisory bodies of public companies and on entering into contracts with State authorities, cooling-off periods, confidentiality duties, etc. (for specific details see below under each particular heading in this section of the report). However, this can mean very little if the enforcement machinery of the law is not fully effective; a recommendation in this decisive domain follows in paragraph 71. The slightly different formulation of the notion of conflict of interest in the LCI and the Law on APIK worries the GET less than the co-existence of non-harmonised regimes in this area. The European Union has also warned the country on this point and while it has called for the identification of dedicated and specialised structures at all levels of government, it has also stressed that if separate structures and regimes coexist, they need to be coupled with appropriate coordination channels and a holistic vision[17]. The GET recalls that, throughout the different evaluation rounds carried out in BiH, GRECO has consistently advocated for harmonisation of legislation in the country. The GET is pleased to note that the BiH Anticorruption Strategy and Action Plan 2015-2019 (Strategic Programme 1.14) sets as one of its priorities the harmonisation of anticorruption legislation within the national territory, and that APIK intends to establish a cross-sectoral task force to achieve this goal. It is also crucial that formal institutional mechanisms of cooperation between APIK and bodies for the prevention of corruption and anti-corruption institutions at the different levels of government be efficiently established; a number of developments to this effect were reported after the on-site visit, as undertaken by APIK in close cooperation with FBiH/BD and cantonal authorities (e.g. joint activities and consultative meetings to establish specialised corruption prevention bodies and to issue integrity plans at the different levels of government[18]). **GRECO recommends harmonising the legislation on conflicts of interest throughout the national territory.**

Prohibition or restriction of certain activities

Gifts

45. MPs are prohibited from accepting gifts or promises of gifts, directly or indirectly, in connection with their duties in so far as these can put at risk their required

[17] European Commission's 2015 Report on Bosnia and Herzegovina.
[18] On 15 October 2015, the Sarajevo Canton adopted its Action Plan for the Fight against Corruption (2015-2019) and designated a Team for Monitoring and Coordinating the Implementation of the Action Plan.

independence. The definition of gift comprises objects, rights, service without remuneration and any other benefit, e.g. catering service, overnight stay, release of debt or obligation, travel expenses or similar services, tickets, works of art, souvenirs, insurance or similar service, medical or similar service provided at a rate which does not correspond to its market price. Acceptance of money, cheques or any other security (e.g. shares, bonds, etc.) is specifically banned.

46. Only gifts of a symbolic nature are acceptable, i.e. gifts valued under 200 KM (102 EUR) received from the same donor in a given year. Any gift that exceeds the afore-mentioned threshold of accepted gifts has to be reported to the Commission for Deciding on Conflicts of Interest, which records it in a central register. If there is any doubt as to the value of the gift, an invoice is to be requested from the donor. The GET was told that rules have been adopted to set in place a procedure for recording, turning over and storing gifts. With only one gift over 200 KM recorded so far, the GET has misgivings as to whether the current rules and registry on gifts are operational in practice. Furthermore, the reports of the Central Election Commission pointed at several problems in the area of the prevention of conflicts of interest for public officials (including parliamentarians, as well as ministers and deputy ministers in the Council of Ministers of BiH, and all other persons who are elected or appointed, not being civil servants); one of them was precisely the various interpretations of the concept of gifts. This is clearly an area, as per the considerations made in paragraph 38, where parliamentarians can benefit from further tailored guidance.

Incompatibilities and accessory activities, post-employment restrictions

47. The principle of exclusive dedication applies. Involvement in a private company under circumstances that create a conflict of interest is banned. Likewise, serving on the steering board, supervisory board, assembly[19], administration or management, or acting in the capacity of an authorised person of a public company is incompatible with the parliamentary function. Serving on the steering board, supervisory board, and performing duties as director of a directorate, or of an Agency for Privatisation, are also incompatible with the parliamentary mandate. MPs must resign from any incompatible offices and duties no later than three days after they have assumed office (Article 4, LCI).

48. The restrictions set out above continue to apply six months after leaving office (Article 5, LCI).

Contracts with State authorities

49. Elected officials, executive office holders and advisors cannot serve on the management board, steering board, supervisory board, executive board, or act in the capacity of an authorised person, for any private company in which the governmental body where s/he serves has invested capital in the four years prior to taking office and during his/her term of office (Article 6, LCI).

50. Elected officials, executive office holders and advisors cannot serve on the management board, steering board, supervisory board, executive board, or act in the capacity of an authorised person, for any private company that contracts, or otherwise does business, with government authorities, at any level, when the value of the contract or the business conducted exceeds 5 000 KM (2 554 EUR) per year (Article 6, LCI).

51. Elected officials cannot act as authorised persons in foundations and associations which are financed from the public budget, at any level of government, in an amount

[19] Shareholders who are the owners of more than 1% of the company's capital are deemed to be members of the assembly.

exceeding 10 000 KM per year (5 108 EUR), or 50 000 KM per year (25 540 EUR) in the case of sporting and cultural foundations/associations. However, elected officials may perform executive duties in foundations and associations that are not financed from the budget at any level of government and are founded pursuant to the Law on Associations and Foundations (Article 11, LCI).

52. Elected officials, executive office holders and advisors cannot enter into a contract with any public company to provide personal services. This ban extends to contracts with private companies awarded a public contract in so far as the value of the contract or business exceeds an annual turnover of 5 000 KM (2 554 EUR). Infringements of the aforementioned provisions result in the contract being deemed null and void (Article 8, LCI).

53. The aforementioned restrictions on incompatibilities, public enterprises and privatisation agencies, government investment in private enterprises, personal service contracts (Articles 4, 5, 6 and 8, LCI) extend to close relatives (Article 8a, LCI)[20]. Close relatives are not, however, covered by the restrictions applicable to involvement in foundations and associations benefiting from the government's budget.

Misuse of confidential information and third party contacts

54. MPs have a duty of confidentiality (Articles 11 and 12, Rules of Procedure). The LCI also bans the use of privileged information about the activities of State bodies for personal gain (Article 9, LCI).

55. Lobbying is not regulated by law in Bosnia and Herzegovina, although it was one of the commitments under the Anticorruption Strategy 2009-2014 to be completed by 2012. The new Anticorruption Strategy and Action Plan 2015-2019 also prioritise the regulation of lobbying, at all levels of government, to be accomplished by 2019 (Strategic Programme 1.10). The issue of politicians being lobbied was not specifically raised as a matter of concern on-site. Rather the main thrust of comments put to the GET focused on the fact that networking relationships do prevail in a country where "everyone knows each other". Although the industry of lobbying *per se* may not yet be fully developed in the country (but may acquire growing significance in the context of the EU accession process and its networking dynamics), the GET has already expressed its viewpoint on how important it is to set in place appropriate procedures in order to instil greater transparency in the interactions of parliamentarians and third parties, i.e. lobbyists and any others seeking to influence the legislative process.

Misuse of public resources

56. In the exercise of their duties, elected officials are bound to use the property and means entrusted to them exclusively for the purposes for which they are intended and in an efficient manner (Article 2, LCI).

Declaration of assets, income, liabilities and interests

57. Since the obligation to file financial reports is set in the LCI, the Commission for Deciding on Conflicts of Interest (hereinafter: CDCI) is responsible for its implementation. Under the LCI (Article 12), elected officials (including MPs), executive officeholders and advisors are required to file financial reports, as provided by the law and Rules and Regulations of the CDCI. The internal Regulations of the CDCI, as adopted in 2014, prescribe that financial reports are to be submitted at the following intervals: (i) within 30 days of assuming office; (ii) on an annual basis, by 31 March for the previous

[20] Close relative means a marital or extramarital partner, child, mother, father, adoptive parent and adopted child (Article 3, LCI).

year; (iii) within 30 days after the expiry of 6 months after the termination of the office (Article 6 of the Regulations); and (iv) upon request of CDCI, officials are obliged to submit extraordinary financial reports in situations concerning decisions on possible conflicts of interest (Article 5 of the Regulations). The form and the content of the financial report is determined by CDCI and comprise the following data: personal details of official and his/her close relatives (name, date and place of birth, address), information on public office held, current income and sources of income (e.g. all incomes, wages, pension, profits, etc.); property in BiH and abroad which exceeds 1 000 KM (511 EUR) (e.g. money, business documentation, shares, bonds, real estate, etc.); liabilities (e.g. debts, disbursements, promissory notes, loans, etc.); and data on other positions (public enterprises, Agency for Privatisation, private company, associations and foundations). They are also required to declare the positions held (in public enterprises, Agency for privatisation and private companies) of their close relatives, but not their assets and income. The Office of the CDCI is given the competence to analyse financial reports according to Article 7(2) of the Rules of Procedure of the CDCI (as adopted in May 2014); the Office of the CDCI has reportedly just started to perform this task in the last quarter of 2015, following the operational arrangements set in motion in September 2015, as described later in this report (see also footnote 25). In this connection, the authorities underscored that the information obtained in these financial reports is solely used for the implementation of the LCI and is not made available to the public in order to protect the privacy of the officials concerned. By contrast, the decision of the CDCI when it finds that an official does indeed have a conflict of interest is public.

58. In addition, pursuant to the Election Law (Article 15) elected representatives must file asset declarations including information on current income and sources of income (e.g. all incomes, wages, profit from property, etc.); property which exceeds 5 000 KM (2 554 EUR) in BiH and abroad (e.g. money, bank accounts, business documentation, shares, bonds, real estate, etc.); liabilities (e.g. debts, disbursements, promissory notes, loans, etc.) Declarations are to be submitted at the beginning (30 days from the day of appointment) and at the end of the mandate (30 days from the termination of the mandate). The asset declarations submitted must also include details on the property situation of close relatives. The notion of close relatives covers the spouse, children and members of the family household whom it is the official's legal obligation to support. The obligation to submit asset declarations also extends to candidates for election. There is no obligation, while in office, to declare any significant change to the value of the income and assets owned by the official. The Central Election Commission files the declarations received, but has no authority to check the accuracy of their contents or to deal with complaints regarding the information contained in the forms. Moreover, the Personal Data Protection Agency stated that the disclosure of personal information in asset declarations infringed upon privacy rights; this decision was subsequently backed by the Court of BiH. The Central Election Commission took a rather strict interpretation of this decision, according to which the content of asset declarations can no longer be published. They can, nevertheless, be accessed on the premises of the Central Election Commission upon request; copies of the original forms submitted cannot be made.

59. It is clear that the current disclosure system for parliamentarians suffers from multiple crucial shortcomings. First, there are two different, and at times overlapping, reporting obligations: one stems from the LCI and the other from the Election Law. The GET considers that the disclosure system for parliamentarians needs to be streamlined; to this effect, it would be worthwhile moving to a harmonisation of the existing requirements for financial disclosure for parliamentarians.

60. Furthermore, the GET notes that there is no obligation for parliamentarians to update financial information when a significant variation in wealth occurs. The LCI contains an obligation to file "regular" financial reports (Article 12, LCI). In addition, according to the Code of Conduct of MPs, financial disclosure records of parliamentarians must be updated when changes occur (Article 16, Code of Conduct MPs). However,

nobody interviewed on-site was able to explain to the GET how the obligations of regular reporting were being complied with in practice.

