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Addendum

First Evaluation Round

Addendum to the Compliance Report on Bosnia and Herzegovina

Adopted by GRECO
at its 34th Plenary Meeting
(Strasbourg, 16-19 October 2007)

I. INTRODUCTION

1. GRECO adopted the First Round Evaluation Report on Bosnia and Herzegovina at its 14th Plenary Meeting (7-11 July 2003). The report (Greco Eval I Rep (2002) 10E), which contains 18 recommendations addressed to Bosnia and Herzegovina was made public on 11 August 2003.
2. Bosnia and Herzegovina submitted the Situation Report required by GRECO's compliance procedure on 4 January 2005. On the basis of this report and a Plenary debate, GRECO adopted the First Round Compliance Report (RC-report) on Bosnia and Herzegovina at its 23rd Plenary meeting (20 May 2005) which was made public on 11 October 2005. The Compliance Report (Greco RC-I (2005) 1E) concluded that recommendations iv, v, vi, vii, x, xi, xii, xiii, xv and xvii had been implemented satisfactorily, recommendations i, ii, iii, viii and ix had been dealt with in a satisfactory manner, whereas recommendations xiv, xvi and xviii had been partly implemented. GRECO requested additional information on the implementation of the latter. The information requested was submitted on 14 May 2007 and 5 September 2007.
3. Pursuant to Rule 31, paragraph 9.1 of GRECO's Rules of Procedure the objective of the present Addendum to the First Round Compliance Report is to appraise the implementation of recommendations xiv, xvi and xviii in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendation xiv.

4. *GRECO recommended to envisage a consolidation of the Entities' Customs administrations and to set up an adequate mechanism for cooperation and information exchange between the Entities' tax authorities.*
5. In its compliance report, GRECO welcomed the merger of the Entities' Customs administrations into the Indirect Taxation Authority (ITA). It nevertheless noted that other elements of the tax administration, notably with respect to direct taxation, remained fragmented at State and Entity levels. For this reason, the recommendation was assessed as partly implemented.
6. The authorities of Bosnia and Herzegovina now report that the reorganisation of direct taxation is underway and that steps have been taken to harmonise corporate and personal income taxes at Entity level.
7. As far as the mechanism for cooperation and information exchange between the Entities' tax authorities is concerned, the governments of the Republika Srpska, the Federation of Bosnia and Herzegovina and the Brcko District signed a Memorandum of Understanding on excise tax. Moreover, the different levels of government signed an Agreement on Mutual Assistance and Administrative Cooperation in the field of taxation, which provides for information exchange in the areas of accounts' control, payment and collection of public revenues. The authorities of Bosnia and Herzegovina indicate that the existing information exchange mechanisms need to be further developed and improved, and that new channels of cooperation are to be established to sustain the fight against corruption within the country.
8. GRECO notes that the authorities of Bosnia and Herzegovina have paid due attention to the first part of the recommendation and are in the process of further consolidating the Entities' Customs

administrations. However, the reorganisation of direct taxation is still not completed. It would appear that in this particular area legislation is still heterogeneous and responsibilities remain dispersed amongst Entities and municipalities to the detriment of a more coordinated and, ultimately, efficient action in the fight against corruption. Consequently, GRECO maintains that the recommendation can only be considered fully implemented when the consolidation of a coherent framework for direct taxation is achieved. With respect to the second part of the recommendation, GRECO welcomes the measures reported concerning the establishment of agreements governing cooperation and information exchange in the field of taxation and encourages Bosnia and Herzegovina to continue its efforts in this area to swiftly and effectively uncover instances of corruption.

9. GRECO concludes that recommendation xiv has been partly implemented.

Recommendations xvi and xviii.

10. *GRECO recommended to review the system of immunities applicable at State and Entity level and make sure that the legal framework is clear, coherent, comprehensive, and understood by practitioners and the public at large.*
11. *GRECO also recommended to provide for clear conditions and procedures to be followed for the lifting of the immunities.*
12. GRECO recalls that in the First Round Evaluation Report it had addressed three distinct recommendations on the issue of immunities: (1) to revise the system of immunities with a view to setting in place a clear, coherent and comprehensive legal framework, which is understood by practitioners and the public at large (recommendation xvi); (2) to limit the categories of persons covered by immunities from criminal proceedings (recommendation xvii); and (3) to provide for clear conditions and procedures for the lifting of immunities (recommendation xviii). In its compliance report, GRECO acknowledged the review of the system of immunities in Bosnia and Herzegovina. It particularly welcomed the reforms introduced to restrict the categories of persons enjoying immunities, which led GRECO to conclude that recommendation xvii had been implemented satisfactorily. In accordance with paragraph 79 of the First Round Compliance Report, GRECO considered that recommendations xvi and xviii were closely interlinked. In this connection, GRECO noted that the information provided by Bosnia and Herzegovina was insufficient to assess the real extent of the review performed in the system of immunities, in particular, in respect of two outstanding issues raised by the GET at the time of the First Round Evaluation Report i.e. the scope of immunities (inviolability against criminal prosecution and civil action for “acts committed in the course of duties”) and the procedures for lifting immunities. Consequently, GRECO assessed recommendations xvi and xviii as partly implemented.
13. The authorities of Bosnia and Herzegovina state that the legal framework governing the issue of immunity was amended in 2002 on the basis of a Decision of the High Representative, which enacted the Law on Immunity of Bosnia and Herzegovina. The Federation of Bosnia and Herzegovina and the Republika Srpska adopted their own Laws on Immunity. The contents of the three afore-mentioned laws - which are applicable at State and Entity levels respectively – have been harmonised. The scope of immunity is strictly limited to acts related to the official’s duties and must by no means be seen as a general bar preventing criminal prosecution or the institution of civil proceedings. Immunity also applies after the official has left his/her functions for acts accomplished before departure. Individual requests for immunity (which could be filed either by the competent prosecutor before the civil/criminal proceedings start, or during the civil/criminal

procedure by the person claiming immunity) are to be submitted to a “competent court”; the court is then to decide whether or not an action has been committed within the scope of the official’s duties. The law further requires the development of “model procedural rules” governing the hearing of immunity requests, including the identification of the competent court for dealing with such issues.

14. GRECO takes note of the information provided concerning the scope of immunities, which brings light to the issues raised in the First Round Evaluation Report. It notes, however, that as far as the conditions and