61. The Central Election Commission's understanding – which was questionable in the GET's view – of the decision issued by the Personal Data Agency (as subsequently ratified by a court of law), restrains *de facto* public access to disclosure forms, which are no longer made easily available online. Granted that they can be accessed upon request, but this implies going over to the Central Election Commission in person to view the forms. Since the forms cannot be photocopied, the GET was told that journalists end up transcribing data by hand and that when these data are then disclosed in the media, their value and legitimacy are often brought into question. The GET can well understand the privacy (and security) concerns arising from the personal information included in the forms (address, ID, other personal identification data). However, the Central Election Commission could well have opted to exclude this information from the forms (e.g. without applicants' identification numbers nor addresses of the property) when disclosing to the public rather than not publishing them any longer. The claims of technical difficulties for the Central Election Commission regarding ways to omit personal data in the submitted declarations seem rather unconvincing to the GET. In this connection, the GET refers to the experience developed by GRECO member States in this area and the common practice of publishing asset declarations of parliamentarians for transparency and accountability purposes. It is commonly recognised that, in comparison with other categories of public officials, political representatives should be subject to more stringent accountability and transparency standards and might expect less privacy. GRECO has reiterated the need to strike a reasonable balance between the interests of public disclosure and privacy rights of the declarant. There are ways to protect the confidentiality of certain data for privacy and security concerns, but at the same time provide for public accessibility of key financial information of parliamentarians which could warn of conflicts of interest risks. In this light, ensuring public access to MPs' financial declarations, e.g. through their timely publication on the Parliament's website or that of a relevant oversight body would seem appropriate and justified. **GRECO recommends (i) unifying the applicable requirements regarding financial disclosure in one single declaration form; (ii) introducing a duty to report the property of close relatives and to provide an update in the event of significant change in the information to be reported in the course of the legislative mandate; and (iii) ensuring the publication of and easy access to financial information, with due regard to the privacy and security of parliamentarians and their close relatives subject to a reporting obligation.**

62. The GET is also gravely concerned about the lack of control of the accuracy of asset declarations when, according to the provisions of the Election Law, the Central Election Commission can only act as a mere depositary, with no authority to carry out a material check of their content. It is not clear how the newly established Commission for Deciding on Conflicts of Interest will perform checks from now on, including with respect to the authority and the means it would have for doing so. This state of affairs clearly hampers the effective deterrent function of the system in practice. In the GET's view, in order to effectively detect irregularities, it is not only necessary to have information collected, but also to ensure that channels exist for checking the accuracy of data submitted, including through random verifications, as well as establishing cooperation routines with other authorities responsible for keeping financial and property information (e.g. tax inspectorate, cadastre). This situation is all the more troubling since, as mentioned before, asset declarations/financial reports are not made public, thus limiting their preventive impact where integrity is concerned and the possibilities for social control through transparency. The absence of operational mechanisms allowing asset declarations/financial reports to be effectively reviewed for both repressive (detection of irregularities) and preventive (as a basis for counselling on ways in which to avoid potential conflicts of interest) purposes is certainly a crucial weakness in the existing conflict of interest regime. It is to be recalled that the shortcomings referred to in this

paragraph were already at the heart of GRECO's concerns in its Second Evaluation Round Report on BiH and the Compliance Reports that followed thereafter; the implementation of the recommendation issued in this respect remains pending[21]. This state of affairs was also recognised as problematic by the Council of Europe Venice Commission in its Opinion No. 560/2009 relating to conflict of interest legislation in BiH[22].

63. Finally, although the LCI establishes an obligation to file financial reports for elected officials, it does not include any sanction for failure to comply with this requirement. Pursuant to the Election Law, non-submission and late submission of asset declarations is punishable by fines ranging from 200 to 3 000 KM (102 to 1 534 EUR). There is no penalty for incorrect/false reporting, other than those in criminal law. In light of the foregoing considerations, **GRECO recommends (i) coupling the disclosure system with an effective control mechanism (including random verifications) and (ii) introducing appropriate sanctions for false reporting.**

Supervision and enforcement

64. With the latest amendments of the LCI, supervision over conflicts of interest rules lies mainly with the Commission for Deciding on Conflicts of Interest (Article 17, LCI). It is comprised of nine members: three members from the House of Representatives and three members from the House of Peoples (at least one third of whom must comprise delegates from opposition parties), the Director and two Deputy Directors of the APIK. CDCI members serve for a four-year term which coincides with the mandate of Parliament; they can be reappointed once. Decisions are taken by majority vote. The CDCI has its own internal Rules of Procedure regulating its decision-making procedures, register maintenance and other implementation requirements of the LCI; by-laws were adopted in May 2014. For all other operational questions (e.g. recruitment of personnel) the Rulebook on the Internal Organisation of the APIK, along with the relevant regulations on civil servants, apply. The CDCI is to submit an annual report to Parliament on its activities. The GET was told that since the CDCI only started to operate in 2014, but was inactive from October 2014 to April 2015 (end of mandate of members of the CDCI because of closure of legislature and calling of new elections), it has not yet released any annual report. At the time of the on-site visit, the Commission members had met twice following its new composition.

65. The CDCI may investigate ex-officio or upon an individual complaint, which must be credible, reasonable and non-anonymous. It must give a written submission on its decision on whether or not to investigate. If the CDCI discusses and decides on the conflict of interest of one of its members, that member cannot take part in the discussion and decision-making of the case at stake. When conducting an investigation, the CDCI's role is to determine whether the official act or omission constitutes a violation of the LCI provisions and to state the reasons for its decisions. The CDCI is authorised to determine the facts in a case and to collect information and evidence from other State bodies, which are obliged to cooperate as requested. The procedure before the CDCI is public (except for the voting process). The official being investigated is informed of on-going procedures and provided with opportunities to remedy the situation giving rise to a conflict of interest. The CDCI is required to make a final decision within 15 days from the day of completion of the fact finding procedure and presentation of evidence. The official has 30 days to remove the reasons giving rise to a conflict of interest. The final decision must be publicly announced. The decisions of the CDCI cannot be appealed, but it is possible to initiate a lawsuit through an administrative procedure.

66. The CDCI decides on administrative sanctions for non-compliance with conflict of interest rules. More particularly, the CDCI can impose the suspension of a portion of

[21] GRECO Second Evaluation Round Report, Compliance Report and Addendum on Bosnia and Herzegovina
[22] Opinion No. 560/2009 on the Draft Law on the Prevention of Conflict of Interest in the Institutions of Bosnia and Herzegovina, CDL-AD(2010)018 of 4 June 2010.

salary payment (a fine, Article 20, LCI), from 50% to 30% of the net monthly salary depending on the seriousness of the offence[23]. Suspension of salary is limited to a maximum period of 12 months (except when the CDCI submits a proposal for removal or calls an official to resign, the sanction is not effected as proposed, or until either the concerned official puts an end to the conflict of interest or s/he leaves office), and it cannot exceed one-half of the net monthly salary. The CDCI can submit a proposal for removal or call an official to resign if the official fails to remove the reasons leading to a conflict of interest (Article 20a, LCI). The responsible authority under which the official serves may nevertheless reject the CDCI's call, but it is in any event obliged to state the reasons for refusal. The decision of the CDCI to call for resignation must be published in the Official Gazette of BiH and in the CDCI's website. The aforementioned sanctions may be imposed for up to four years following the alleged violation. Since the enactment of the amended LCI, there have been no cases at State level or in BD; in RS, 116 cases were processed and in 10 cases a conflict of interest was found[24]. Moreover, the authorities expressed concern about the effective application of the CDCI sanctioning regime on parliamentarians, more particularly, regarding a removal decision.

67. The GET is of the firm view that the latest amendments introduced to the LCI water down the spirit of the law and significantly weaken its deterrent function. In 2002, the UN High Representative imposed tight limitations for elected officials to preserve the public nature of the parliamentary mandate and the principle of exclusive dedication. This goal remains empty words if not coupled with an effective oversight and enforcement system. At present, by virtue of the amended LCI, responsibility for conflicts of interest is transferred to a newly created body, the CDCI – a role previously carried out by the Central Election Commission. Expert, administrative and technical tasks are to be carried out by the Office of the CDCI (Article 17(7) LCI), which is physically placed within the APIK, and draws on the expertise of eight officials previously working at the Department for Implementation of the LCI of the Central Election Commission. At the time of the on-site visit concrete operational arrangements for this transfer were awaiting; no transitional arrangements had been put in place until the transfer was effective and this had meant in practice a vacuum of over one and a half years in implementation. The authorities reported that the transfer took place in the second half of 2015[25]. As to the detailed description of the responsibilities of the Commission, these are not clearly spelled out in the law, other than saying, in a general manner, that it is responsible of implementing the LCI (Article 17(1) LCI). The APIK is also entrusted with key responsibilities in this particular area, including monitoring instances of conflicts of interests, providing recommendations for the strategy of managing conflicts of interest on a case-by-case basis, issuing guidelines for the policy of managing conflicts of interest in Government institutions; prescribing a uniform methodology for collecting data on the financial situation of public officials; and coordinating with competent authorities the data delivered in order to detect instances of corrupt practices, and taking the necessary measures, as provided by law (Article 10 Law on APIK, indents d), e) and f)). It was not clear to the GET how the APIK and the Commission will operate, and not overlap, in the future. The authorities stressed that, in their view, there was a clear difference between the tasks of the APIK and those of the CDCI, the former being responsible for policy orientation and the latter being entrusted with more operational aspects of the LCI.

68. Moreover, the composition of the newly created CDCI raises serious doubts as to its adequacy. The GET can only share the concerns expressed by the international

[23] Suspension of up to 50% of the salary may be imposed when infringement of Articles 4 (incompatibilities), 7 (prohibition on acting in conflict of interest), 8 (personal service contracts), 9 (prohibition on acting), 10 (accepting gifts) or 11 (officials exercising tasks in foundations and associations) occurs. Suspension of up to 30% of the salary may be imposed when infringement of Articles 5 (public enterprises and privatisation agencies), 6 (Government investment in private companies) and 8a (involvement of close relatives) occurs.
[24] European Commission's 2015 Report on Bosnia and Herzegovina.
[25] After the on-site visit, on 1 September 2015 APIK officially took over the Department for the Implementation of the LCI from the Central Election Commission. On 1 November 2015 the Office of the CDCI was placed in the premises of the APIK.

community and the NGO sector regarding the predominantly political composition of the CDCI and the risks posed to the transparency, independence and impartiality of its functioning, as politicians will now be in charge of scrutinising the conduct of their own party members and colleagues. This would allow the leaking of direct influence of political parties in decision-making procedures of the CDCI. In its latest report on Bosnia and Herzegovina, the European Commission stresses that the latest amendments to the LCI are not in line with international standards because there are no independent bodies in charge of processing conflict of interest cases[26]. The GET also has misgivings regarding the timeliness of decision-making owing to periods of inactivity of the CDCI (e.g. parliamentary recess, unexpected delays in forming the Parliament, etc.) or inability to reach the required quorum. Moreover, the CDCI is to make its decisions by majority vote of all members, which implies the votes of at least two members from each constituent people (Article 17a(2), LCI); this means, in practice, that a seven to two vote would not be enough to pass a decision if the two votes come from the same constituent people. Last but not least, the fact that the Director/Deputy Director of the APIK are members of the CDCI may trigger the unintended effect of risking introducing political considerations into the appointment processes of those key positions.

69. While the CDCI is mainly political in nature, the APIK is called upon to complement the system by purposely adding a technical element to it. The Director and two Deputy Directors of the APIK are members of the CDCI; as mentioned before, the Office of the CDCI, which is composed of former personnel of the Central Election Commission and which is to assist the CDCI with expert, technical and administrative tasks derived from the LCI, is placed in the premises of the APIK. The GET notes that the APIK, although established by law as an autonomous body, lacks decision-making power as to the definition of its responsibilities (for example, as mentioned before, the Agency was not involved at all in the drafting process of the amendments concerning the LCI), budget and working procedures, which all seem to be highly dependent on the Council of Ministers. It took some time until a decision was made by the Council of Ministers regarding the rules of procedure governing the transfer of responsibilities from the Central Election Commission to the APIK; the Rulebook on the Internal Organisation of the APIK was finally adopted on 27 July 2015. The GET is of the view that this state of affairs can only create uncertainty for the APIK; it further considers that it would be more appropriate that the APIK be given full oversight responsibility regarding the conflict of interest regime – the credibility of the entire framework for the prevention of conflicts of interest being at stake. Not a single interlocutor met by the GET understood the reasoning underlying the recent institutional changes, and the CDCI itself recognised that many of the challenges identified by the GET were indeed posing problems in practice now, and will pose problems in the future, as the law is being implemented.

70. Furthermore, the GET has reservations regarding the sanctioning regime in the LCI. Firstly, the available span of fines appears to be low when significant material gain occurs. Secondly, while there is an upper threshold of the fine amounting to either 30% or 50% of the salary depending on the seriousness of the infringement, there is no lower limit. Therefore, the CDCI may well decide on just a fine amounting to a very small percentage of the salary to the detriment of an effective deterrent and dissuasive system. Thirdly, with a limitation period of four years for this type of offence, a sanction consisting of a reduction in/suspension of salary means nothing in practice: once the parliamentarian in question is out of Parliament there is no salary to freeze and the law does not provide for any other sanctioning option such as, for example, a fine of an equivalent value to that of the salary that would have been earned if the parliamentarian were still in office.

71. In light of the foregoing considerations, **GRECO recommends that the advisory, supervisory and enforcement regime regarding conflicts of interest be**

[26] European Commission's 2015 Report on Bosnia and Herzegovina.

completely reviewed and properly articulated, notably, by ensuring its independence and timeliness, and by making it effective through a system of appropriate sanctions.

Immunities

72. MPs benefit from non-criminal and non-civil liability for actions taken in the course of duty. In 2002, the Office of the High Representative enacted the Law on Immunity which became applicable to the entire territory of Bosnia and Herzegovina. Decisions on immunity are to be taken by the competent court of law. None of the interlocutors met raised the issue of immunity as problematic. They were further of the opinion that the immunity legislative framework, as imposed by the OHR (and now included in the recent 2015 amendments to the Rules of Procedure of the respective Chambers of Parliament), had important guarantees in place to ensure that it did not function as a waiver to criminal liability. The GET was told that the immunity waiver has never been resorted to by a parliamentarian; as a matter of fact, in the last eight years there have been no corruption-related cases involving a BiH MP.

Advice, training and awareness

73. At the start of a new session of Parliament, MPs are orally informed of their duty to adhere to integrity principles and to prevent conflicts of interest from occurring. All relevant rulebooks are handed to them.

74. Parliamentarians can obtain advice on ethical matters from the Board of the Secretariat, the House secretaries, the relevant parliamentary services, and especially from the Joint Committee on Human Rights (JCHR).

75. The GET believes that more could be done to raise MP's awareness about conflicts of interest and about integrity standards more generally, and to further explain to them how the rules apply in practice; concrete recommendations to this aim have already been made in this report. Likewise, it is crucial to effectively convey to the public the reforms and steps being taken by Parliament itself to prevent corruption among its own ranks and to deliver an unequivocal message of zero tolerance to corruption in the legislative.

76. To facilitate the application of uniform integrity standards across the existing legislatures in the national territory, **GRECO recommends that the respective parliaments of the Republika Srpska, the Federation of Bosnia and Herzegovina and Brčko District of Bosnia and Herzegovina be invited, similarly, to take action in accordance with the recommendations issued in this section of the report.** The responsible authorities may wish to keep GRECO abreast of any developments in this respect.

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

77. There are four separate judicial systems in Bosnia and Herzegovina (BiH), with no functional links between them. At State level, the judicial system consists of the Constitutional Court of BiH and the Court of BiH. The Court of BiH has both a first instance jurisdiction in criminal and administrative matters and an appellate jurisdiction against the decisions taken by its first instance divisions. It has no jurisdiction over the decisions adopted by the Supreme Court of the Entities. Within its criminal jurisdiction, the Court of BiH is competent to deal with criminal offences laid down in the Criminal Code and the laws of BiH, as well as those laid down in the criminal codes of the Entities and Brčko District (BD), when an important interest of the state is at stake. In administrative matters, the Court of BiH decides on disputes concerning decisions issued by BiH institutions and other organisations in charge of public functions, as well as property disputes between the State, the Entities and BD; certain conflicts of jurisdiction and violations of the electoral law.

78. The Entities and BD also have their own judicial systems. In the Federation of Bosnia and Herzegovina (FBiH), there is a Constitutional Court, a Supreme Court, ten cantonal and 32 municipal courts. The Republika Srspska (RS) has courts of both general and special jurisdiction: the general system consists of the Supreme Court of RS, five district courts and 19 basic courts. The courts of special jurisdiction, that were established in 2008, are the Higher Commercial Court and five district commercial courts. Finally, in the BD, there is an Appellate and a Basic Court.

79. The basic/municipal courts are courts of first instance in criminal cases that carry a penalty of up to ten years imprisonment, civil cases, non-contentious proceedings, misdemeanour cases, enforcement proceedings, land registry (except in RS) and registration of legal entities. The Basic Court of BD is competent for all criminal cases. The district/cantonal courts deal in first instance with complex criminal offences and administrative disputes. They also hear the appeals against civil, criminal and misdemeanour decisions made by lower courts. The commercial courts in RS decide in first instance in civil and non-contentious matters relating to transactions of goods, services, property, securities etc., as well as with bankruptcy, intellectual property rights and other matters of a financial/economic nature. Their decisions may be appealed to the Higher Commercial Court. The Entities' Supreme Courts and the Appellate Court of BD decide on regular legal remedies against the decisions of the cantonal, district and commercial courts, as well as extraordinary legal remedies. Within the Supreme Court of the RS, there is a Special Panel for Organised and the Most Severe Forms of Economic Crime, that hears appeals against decisions of the Special Department for Organised and Most Severe Economic Crime. Within the Supreme Court of the FBiH, a Special Department[27] was created by the 2014 Law on Combating Corruption and Organised Crime, with first instance jurisdiction for offences related to organised crime, terrorism as well as bribery when committed by an elected or appointed official or involving amounts exceeding 100 000 KM (51 129 EUR) and criminal offences against the judiciary. Appeals against decisions of this Department are to be heard by a panel of the FBiH Supreme Court.

80. The judiciary consists of professional career judges and prosecutors. They belong to a single professional *corpus*, governed by the High Judicial and Prosecutorial Council of BiH and are, to a large extent, governed by the same rules, including those relating to recruitment, career, integrity and disciplinary accountability. *As a consequence of the common system of judges and prosecutors in Bosnia and Herzegovina, this chapter*

[27] This department is not operational, however, as material resources for its functioning have not yet been provided.

(Chapter IV), dealing with judges also refers to prosecutors, wherever useful and contains recommendations addressed to both judges and prosecutors. Cross references to the current chapter are made in the subsequent chapter (Chapter V) dealing with prosecutors.

81. There are 987 professional judges in Bosnia and Herzegovina, of whom 360 are men and 627 are women. In addition, there are 98 reserve judges who are appointed on a temporary basis (for up to two years) and whose role is to assist courts in reducing backlogs and replacing judges on prolonged absence. These judges enjoy the same status and are subject to the same rules as regular judges. The current judicial systems do not foresee the participation of lay judges anymore, but due to a backlog of cases, there are still 322 lay judges who hear and decide on criminal cases together with professional judges, under previous criminal procedural laws that required their participation.

Judicial independence

82. The BiH Constitution does not contain provisions on judicial independence, nor is it explicitly stated in the Law of Courts of BiH. The principle of the independence of courts is enshrined in the Entities' constitutions and laws on courts, as well as in the statutory and regulatory framework of BD (Articles 121 and 121a, RS Constitution, Section I Article 4, FBiH Constitution, Article 66, Statute of BD). The respective laws on courts provide that the courts are autonomous and independent from the legislative and executive authorities and that no one shall affect the independence and impartiality of a judge in deciding the cases assigned to him/her (Article 3, Laws on Courts of FBIH, RS and BD).

83. The GET is concerned that the complexity of the court systems and threats to judicial independence are deeply affecting the efficiency of justice in Bosnia and Herzegovina and are fuelling negative perceptions of the judiciary. The judicial system ought to be designed to serve the citizens of the country rather than to present an obstacle to access to justice. The current variety of court arrangements and their complexity is inevitably wasteful of all the resources that are available: financial, judicial, administrative support and legislative drafting are just a few aspects where simplification would enable far more to be achieved within resources available. The GET heard of instances where cases were inefficiently passed around the system (for further details, see paragraph 143). Public suspicion that some of this delay is due to deliberate interference with the progress of certain cases is difficult to counteract when the judicial systems lack coherence and this contributes to undermining public confidence. The rule of law needs to be seen to work through an effective and respected court system; consequences and sanctions must effectively deter from illegal activity and be seen to be enforced. The GET was concerned to note that this is not currently the case with non-enforcement of judicial decisions, in particular key decisions of the European Court of Human Rights and the BiH Constitutional Court, excessive length of proceedings and a large backlog of cases. Greater transparency and simplification of the complex court system would no doubt assist in providing an easier to use and more understandable system for all courts users, enabling the citizens the courts serve to be more confident in them. The authorities highlighted that the Strategy for the Fight against Corruption 2015-2019 foresees the publication of statistical data regarding corruption-related investigations, indictments and verdicts. This is a positive measure, but more clearly needs to be done to promote transparency throughout the justice systems.

84. The issue of respect for judicial independence is also a considerable challenge and its importance not being given due weight is particularly apparent in the tension between court authority and legislative and executive powers. Flaws in the independence and impartiality of the judiciary, notably through political interference and pressure on issues relating to processing certain criminal cases, have already been highlighted by GRECO in

its First Round Evaluation Report and more recent reports confirm their persistence[28]. In its latest report on Bosnia and Herzegovina, the European Commission stresses in particular that there are no formal procedures, carrying penalties, that offer legal or constitutional protection against undue influence or threats to judicial independence, resulting in unlawful and politically motivated attacks against the judiciary. Independence and efficiency of justice are also affected by lack of certainty about available resources and inefficiencies of the current budgetary processes contribute to this uncertainty. Budgetary sources are fragmented, with up to 14 institutions involved in its planning. At best this is inefficient and does not ensure that the available budget is targeted appropriately to meet needs equally across the system. At worst it may mask attempts by governments and parliaments to inappropriately control and interfere with the judicial process. The GET repeatedly heard that a number of positions for regular and reserve judges, as well as prosecutors, were vacant across the country[29]. These vacancies seem to affect certain courts and prosecutor's offices disproportionately, notably in Sarajevo where the number of cases is the highest in the country. In the GET's view, pending a streamlining of budgetary responsibilities which is highly desirable, an analysis of the issue is necessary, in order to ensure a more efficient use of available staff and resources across the judicial system. A recommendation to this effect appears in paragraph 105. The GET is also convinced that enshrining judicial independence at the highest possible level would underline its crucial importance and put the judicial system in a better position to address some of the interference it faces. It encourages therefore the authorities to enshrine it in the Constitution of BiH at a suitable opportunity.

The High Judicial and Prosecutorial Council

85. The High Judicial and Prosecutorial Council of BiH (HJPC) has a key role in managing the judicial and prosecutorial professions and ensuring the independence of the judiciary in Bosnia and Herzegovina. It is an autonomous and independent body, which was first established in 2004 when the Entities agreed to transfer certain responsibilities for the establishment of an independent judicial system in BiH to the State, in order to unify jurisdiction and strengthen the independence of the judiciary. The HJPC is composed of 15 members, among whom five or six are judges elected by their peers in the four systems of courts, five or six are prosecutors elected by their peers[30], two are attorneys elected by the Bar associations of the Entities and two are other lay members elected by the BiH House of Representatives and the BiH Council of Ministers respectively. Membership of the HJPC has to generally reflect the ethnic composition and the gender balance of BiH and members have to be persons of high moral standing and integrity, with a reputation for efficiency, competence and integrity. The HJPC is competent for the appointment and training of judges and prosecutors, as well as for conducting disciplinary proceedings against the holders of judicial office; it establishes the criteria for the evaluation of judges and prosecutors, publishes codes of ethics, decides on incompatibilities and has certain budgetary, advisory, administrative and IT tasks relating to the judiciary (Article 17, Law on the HJPC).

86. The GET acknowledges that the HJPC has been having a positive influence in strengthening the independence and professionalism of the judiciary. However, the progress made over the past ten years is fragile and the HJPC is currently subject to numerous criticisms and concerns from various parts of society. Concerns expressed to the GET pertained to the HJPC's composition, the appointment procedures for its members, their accountability and the HJPC's limited capacity to address the complex issues with which the judicial system as a whole is confronted, including integrity issues. The HJPC itself faces problems related to the absence of a constitutional basis, political

[28] GRECO First Evaluation Round Report on Bosnia and Herzegovina and European Commission's 2015 Progress Report on Bosnia and Herzegovina.
[29] According to figures of the BiH Ministry of Justice, only 1 350 of the 1 419 judicial positions were staffed in December 2014.
[30] The Judicial Commission of BD elects a judge or a prosecutor.

pressure and attempts to undermine its independence, including through interference of the executive and legislative powers in the appointment of its members. These concerns are acknowledged by the HJPC itself and other competent authorities and amendments to the Law on the HJPC have been under preparation since 2013 to address some of them, under close scrutiny of the international community[31].

87. More specifically, as regards the composition of the HJPC, its unitary structure has been criticised as it implies that the prosecutors and lay members can have a majority vote on the appointment and disciplinary proceedings regarding judges. Conversely, a majority of judges and lay members can vote on the appointment and disciplinary proceedings regarding prosecutors. Draft amendments to the Law on the HJPC foresee the establishment of two separate sub-councils, one dealing with appointments and disciplinary procedures regarding judges and the other for prosecutors, while maintaining a common platform for both professions to decide on common problems of the judicial system as a whole. The GET supports this solution, which would preserve the unitary design of the HJPC while ensuring that judges and prosecutors are selected by a body composed in majority of their peers.

88. Concerns were also raised about attorneys being lay members in the Council and regarding the politicisation of the appointment procedures for the members of the HJPC, through the involvement of both the legislative and executive branches. The GET wishes to stress that it is not unusual and is, in fact, advisable that a judicial council include also a number of non-judicial members, so as to create a link between the judiciary and the rest of society. However, it agrees that only including judges, prosecutors and attorneys in a body which is competent to decide on appointments, dismissals and disciplinary liability of judges and prosecutors may not be advisable in a country like Bosnia and Herzegovina, in which there is considerable public mistrust of the judiciary and its independence, as it may fuel perceptions of collusion across the judicial system. Broadening the composition of the HJPC to other lay members, such as members of relevant NGOs and/or academics instead of or in addition to attorneys is an idea worth exploring. It is important, however, to ensure that their professional qualities and impartiality can be objectively endorsed by objective and measurable selection criteria.

89. Furthermore, most of the GET's interlocutors expressed the view that the judiciary as a whole is perceived as generally politicised, due on the one hand to personal links of some of its members with politicians and on the other hand, due to the perception that high profile investigations and cases are either lacking or are opened and closed based on political motivations. Members of the HJPC are not exempt from such suspicions. In this context, the GET is deeply worried by the draft amendments of the law on the HJPC that would entrust the Parliamentary Assembly of BiH with the prerogative to appoint the judicial and prosecutorial members of the HJPC, as well as its president and vice-president, upon presentation of a short list of candidates nominated by groups of courts or prosecution offices. This model would bring an over-exposure of the HJPC to the legislative power and would deviate from international standards that require that judicial members be effectively chosen by their peers[32].

90. Finally, the GET notes that the HJPC has wide-ranging powers over the career of judges and prosecutors, ranging from their appointment to their promotion, transfer, ethics and disciplinary liability. It is therefore possible for the same HJPC members to be involved in different aspects of a judge's or a prosecutor's professional life and this may well create conflicts of interests and be detrimental to their individual independence. Consequently, it is important to provide a proper separation of tasks of HJPC members, as highlighted by Opinion No. 10(2007) of the Consultative Council of European Judges

[31] See in particular http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)014-e
[32] Recommendation Rec(2010)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities.

(CCJE) on the Council for the Judiciary[33]. Furthermore, decisions of the HJPC on appointment of judges and prosecutors are not subject to appeal. As to disciplinary liability of judicial office holders, decisions of the Disciplinary Panels are subject to appeal to the plenary of the HJPC and decisions on dismissal may be appealed to the Court of BiH, but only for an alleged violation of the disciplinary procedure or an erroneous application of the law. A genuinely external review is therefore lacking for many decisions in disciplinary matters.

91. An opportunity exists in the establishment of the HJPC as being responsible for all the judiciary, to unify the way the judicial system operates into a coherent whole. However, confidence in its ability to implement the sort of change required will be damaged if the HJPC does not lead by example and operate by the highest standards of independence and ethics (see also in this respect paragraph 111). In view of the foregoing, **GRECO recommends that determined legislative and operational measures be taken to strengthen the High Judicial and Prosecutorial Council's role in protecting the holders of judicial and prosecutorial offices from undue influences – both real and perceived – including by (i) providing for separate judicial and prosecutorial sub-councils; and (ii) avoiding an over-concentration of powers in the same hands concerning the different functions to be performed by members of the High Judicial and Prosecutorial Council; and (iii) ensuring that decisions of the High Judicial and Prosecutorial Council on the appointment, promotion and disciplinary liability of judges and prosecutors are subject to appeal before a court.** In this connection, it is crucial for judicial independence to ensure that a majority of members of the HJPC, as the key institution in charge of managing the career of judicial office holders, remain elected by their peers as is the case presently.

Recruitment, career and conditions of service

92. With the exception of the reserve judges mentioned above, judges in BiH have life tenure until the retirement age of 70. All judges in BiH, including reserve judges and lay judges, are appointed and dismissed by the HJPC, with the exception of judges in the Constitutional Courts of FBiH and RS. Regarding these two categories of judges, the HJPC proposes candidates for election/appointment by the relevant authorities (Article 17, Law on the HJPC). A judge can be dismissed only as a consequence of disciplinary proceedings or if s/he has permanently lost the working capacity to perform his/her functions (Article 88, Law on the HJPC). Decisions on dismissal may be appealed before the Court of BiH. Court presidents are appointed for a fixed term, renewable, at the end of which they continue to work in the same court as judges.

93. Appointment to any position of judge/court president – as well as any position of prosecutor/chief prosecutor – in BiH requires the publication of a vacancy announcement in three daily newspapers and on the website of the HJPC. Basic requirements for appointment at a first instance court include passing the bar examination and having a minimum of three years' legal experience. Additional conditions of working experience are required for appointment to higher positions within the judiciary. Judges are selected by sub-committees of the HJPC (appointed by the president of the Council, they are composed of three to five members of the HJPC reflecting the ethnic composition of the country or the Entity in which the appointment is to take place) or sub-committees appointed by the Entities' sub-councils. Criteria to be taken into account include professional expertise, legal analysis skills, ability to perform the functions responsibly and impartially based on the candidate's previous work experience, professional impartiality and reputation, conduct outside of work, academic publications, training, and communication skills, as well as managerial experience and qualification for positions of

[33] Opinion No.10 (2007) of the Consultative Council for European Judges on the Council for the Judiciary at the service of society

court president (Article 46 of the Rules of Procedure of the HJPC). Constitutional provisions regulating the equal representation of constituent peoples and others, as well as gender balance, are also to be taken into account in appointment decisions (Article 43, Law on the HJPC). As explained above, decisions on appointment are not subject to appeal, but the HJPC may annul an appointment if, before the appointed judge takes up his/her duties, it receives information which would have prevented the appointment from taking place. In such a case, the date of commencement of duty of the appointed judge may be postponed in order to conduct an investigation.

94. The appointment system, as well as the quality of the appointees is an issue followed with great interest in BiH. Many of the criticisms heard by the GET concerning the lack of a track record of successfully prosecuted cases and convictions, decisions perceived as politically motivated, poor prioritisation of cases and length of procedures, may be linked to shortcomings in the appointment and promotion system. This system is the same for judges and prosecutors and the GET heard strong criticism regarding its superficiality, lack of transparency and vulnerability to personal and political links. The GET heard that this often results in inexperienced judges and prosecutors being called on to work on complex cases. This inexperience can only be partially alleviated by training[34], as there is no judicial academy in Bosnia and Herzegovina that could adequately prepare the future candidates to judicial positions. As explained above, according to current legislation, candidates for entry positions of judges and prosecutors are subject to an interview before the competent sub-committee of the HJPC. This interview was said to leave significant possibilities for subjectivity – one of the GET's interlocutors called it "a mere conversation". Written exams are only a possibility, not an obligation. Promotion to higher positions within the judicial system is based on the results of the candidates' performance appraisals for the past three years, as well as on an interview. The performance appraisal system has its own flaws, as will be explored further below. Further criticism was raised regarding the initial recruitment and promotion process particularly that not much emphasis appears to be placed on questions of ethics and integrity in the candidates' examination. Moreover, the ethnicity criterion that has to be taken into account in appointments to judicial positions further complicates the process and is widely recognised as taking precedence over professional competence in some appointment decisions.

95. The GET notes that efforts have been made by the HJPC in recent practice to increase the objectivity and transparency of the process. Candidates for beginning-of-career posts have to undergo a written exam containing 100 questions extracted from a data-base. They also have to draft a judgment or an indictment. For candidates to more senior positions, the interview has been standardised with questions from the data-base, to test candidates' legal analytical skills, integrity, responsibility and managerial skills. It only accounts for 20% of the candidates' final ranking, the remaining 80% being based on performance appraisals. Following the tests, candidates' ranking is calculated by a dedicated software. Unfortunately, the ethnicity criterion still allows the final appointment to override the results of the tests and the GET even heard that some candidates indicated a false ethnicity in order to receive preference. The draft amendments to the Law on the HJPC mentioned earlier in this report foresee the inclusion of a compulsory written exam in the appointment procedure. In the GET's view, this provision needs to be adopted as a matter of priority. As to the ethnicity criterion, although the GET understands the historical reasons that presided over its inclusion, it questions its continued relevance from the perspective of selecting the most competent judges or prosecutors.

96. Reserve judges are appointed for up to two years to a specific court by the HJPC according to the same procedure, on the basis of an application by the president of the

[34] The GET welcomes in this connection that the Strategy for the Fight against Corruption 2015-2019 foresees additional training for judicial and law enforcement authorities on the application of advanced measures for detecting and proving corruption.

court concerned, supported by evidence indicating a need and sufficient funding for the reserve judges (Article 48, Law on the HJPC).

97. Lay judges are appointed by the HJPC for a mandate of eight years, renewable, upon receipt of a list of proposed candidates drawn up by the president of the court concerned. Candidates have to be at least 25 years old, resident in the jurisdiction of the court in which they seek appointment, have a reputation for a high moral character and integrity, a clean criminal record and proof that no criminal proceedings are on-going against them (Articles 34 and 49, Law on the HJPC).

98. Most judges are subject to yearly performance appraisals carried out by the president of their court, in accordance with criteria adopted by the HJPC. This is not the case, however, for the president and judges of the Court of BiH and for the president of the FBiH Supreme Court, for lack of an explicit legal basis. The HJPC has proposed on several occasions to the BiH Ministry of Justice to amend the Law on the HJPC to unify the regulation of performance appraisals for all judicial office holders. The HJPC's Strategic plan for 2014-2018 also foresees remedying this gap by introducing appraisals along with the adoption of criteria for the above-mentioned judges. The GET supports this planned reform, as it will contribute to even handedness and indicate a desire for accountability.

99. As mentioned above, the results of the appraisals are the determining factor (representing 80% of the overall assessment of the candidate) in promotion procedures. The GET heard major criticism of the ineffectual appraisal system that did little to distinguish candidates. The lack of knowledge about actual performance from some appraisers, too great attention paid to numerical data about cases processed rather than qualitative information about the complexity of work, and reluctance to performance manage instead of moving problems on were highlighted. Consequently, **GRECO recommends that further steps are taken to improve the performance appraisals (with a priority given to qualitative over quantitative criteria) to both enforce the high ethical and performance standards expected from judges and prosecutors and assist in identifying meritorious candidates for promotion.**

100. Judges cannot be transferred without their consent, except by the HJPC for organisational reasons up to a period of three months or as a disciplinary sanction.

101. Judges' salaries are regulated in the relevant laws of the State, the Entities and BD. They vary depending on the level of the court, the position in the court and the years of service. Performance appraisals do not impact on judges' salaries. For example, the monthly base salary for judges of the Court of BiH is 2 021€ and that of the president of the Court is 2 340€; in FBiH, salaries range from 1 276€ for judges of municipal courts to 2 340€ for the president of the Supreme Court; in RS, judges of the basic courts earn a base salary of 1 255€ and the President of the Supreme Court, 2 301€; in BD, the range of salaries goes from 1 585€ for judges of the Basic Court to 1 861€ for the President of the Appellate Court. Judges are entitled to the same benefits as other employees in the public service, except for judges of the Court of BiH and judges in RS.

102. Although progress has been made regarding IT equipment, courts and their staff continue to work in poor conditions. As already referred to, the overall money available for justice purposes is not being targeted at areas of highest need, due to the fragmented budgetary system. Lack of space, poor facilities and accommodation in some parts of the system may be a contributory factor to delays and backlogs, enabling cases and evidence to become lost in the system, either deliberately or inadvertently. The statute of limitations is then used to end a prosecution that should have been effectively processed and identified as becoming delayed, using the available universal case-management system.

Case management and procedure

103. Cases are in principle allocated automatically at random (chronologically) through the Automated Case Management System in the Courts (CMS), according to parameters determined yearly by the president of the court. Prior to the development of the CMS system, cases were assigned manually based on the alphabetical and numerical order of judges of the court, according to the Book of Rules on Internal Court Operations. This manual system is still used for cases that have not been entered in the CMS. The judicial information and communication system was reported to the GET as fully functional throughout the country, covering 3.9 million cases in courts and prosecutors' offices. Whilst there is provision for cases to be pre-assigned to another judge by the president of the court for legitimate reasons, stating these reasons in writing, the GET also heard of instances where co-defendants were split in order to meet numerical targets, or manual allocation made where reasons for avoiding the CMS were not clear. In the GET's view, the CMS system offers the potential for comprehensive management information that could help the HJPC to identify and investigate such anomalies, enforce legally set timeframes for cases and root out and eliminate the corrupt practices, delays and inefficiencies reported by the public and acknowledged by some in the judiciary and governments.

104. The four Criminal Procedure Codes proclaim the right to a trial without undue delay and provide deadlines for certain stages of the criminal proceedings, as well as measures to shorten the length of proceedings, such as plea bargaining. The four Civil Procedure Codes also contain measures aimed at preventing undue delay, such as decisions on small claims taken by legal associates instead of judges or judicial settlement – which is possible at any stage of the proceedings. The HJPC has adopted a regulatory framework containing timeframes, benchmarks for judges and instructions for reducing backlog of old cases and the CMS system allows courts to monitor the timeframes within which cases are decided.

105. As already mentioned, in spite of these measures, judicial backlog remains a serious issue across the justice system. The total number of backlogged cases is currently around two million[35], most of them being small claims enforcement cases (collecting unpaid utility bills). These cases are not only a burden on the judicial system, but the GET was told they affected the motivation of judges and their diligence in keeping timeframes. They may also be one of the reasons behind the absence of a successful track record of convictions in high-level corruption cases. The GET was concerned to note that the number of prosecuted cases, indictments and verdicts in corruption-related matters had actually fallen to an all-time low in 2011-2012[36]. In order to deal with the judicial backlog, the Justice Sector Reform Strategy 2014-2018 foresees an analysis of the possibilities to improve the enforcement procedure and certain extrajudicial procedures through the transfer of these cases to other authorities. Some interesting initiatives also exist at Entity level, such as the SOKOP pilot project developed in the Basic Court of Banja Luka to digitise existing public utility cases to facilitate their simultaneous electronic processing in bulk. This system is to be extended to all basic courts in the RS in the future. In the GET's view, these measures go in the right direction, but the problem ought to be addressed in a broader manner. An analysis of the situation of each court and prosecutor's office with regard to the budgetary and staff shortages highlighted earlier in this report would enable a better allocation of available resources, while a more centralised system of judicial deployment using the case management system would enable the low level backlogged cases to be triaged to the reserve judges, or removed from the system altogether, enabling a concerted judicial and prosecutorial focus on the serious cases in the system. **GRECO recommends**

[35] Source: Bosnia and Herzegovina Justice Sector Reform Strategy 2014-2018
[36] http://ti-bih.org/wp-content/uploads/2013/07/Procesuiranje-korupcije-pred-sudovima-i-tu%C5%BEila%C5%A1tvima-u-Bosni-i-Hercegovini-2011-2012.pdf

(i) carrying out an analysis of the budgetary and staff situation in courts and prosecution offices, with a view to ensuring that the resources necessary are available and efficiently used across the judicial systems; and (ii) seeing to it that judicial resources are better prioritised with due regard for the gravity of cases. The HJPC could then better demonstrate accountability in the judiciary and prosecutorial functions through regularly using of the press to publish successes in finalising cases and holding the system to account in observing deadlines, as part of a concerted public communication strategy (see paragraph 131).

106. Court procedures are generally public, but the public may be excluded by explicit legal provision (e.g. in some family matters or criminal proceedings against a minor) or by decision of the court (for instance to protect an official, business or personal secret or to preserve public order and morality). Other measures have recently been developed to inform the public, such as a judicial web portal[37], which offers online access to case files for parties in judicial proceedings, a calculator for court fees and a tool to enable parties to receive information on the predicted duration of their case in court. The Judicial Documentation Centre also contains a case-law database, which is accessible to all interested persons for a fee of 100 KM (51 €).

Ethical principles and rules of conduct

107. A Code of Judicial Ethics was adopted by the HJPC in November 2005 and has been applied as of February 2006. It contains five principles (independence, impartiality, equality, integrity and propriety, expertise and diligence), each declined into several articles on application. The Code of Judicial Ethics applies to all judges in BiH – prosecutors have their own code of ethics. Disregard for its provisions may give rise to disciplinary proceedings against the judge, which are conducted by the Disciplinary Panels of the HJPC (see below under supervision and enforcement).

108. A Standing Committee on Judicial and Prosecutorial Ethics, Independence and Incompatibility of the HJPC monitors the implementation of the Code of Judicial Ethics, as well as the Code of Prosecutorial Ethics, and advises the HJPC on issues of ethics. Judges and prosecutors may seek guidance about expected conduct from this committee, which informs the HJPC about its decisions. These decisions are communicated to the person who asked for guidance, but are not made public to a larger audience. The GET notes that it is possible for a member of the HJPC to provide advice to a judge or a prosecutor as a member of this committee and then to be involved in disciplinary proceedings against that same person. This undesirable situation needs to be prevented in the context of the recommendation in paragraph 91.

109. The Code is a valuable document, which appears to provide an adequate level of detail and is coupled with an accountability mechanism – even if that mechanism is not as efficient as it should be, as will be seen later in this report. Yet, the GET noted with concern that the judges it met during the on-site visit appeared largely ignorant of the Code and of the activity of the Standing Committee. Clearly more needs to be done to promote the Code and to effectively ensure adherence to its principles. In the GET's view, in the absence of a training institution for judges and prosecutors at state level, the Standing Committee has a crucial role in maintaining, promulgating and promoting ethical standards and in demonstrating that the judicial system takes such matters seriously. **GRECO recommends significantly strengthening and further developing – for judges and prosecutors – confidential counselling and dedicated training of a practical nature on issues of ethics and integrity.** Issues such as conflicts of interest, reactions to gifts and relations with third parties need to be covered and the training centres within the entities need of course to be associated to these efforts.

[37] http://www.pravosudje.ba

Conflicts of interest

110. There is currently no specific conflicts of interest regime that applies to judges and prosecutors, except members of the HJPC. A special Book of Rules on Conflict of Interests of Members of the HJPC BiH was adopted by this institution in May 2014. It defines a conflict of interests as a situation in which members of the HJPC, their relatives or other persons closely connected to them (friends, business connections) have a private interest that affects or may affect the legality, transparency, objectivity and impartiality in the performance of their functions, or when a private interest harms or may harm the public interest or citizens' trust. A conflict of interests occurs *inter alia* when a member of the HJPC or one of his relatives applies for a position in the judiciary. In this case, the member has to resign from the HJPC. In other cases of conflicts of interest, the HJPC member has to seek disqualification.

111. One of the main criticisms of the members of the judicial profession – judges and prosecutors – as a whole and the members of the HJPC in particular is their lack of openness and the perception that they are working for their own good rather than the society's best interests. In this particular context, the Book of Rules is a valuable piece of legislation, aiming at improving the credibility and accountability of the HJPC. The GET was made aware that some members of the HJPC had criticised the Book of Rules and in particular the rule obliging a member to resign in case one of his/her relatives applies to a position of judge or prosecutor. However draconian this rule may be, the GET is convinced of its merits in the particular context of Bosnia and Herzegovina, characterised by strong mistrust of the judiciary and the central role, the responsibilities and the independence of the HJPC in the management of judicial careers. In order to continue to lead effective reform and restore confidence, the HJPC must apply the very highest ethical standards to its own operations. More generally, adequate rules on the prevention and management of conflicts of interest applicable to all judicial and prosecutorial office holders need to be adopted. The GET is therefore pleased that the Justice Sector Reform Strategy 2014-2018 foresees amending the Law on the HJPC to this end. In this context, rules ought to prevent HJPC members from applying to positions representing a personal promotion during their mandate and for a reasonable time after its expiration. They also need to include, inter alia, a clearer limitation of the extra-judicial activities and remunerations that are incompatible with the judicial/prosecutorial office. Moreover, in order for rules on conflicts of interest to be enforceable in disciplinary proceedings rather than remain merely aspirational, guidance needs to be available as per the recommendation in paragraph 109 and compliance needs to be closely monitored. Consequently, **GRECO recommends developing rules on conflicts of interest that apply to all judges and prosecutors, along with an adequate supervisory and enforcement regime.**

Prohibition or restriction of certain activities

Recusal and routine withdrawal

112. The reasons for disqualification are listed in the relevant procedural laws (Codes of Criminal Procedure: Court of BiH, Articles 295-298; FBiH, Articles 357-360; RS, Articles 357-360; BD: Articles 111-114; Codes of Civil Procedure: BiH, Articles 29-34; FBiH, Articles 39-44; RS: Articles 37-42; BD: Articles 29-34) and include conflicts of interest arising from family, marital, financial or any other relationship with the parties, prior involvement in the case, as well as any other circumstances that raise reasonable suspicion as to the judge's impartiality. Disqualification may occur at the initiative of the judge or of the parties and is decided upon by the court in plenary session (criminal cases) or by the president of the court (civil cases) or, if the conflict of interest involves the president of a court, by the president of the higher court.

113. The obligation of disqualification in case of conflict of interests is also addressed in the Code of Judicial Ethics (Articles 2.2 and 2.5). Failure to request disqualification in such a case constitutes a disciplinary offence (Article 56, Law on HJPC).

Gifts

114. Judges are prohibited from seeking or accepting gifts, bequests, loans and other services and advantages related to acts or omissions in the performance of their judicial duties. This prohibition extends to members of their close family and court employees or other persons under their supervision. Gifts, remunerations or benefits of a symbolic nature given for a special occasion are allowed, provided they cannot reasonably be perceived as aiming at influencing the judge or creating an impression of partiality in the public's view (Articles 4.10 and 4.11, Code of Judicial Ethics). The acceptance of a gift or remuneration in exchange for improper influence or appearance of such an influence, constitutes a disciplinary offence (Article 56, Law on HJPC). However, the GET notes that, in practice, little attention seems to be given to ensuring compliance with these rules. No advice is available to judges in case of doubt as to whether a gift or remuneration may give rise to a conflict of interests. This gap needs to be addressed in the context of the recommendation given in paragraph 111.

Incompatibilities and accessory activities, post-employment restrictions

115. The holding of any public office or the exercise of any activity in the private sector for remuneration is prohibited. Participation as a manager or member of the supervisory board of public or private companies, as well as any other legal person, is likewise prohibited (Article 83, Law on HJPC). Moreover, membership in political parties and associations is banned and judges must refrain from engaging in any public political activity (Article 82, Law on HJPC).

116. The only exceptions to this general prohibition are (a) the exercise of scientific and cultural activities; (b) participation in public discussions concerning legal and judicial issues and (c), membership of government commissions and advisory bodies, if such membership does not damage public perception of impartiality and political neutrality. Remuneration may be perceived for these activities. Judges may also hold financial interests, but have to declare them annually. The rules concerning incompatibilities and accessory activities are further developed in the Code of Judicial Ethics. In case of doubt on the exercise of a given activity, judges may seek written advice from the HJPC. This advice is binding. In the GET's view, the HJPC could usefully contemplate whether greater transparency about the nature of activities that are acceptable might reinforce standards, through publication of anonymised requests and their response.

117. There are no post-employment restrictions applicable to judges. The GET read some press reports that indicated instances of fluidity between judicial and political appointments over an individual's career. The GET was told, however, that return to practice following judicial appointment is uncommon. The HJPC may wish to examine whether there are concerns about judicial independence and post appointment influence that might merit guidance in this area.

Misuse of confidential information and third party contacts

118. Disclosure of confidential information from a case and engaging in inappropriate communications with parties to the proceedings or their representatives constitute disciplinary offences under Article 56 of the HJPC. The Code of Judicial Ethics also prohibits disclosure or use of confidential information.

Declaration of assets, income, liabilities and interests

119. Article 86 of the Law on the HJPC obliges judges and prosecutors to file an annual financial statement with the HJPC disclosing, for themselves and members of their household, their income, assets, liabilities and guarantees given to or received from third parties during the past year. Activities in public and private companies, as well as political parties also have to be reported. Candidates to positions in the judiciary also have to submit a statement, and an ad-hoc statement may be requested from a judge or a prosecutor in the framework of disciplinary proceedings. The law foresees the possibility for the HJPC to request additional information, but does not provide specifically for a review of the statements' content, nor for their publication. Representatives of the HJPC confirmed to the GET that these statements are archived, but that their content is not reviewed except if necessary in the framework of disciplinary proceedings and they are not disclosed to the public. They also made reference to the decision issued by the Personal Data Agency, confirmed by the Court of BiH, stating that the disclosure of personal information in asset declarations infringed upon privacy rights (see paragraph 58) to argue that publication of the annual financial statements of judges and prosecutors would be impossible. Moreover, there is no specific sanction for failing to file the annual statement or for false reporting. The Law on the HJPC does contain general sanctions according to which providing false, misleading or insufficient information with regard to any matter under the competence of the Council is a disciplinary offense, but no judge or prosecutor has ever been sanctioned so far for omitting to fill in an asset declaration or for lying with regard to his/her assets.

120. The filing of assets and financial declarations is an important tool to prevent and detect conflicts of interests, but the usefulness of such a tool is close to none if the declarations remain hidden on unused pieces of paper. At the very least, a system of review of annual statements – through for instance random checks – needs to be introduced, along with specific, proportionate and dissuasive sanctions in case of non-compliance. In order for this system to be credible, the human and material resources necessary must be foreseen, as well as channels of co-operation with other authorities responsible for keeping financial and property information (e.g. tax authorities and land registry). As regards the publicity of financial statements, the GET has already expressed its doubts regarding the decision of the Personal Data Agency in the part of this report on MPs (see paragraph 61). This decision ought not to be an obstacle to public disclosure of financial statements, for instance by excluding private information (such as address, ID and other personal identification data) from the forms. The GET is aware that judges and prosecutors are not subject to the same standards of transparency as politically elected representatives and that practice regarding publication of the financial declarations of judicial officials varies among GRECO member states. It believes, however, that public disclosure of annual financial statements would clearly have a positive impact on public trust in the judiciary in Bosnia and Herzegovina by allowing external checks on their accuracy and a potential challenge to any corrupt practices. Therefore, **GRECO recommends (i) developing an effective system for reviewing annual financial statements, including adequate human and material resources, co-operation channels with relevant authorities and appropriate sanctions for non-compliance with the rules or false reporting and (ii) considering ensuring the publication of and easy access to financial information, with due regard to the privacy and security of judges, prosecutors and their close relatives.**

Supervision and enforcement

121. Judges (as well as reserve judges, lay judges and prosecutors) may have disciplinary procedures brought against them for committing a disciplinary offence as listed in Article 56 of the Law on the HJPC or disregarding the provisions of the Code of Judicial Ethics. The HJPC is competent to receive complaints against judges and prosecutors, conduct disciplinary proceedings, determine liability, impose sanctions,

decide upon appeals and upon suspensions of judges (Article 17, Law on the HJPC). Disciplinary proceedings are initiated by the Office of the Disciplinary Counsel and are conducted by the First and Second Instance Disciplinary Panels of the HJPC. These bodies are autonomous but form part of the HJPC.

122. The Office of the Disciplinary Counsel (ODC) is headed by a Chief Counsel, appointed by the HJPC for a mandate of four years, renewable (Article 64, Law on the HJPC). S/he is assisted by a staff of lawyers and investigators. The ODC can act *ex officio* or upon complaints about alleged misconduct of a judge or a prosecutor received from any natural or legal person. It conducts investigations, decides whether to file a disciplinary complaint against the judge or prosecutor and presents the case before the disciplinary panels. It can request that the HJPC suspend the judge or prosecutor for the duration of the proceedings. It can also decide to enter into "an agreement of common consent" (plea bargaining) with the judge or prosecutor.

123. Disciplinary liability is decided upon by the First Instance Disciplinary Panel, composed of three members, at least two of whom are members of the HJPC. Appeals against its decisions are heard by the Second Instance Disciplinary Panel, composed of three (other) members, who all belong to the HJPC. Members of the panels are appointed by the president of the Council for two years, renewable. In disciplinary proceedings against judges, both panels have to be composed of a majority of judges and in disciplinary proceedings against prosecutors, of a majority of prosecutors. Decisions are taken by majority vote. Appeal against a decision from the Second Instance Disciplinary Panel is possible before the full membership of the HJPC. Members of the panels may take part in the procedure. Appeal against a dismissal decision is possible before the Court of BiH, but only for an alleged violation of the disciplinary procedure or an erroneous application of the law (Article 60, Law on the HJPC).

124. Disciplinary measures consist of a written warning, public reprimand, salary reduction of up to 50% for a maximum period of one year, temporary or permanent reassignment to another court, demotion of a court president to an ordinary judge and dismissal. Instead of or in addition to these measures, the disciplinary panels may order that a judge participates in rehabilitation programmes, counselling or professional training. Moreover, judges are criminally liable for illegal actions or decisions taken in the performance of their official duties. The information regarding disciplinary proceedings and disciplinary measures is public, but the names of the judges concerned are not disclosed.

125. According to information provided by the ODC, in the past three years, 55 disciplinary proceedings were initiated against judges, 18 against prosecutors and the following final disciplinary measures were imposed:

Disciplinary measure	**2013**	**2014**	**2015** (until 28.07)
Written warning	6	6	0
Public reprimand	6	3	2
Reduction in salary	6	8	8
Temporary or permanent reassignment to another court or prosecutor's office	0	1	0
Demotion of court president to ordinary judge or chief prosecutor/deputy chief prosecutor to an ordinary prosecutor	0	0	1
Removal from office	0	0	1
Separate measures (rehabilitation programmes, professional training, counselling, etc.)	0	0	0
Total	**18**	**18**	**12**
Suspension	2	1	5

126. The capacity of the ODC and the disciplinary panels of the HJPC to deal with misconduct of judges and prosecutors in a determined and effective manner is crucial, especially against the perception of judicial bias and self-reporting by many of paying bribes to the judiciary. The GET has several misgivings about the current disciplinary liability system and heard many critical voices about its performance. A first concern lies with the ODC's lack of independence. The head of the ODC is appointed by the HJPC, which evaluates the work of the Office and allocates funds for its functioning. This dependence on the HJPC can lead to self-censorship in sensitive cases. Many of the GET's interlocutors also highlighted a lack of sufficient and adequately trained staff to deal with the 1 200 complaints the ODC receives on average each year[38]. On a related note, a recurrent criticism heard by the GET was that disciplinary procedures are not dealt with in a timely manner. Some disciplinary reports sent to the ODC by chief prosecutors were said not to have been dealt with even after a year[39]. The ODC has the ability to commence investigations at its own initiative and, with adequate human resources, might choose to follow up on some of these complaints to assess whether they have merit or, as was alleged, were motivated by malice. Moreover, many of the GET's interlocutors criticised the mildness and inadequacy of sanctions applied by the disciplinary panels of the HJPC, especially in recent years, which sends out unfortunate messages that misconduct and lack of diligence are tolerated with no effective deterrents. Salary penalties, in particular, seem not to be used to their full extent – all the more since there is no lower threshold – and transfer to another court or prosecutor's office is sometimes perceived as a reward rather than a sanction. Finally, the activity of the ODC and the disciplinary panels lacks transparency. Giving greater publicity to cases, explaining decisions not to prosecute, publishing details about sanctions imposed in disciplinary cases, both anonymised overall figures of numbers sanctioned and specific penalties imposed, and in severe cases publically by naming individuals removed from office with reports of the behaviour and outcome would start to improve the system's accountability to the public it serves. This would reinforce standards of expected behaviour, might rebalance negative press reporting and improve public confidence. The HJPC and the ODC are aware of all these concerns, which their representatives themselves relayed to the GET. The GET notes that the Justice Sector Reform Strategy 2014-2018 foresees amendments to the Law on the HJPC related to the disciplinary responsibility of judicial office holders, as well as the work, powers and role of the ODC, and hopes that this will offer the opportunity to remedy some of the system's flaws. However, several of the issues exposed above go beyond legislative amendments. They are matters of practice and have to be addressed accordingly. In view of the foregoing, **GRECO recommends that (i) the independence, capacity and transparency of the activity of the Office of the Disciplinary Counsel be increased; and that (ii) the disciplinary procedure and sanctions in case of misconduct of judges and prosecutors be revised in order to ensure that cases are decided in a timely manner and that misconduct is effectively subject to proportionate and dissuasive sanctions.**

127. The statute of limitation is five years from the commission of the disciplinary offence or two years from the receipt of information regarding the alleged offence by the HJPC (Article 72, Law on the HJPC). Once initiated, the proceedings must be completed within one year from the date of filing of the complaint before a disciplinary panel, unless it can be demonstrated that an extension is justified (Article 73, Law on the HJPC).

128. Immunity is regulated by the Law and Rules of Procedure of the HJPC, as well as the Constitutions of the Entities and the Statute of BD. Judges and prosecutors enjoy immunity from criminal and civil liability for opinions expressed and decisions taken in the performance of their official duties. However, immunity cannot bar or delay criminal or civil investigation against them. Immunity does not cover illegal actions or decisions

[38] Most of the complaints received relate to delays in the management of cases.
[39] The authorities highlighted recent efforts to reduce the processing time of investigations, bringing it to an average of 263 days in 2015.

taken in the course of their duties, nor their actions outside the scope of their duties. It is the HJPC which decides whether or not to lift the immunity of a judge or a prosecutor. Besides, a judge or a prosecutor is automatically suspended if held in pre-trial custody. The HJPC has to conduct disciplinary proceedings against a judicial office holder who is in custody, against whom an investigation is initiated or a decision in criminal or civil proceedings is issued. As a result of these disciplinary proceedings, the HJPC may decide to dismiss the person concerned, thereby ending his/her immunity independently of the results of the criminal or civil proceedings.

Advice, training and awareness

129. As there is no judicial training institution at state level, nor in BD, initial and in-service training is organised by the training institutions at the level of the Entities (FBiH Centre for Judicial and Prosecutorial Training and RS Centre for Judicial and Prosecutorial Training), under the supervision of the HJPC and with the collaboration of the BD Judicial Commission. Newly appointed judges, prosecutors and legal associates have to undergo at least eight days of training per year and other judicial office holders, three days. Training events on corruption are regularly held in the form of two-day sessions, with the cooperation of the international organisations implementing various projects in this field. The theme of professional and ethical standards is also delivered each year in a two-day seminar involving the analysis of relevant legislation and case studies. In addition, a module on this topic is taught as part of the initial training for newly-appointed judges and prosecutors, using distance-learning methods.

130. Although most judicial office holders comply with the compulsory minimum days of training per year, the GET highlighted earlier in this report that judges – as well as prosecutors, as will be seen in the next chapter – are not sufficiently aware of the codes of ethics and rules of conduct. A recommendation to further develop dedicated training of a practical nature is contained in paragraph 109. In this connection, the training centres have to improve both the delivery and substance of training particularly about appropriate judicial conduct, including ethics and integrity. They need to own and take responsibility for this aspect of training where it is currently supported internationally, so that it is promulgated as and owned by the internal system. Strong messages, internalised by the judicial system in Bosnia and Herzegovina, about how it wishes to be known and viewed, backed up by a zero tolerance approach to transgression are needed to restore public trust.

131. These strong messages and zero tolerance approach to transgression need to be articulated in a more proactive communication policy by the judicial and prosecutorial authorities, which is lacking at present. The very poor image of the judicial and prosecutorial system in society has been mentioned several times throughout this report. Whether it is about systemic corruption, political influence, lack of meaningful results in fighting serious crime or all these elements combined, the public perception is overwhelmingly negative and the trust in the judiciary very low. Several of the judges and especially the prosecutors met by the GET blamed the media for creating such an image and complained about the pressure it exerted on them. It would be fair to say that the problems which the judicial system in Bosnia and Herzegovina has to face – budgetary fragmentation, for instance – and which contribute to its poor image cannot be reduced to corruption issues and go beyond actions which the judiciary itself can take. Yet, judges and prosecutors undoubtedly must take responsibility for better informing the public about their decisions. The GET recognises that confidentiality of information is a crucial element of criminal procedure, which plays an important role in protecting the efficiency of criminal investigation and the rights of the persons under investigation. Yet, it needs to be balanced with the requirements of transparency, which are critical in building citizens' confidence in law enforcement and the justice system. On a positive note, the GET wishes to emphasise that the Justice Sector Reform Strategy 2014-2018 contains promising initiatives, such as setting up a regular practice of informing the

public about the role and work of judicial institutions, ensuring that communication by all judicial institutions follows the same principles, publishing more detailed statistics on some types of criminal offences and opening the HJPC's sessions to the public. Some of these measures, such as the opening of the sessions of the HJPC to the public, are already being implemented. These are all moves in the right direction, that need to be complemented by giving adequate guidance and training to judges and prosecutors on when, what and how to communicate about their activity. Increasing communication and discussing common issues of concern with NGOs active in the fields of anti-corruption and justice reform could also help build confidence. In view of the foregoing, **GRECO recommends that a communication policy, including general guidelines and training on how to communicate with the media and the relevant civil society organisations, be developed for the judicial system (judges and prosecutors) with the aim of enhancing transparency and accountability.**

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

132. There are four distinct prosecution services at the level of the State, the Entities and BD, with no functional links between them; this mirrors the organisation of the court systems. At State level, the Prosecutor's Office of BiH (POBiH) is competent to investigate and prosecute offences for which the Court of BiH has jurisdiction. In FBiH, there is the Federal Prosecutor's Office of FBiH (FPOFBiH), which acts before the Supreme Court of FBiH, and ten cantonal prosecutors' offices, which are competent to act before the courts of the canton (both the municipal and cantonal courts). In RS, there is the Prosecutor's Office of RS (PORS) and five district prosecutors' offices, which are established for the territories of district courts. The District Prosecutor's Office of Banja Luka includes a Special Prosecutor's Office that is competent for the most severe forms of organised and economic crime committed across the territory of RS. In BD, the Prosecutor's Office of BD is competent to act before the Basic Court and the Appellate Court of BD.

133. The operations of the prosecution services are governed by 14 distinct laws on Prosecutor's Offices, including: the Law on the POBiH, the Law on the Prosecutor's Offices of the RS, the Law on the FPOFBiH, the Law on the POBD and ten cantonal laws on the cantonal prosecutors' offices of FBiH. A special law, the Law on Combating Organised and the Most Severe Forms of Economic Crime, governs the Special Prosecutor's Office of the RS. In 2014, the FBiH adopted the Law on Combating Corruption and Organised Crime, whereby a Special Department for Combating Corruption, Organised and Inter-Cantonal Crime was established at the POFBiH. More detailed provisions are contained in the Books of Rules of the different prosecutors' offices. In the RS, there is one standardised Book of Rules for all prosecution offices, while in FBiH, there are 11 different Books of Rules that implement the provisions of the relevant laws.

134. There are 374 prosecutors in BiH (191 men and 183 women), including 53 in the POBiH; 206 in FBiH (12 in the FPOFBiH and 194 in the prosecutors' offices of FBiH); 106 in RS (six in the PORS, 92 in district prosecutors' offices and eight in the Special Prosecutor's Office); and nine in the POBD. All have the status of judicial office holders, which means that they perform their office independently of the legislative and executive branches of state. The independence of the prosecution office is enshrined at constitutional level (in RS and BD) or at the level of the law (in the aforementioned laws on the prosecution services of BiH and FBiH). The prosecution services are organised in a hierarchical manner, each prosecutor's office being headed by a chief prosecutor who manages and supervises the work of the office. Chief prosecutors have the authority to give general or individual compulsory work instructions to the prosecutors in their office and Chief Entity Prosecutors may issue similar instructions to prosecutors of lower level offices within the Entity. Mandatory work instructions include those of a general nature, as well as instructions for taking actions in specific cases. In accordance with the relevant by-laws, the prosecutor may request that the instruction be issued in writing. The GET was informed that, in case of a disagreement between the case prosecutor and the chief prosecutor, the latter's opinion prevails. The case prosecutor may write a note – that will not be communicated to the parties – and ask the opinion of the Collegium of Prosecutors[40], but this is not a common practice. No instructions not to prosecute are allegedly issued by the chief prosecutors, as decisions not to initiate or to suspend the investigation are taken at the level of the police bodies, before they even reach the prosecutor's office. Moreover, a prosecutor at Entity level[41] who believes that the legality or his/her independence is compromised may inform the Chief Prosecutor or the Collegium of Prosecutors thereof. Such cases are rare in practice, according to

[40] The Collegium of Prosecutors gathers the Chief Prosecutor, deputy chief prosecutors and prosecutors.
[41] Prosecutors at state level are legally not independent, as all their authority derives from the Chief Prosecutor.

prosecutors met by the GET. Chief prosecutors may transfer or take over certain activities/cases that are under the jurisdiction of a prosecutor of lower level.

135. As is the case for judges, the High Judicial Prosecutorial Council of BiH (HJPC) is the main body in charge of the appointment, training, career and disciplinary liability of prosecutors (see paragraphs 85-91 for a more detailed description of the composition, role and competences of the HJPC, as well as the GET's assessment thereof). A recommendation concerning the HJPC is included in paragraph 91.

Recruitment, career and conditions of service

136. Prosecutors in BiH have life tenure until the retirement age of 70. Their recruitment, career and dismissal are regulated by the same provisions of the Law on the HJPC as those applicable to judges that are described in Chapter IV (see paragraphs 92 to 95). Like judges, they are appointed and dismissed by the HJPC (Article 17, Law on the HJPC). Chief prosecutors are appointed for a fixed term, renewable, at the end of which they continue to work in the same office as prosecutors.

137. Appointment to any position of prosecutor/chief prosecutor in BiH requires the publication of a vacancy announcement in three daily newspapers and on the website of the HJPC. Basic requirements for appointment at a district/cantonal prosecutor's office include passing the bar examination and having a minimum of three years' legal experience. Additional conditions of working experience are required for appointment to higher positions within the prosecution service. The selection process is carried out by sub-councils of the HJPC or sub-committees appointed by the Entities' sub-councils. Concerns of the GET regarding the shortcomings of the appointment and promotion system, as well as the measures taken by the HJPC to attempt to address them, are exposed in Chapter IV.

138. Like judges, prosecutors are subject to yearly performance appraisals carried out by the head of their office, in accordance with criteria adopted by the HJPC. The results of these appraisals are the determining factor (representing 80% of the overall assessment of the candidate) in selection procedures. The GET highlighted the flaws of the appraisal system in paragraph 99, which contains a recommendation that is also relevant for prosecutors.

139. In FBiH and RS, prosecutors may be transferred to an equivalent position in another office without their consent by the FBIH Chief Federal Prosecutor or the RS Chief Republic Prosecutor respectively, for a maximum period of six months within a period of five years (Article 21, Law on the FPOFBiH; Article 21, Law on the Prosecutor's Offices of the RS). The HJPC has to be informed of such transfers. There appears to be no remedy available to a prosecutor transferred without his/her consent, but the authorities pointed out that such transfers had not occurred in practice. As there is only one prosecutor's office in BD and at State level, the issue of transfer is irrelevant for the prosecutors working in these offices.

140. Prosecutors' salaries are regulated in the relevant laws of the State, the Entities and BD. They vary depending on the level of the office, the position in the office and the years of service. Performance appraisals do not impact on prosecutors' salaries. For example, the monthly base salary before tax for prosecutors of the POBiH is 2 021€ and that of the Chief Prosecutor of the POBiH is 2 340€; in FBiH, salaries range from 1 276€ for prosecutors of cantonal prosecutors' offices to 2 340€ for the Chief Prosecutor of the FPOBiH; in RS, prosecutors of the district prosecutors' offices earn a base salary of 1 255€ and the Chief Prosecutor of the PORS, 2 301€; in BD, the range of salaries goes from 1 585€ for prosecutors of the POBD to 1 808€ for the Chief Prosecutor of the POBD. Prosecutors, with the exception of prosecutors of the POBIH and prosecutors in RS, are entitled to the same benefits as other employees in the public service.

Case management and procedure

141. Cases are allocated automatically at random (chronologically) through the Automated Case Management System in the Prosecutors' Offices (TCMS), according to pre-set parameters determined yearly by the chief prosecutor. By way of exception, a case can also be allocated directly to a given prosecutor; for instance cases following up on procedural actions that s/he took when s/he was on duty. There is no need to explain the reasons for such exceptions. The authorities may wish to introduce such a requirement into the TCMS, as a good tool for preventing manipulations and undue influence – or the appearance thereof – over case allocation. Some prosecutors' offices still assign cases manually, according to their respective Books of Rules on Internal Organisation and Operations of Prosecutors' Offices.

142. Safeguards are in place to ensure that prosecutors deal with cases without undue delay, namely deadlines for certain stages of the criminal proceedings, as well as measures to shorten the overall length of proceedings, such as plea bargaining. The HJPC has adopted a regulatory framework containing timeframes, benchmarks for prosecutors and instructions for reducing backlog of old cases and the TCMS system allows Prosecutors' Offices to monitor the timeframes within which cases are decided.

143. The GET was informed that the allocation of cases to prosecutors has to take into consideration their specialisation, where this is applicable (i.e. on organised crime, corruption, etc.) and the need for an even distribution. It is not clear how the complex cases are assessed and if, in practice, they have a higher share in the individual quota assigned to each prosecutor. Reassignment of cases occurs, according to the prosecutors met on-site, when there are unjustified delays. In these situations, a disciplinary complaint is issued against the inefficient prosecutor. In spite of these measures, the general impression with regard to the work of prosecutors throughout the four judicial systems of BiH is that of poor case-management, which as already highlighted in Chapter IV, feeds perceptions of political or other undue influences. The GET heard many allegations from various interlocutors of cases of high level corruption never being completed, of cases transferred back and forth from one prosecutor's office to another and eventually dropped, of cases being artificially split in order to fulfil quotas, of easy cases being prioritised over difficult ones etc. These allegations seem to affect the prosecution service even more than the court system and are corroborated by the study referred to in footnote 36 under paragraph 105. The authorities also stress that large investigations in corruption cases are dependent on experts in finance, audit and accounting, which have to be hired at market prices and for which the prosecutors' offices lack the necessary funds. As the GET already stressed, there is most probably more than one explanation for the absence of successfully investigated high level corruption cases. The GET refers back to its considerations in the above-mentioned paragraph and to the recommendation contained therein to analyse the situation and to better prioritise cases and available resources accordingly.

Ethical principles, rules of conduct and conflicts of interest

144. A Code of Prosecutorial Ethics was adopted by the HJPC in November 2005 and has been applied as of February 2006. It contains five principles (independence, impartiality, equality, integrity and propriety, expertise and diligence), each declined into several articles on application. The Code of Prosecutorial Ethics applies to all prosecutors in BiH. Disregard for the provisions of the Code may give rise to disciplinary proceedings against the prosecutor, which are conducted by the Disciplinary Panels of the HJPC (see below under supervision and enforcement).

145. A Standing Committee on Judicial and Prosecutorial Ethics, Independence and Incompatibility of the HJPC monitors the implementation of the Code of Prosecutorial Ethics and advises the HJPC on issues of ethics. As the GET explained in Chapter IV, the

Standing Committee is sometimes called upon in practice to give opinions on incompatibilities and accessory activities of judges and prosecutors. The opinions thus issued are only communicated to the interested prosecutor (or judge) and not made public to the entire judicial/prosecutorial community. The members of the prosecution service met on-site took the view that making these opinions accessible to all the holders of a judicial or prosecutorial office would be beneficial. More generally, the GET took the view in Chapter IV that more needs to be done to promote ethical norms and ensure they are adhered to, as per the recommendation in paragraph 109.

146. As is the case for judges, there is currently no specific conflicts of interest regime that applies to prosecutors, except members of the HJPC. More information on the Book of Rules on Conflicts of Interests of members of the HJPC is contained in paragraph 110. The Strategic Plan of the HJPC for the period 2014-2018 foresees extending the application of the Book of Rules on Conflicts of Interest to the judiciary as a whole. The GET supports this objective and refers to the recommendation given in paragraph 111.

Prohibition or restriction of certain activities

Recusal and routine withdrawal

147. The reasons for disqualification of judges apply accordingly to prosecutors (Criminal Procedure Code of BiH, Article 34). They include conflicts of interest arising from family, marital, financial or any other relationship with the parties, as well as any other circumstances that raise reasonable suspicion as to the prosecutor's impartiality. Disqualification is decided upon by the chief prosecutors and, as regards the latter, by the Collegium of the Prosecutor's Office.

148. The obligation of disqualification in case of conflict of interests is also addressed in the Code of Prosecutorial Ethics (Articles 2.2 and 2.5) and failure to request disqualification in such a case constitutes a disciplinary offence (Article 57, Law on HJPC).

Gifts

149. Prosecutors are prohibited from seeking or accepting gifts, bequests, loans and other services and advantages related to acts or omissions in the performance of their duties. This prohibition extends to members of their close family and their employees or other persons under their supervision. Gifts, remunerations or benefits of a symbolic nature given for a special occasion are allowed, provided they cannot reasonably be perceived as aiming at influencing the prosecutor or creating an impression of partiality in the public view (Articles 4.10 and 4.11, Code of Prosecutorial Ethics). The acceptance of a gift or remuneration in exchange for improper influence or appearance of such an influence, constitutes a disciplinary offence (Article 57, Law on HJPC). As already highlighted in Chapter IV, little attention has been given to ensuring compliance by prosecutors with these rules. In the GET's view, this gap needs to be addressed in the context of the recommendation for developing confidential counselling and training on issues of ethics and integrity, given in paragraph 109.

Incompatibilities and accessory activities, post-employment restrictions

150. The rules on incompatibilities and accessory activities are the same as those described in Chapter IV (paragraphs 115-117) in relation to judges.

Misuse of confidential information and third party contacts

151. Disclosure of confidential information from a case and engaging in inappropriate communications with the judge or parties to the proceedings or their representatives

constitute disciplinary offences under Article 57 of the HJPC. The Code of Prosecutorial Ethics also contains a prohibition on disclosing or using confidential information.

Declaration of assets, income, liabilities and interests

152. Prosecutors are subject to the same obligations as judges, described in Chapter IV. They have to file an annual financial statement with the HJPC disclosing, for themselves and members of their household, their income, assets, liabilities and guarantees given to or received from third parties during the past year. Activities in public and private companies, as well as political parties also have to be reported. These statements are archived by the HJPC but their content is not reviewed except if necessary in the framework of disciplinary proceedings and they are not disclosed to the public. Prosecutors may also have to submit *ad hoc* financial statements in the context of disqualification and disciplinary proceedings. Reference is made to the GET's concerns as to the current system (see paragraphs 119-120) and to the recommendation in paragraph 120 to develop an effective system for reviewing statements, as well as to consider publishing these statements.

Supervision and enforcement

153. Prosecutors are disciplinarily liable for committing a disciplinary offence as listed in Article 57 of the Law on the HJPC or disregarding the provisions of the Code of Prosecutorial Ethics. As described in Chapter IV, the HJPC is competent to receive complaints against judges and prosecutors, conduct disciplinary proceedings, determine liability, impose sanctions, decide upon appeals and upon suspensions (Article 17, Law on the HJPC). Disciplinary proceedings are initiated by the Office of the Disciplinary Counsel and are conducted by the First and Second Instance Disciplinary Panels of the HJPC. Details of the functioning of these bodies, statistics of disciplinary proceedings against judges and prosecutors in the past three years and the GET's misgivings about the current disciplinary liability system are detailed in paragraphs 121 to 126. A recommendation to address the issues highlighted by the GET appears in paragraph 126.

154. The rules on immunity are the same for judges and prosecutors. They are described in paragraph 128.

Advice, training and awareness

155. The modalities for initial and in-service training, organised by the training institutions at the level of the Entities and BD, under the supervision of the HJPC, are the same for prosecutors as for judges (see paragraphs 129 and 130). Reference is also made in this context to the recommendation to further develop training of a practical nature on ethics and integrity contained in paragraph 109.

156. It has been mentioned several times throughout this report that the judicial system and especially prosecutors have a very poor image in society. The GET's analysis and the recommendation in paragraph 131 on the development of a communication policy are therefore especially relevant to the prosecution service.

VI. RECOMMENDATIONS AND FOLLOW-UP

157. In view of the findings of the present report, GRECO addresses the following recommendations to Bosnia and Herzegovina:

Regarding members of parliament

i. **(i) introducing precise rules defining and facilitating public consultation processes of legislation in Parliament, and assuring effective compliance thereafter; and (ii) enhancing the transparency of the parliamentary process by introducing rules for parliamentarians on how to interact with third parties seeking to influence the legislative process** (paragraph 29);

ii. **that internal mechanisms be further articulated to promote and enforce the Code of Conduct for parliamentarians and thereby safeguard integrity within the legislature, including by (i) providing tailored guidance, counselling and training regarding ethical, integrity and corruption prevention related provisions, as well as (ii) developing effective oversight and compliance tools on these critical matters** (paragraph 38);

iii. **harmonising the legislation on conflicts of interest throughout the national territory** (paragraph 44);

iv. **(i) unifying the applicable requirements regarding financial disclosure in one single declaration form; (ii) introducing a duty to report the property of close relatives and to provide an update in the event of significant change in the information to be reported in the course of the legislative mandate; and (iii) ensuring the publication of and easy access to financial information, with due regard to the privacy and security of parliamentarians and their close relatives subject to a reporting obligation** (paragraph 61);

v. **(i) coupling the disclosure system with an effective control mechanism (including random verifications) and (ii) introducing appropriate sanctions for false reporting** (paragraph 63);

vi. **that the advisory, supervisory and enforcement regime regarding conflicts of interest be completely reviewed and properly articulated, notably, by ensuring its independence and timeliness, and by making it effective through a system of appropriate sanctions** (paragraph 71);

vii. **that the respective parliaments of the Republika Srpska, the Federation of Bosnia and Herzegovina and Brčko District of Bosnia and Herzegovina be invited, similarly, to take action in accordance with the recommendations issued in this section of the report** (paragraph 76);

Regarding judges and prosecutors

viii. **that determined legislative and operational measures be taken to strengthen the High Judicial and Prosecutorial Council's role in protecting the holders of judicial and prosecutorial offices from undue influences – both real and perceived – including by (i) providing for separate judicial and prosecutorial sub-councils; and (ii) avoiding an over-concentration of powers in the same hands concerning the different functions to be performed by members of the High Judicial**

and Prosecutorial Council; and (iii) ensuring that decisions of the High Judicial and Prosecutorial Council on the appointment, promotion and disciplinary liability of judges and prosecutors are subject to appeal before a court (paragraph 91);

ix. **that further steps are taken to improve the performance appraisals (with a priority given to qualitative over quantitative criteria) to both enforce the high ethical and performance standards expected from judges and prosecutors and assist in identifying meritorious candidates for promotion** (paragraph 99);

x. **(i) carrying out an analysis of the budgetary and staff situation in courts and prosecution offices, with a view to ensuring that the resources necessary are available and efficiently used across the judicial systems; and (ii) seeing to it that judicial resources are better prioritised with due regard for the gravity of cases** (paragraph 105);

xi. **significantly strengthening and further developing – for judges and prosecutors – confidential counselling and dedicated training of a practical nature on issues of ethics and integrity** (paragraph 109);

xii. **developing rules on conflicts of interest that apply to all judges and prosecutors, along with an adequate supervisory and enforcement regime** (paragraph 111);

xiii. **(i) developing an effective system for reviewing annual financial statements, including adequate human and material resources, co-operation channels with relevant authorities and appropriate sanctions for non-compliance with the rules or false reporting and (ii) considering ensuring the publication of and easy access to financial information, with due regard to the privacy and security of judges, prosecutors and their close relatives** (paragraph 120);

xiv. **that (i) the independence, capacity and transparency of the activity of the Office of the Disciplinary Counsel be increased; and that (ii) the disciplinary procedure and sanctions in case of misconduct of judges and prosecutors be revised in order to ensure that cases are decided in a timely manner and that misconduct is effectively subject to proportionate and dissuasive sanctions** (paragraph 126);

xv. **that a communication policy, including general guidelines and training on how to communicate with the media and the relevant civil society organisations, be developed for the judicial system (judges and prosecutors) with the aim of enhancing transparency and accountability** (paragraph 131).

158. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Bosnia and Herzegovina to submit a report on the measures taken to implement the above-mentioned recommendations by 30 June 2017. These measures will be assessed by GRECO through its specific compliance procedure.

159. GRECO invites the authorities of Bosnia and Herzegovina to authorise, at its earliest convenience, the publication of this report, to translate the report into its national languages and to make the translations publicly available.

About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe's anti-corruption instruments. GRECO's monitoring comprises an "evaluation procedure" which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment ("compliance procedure") which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

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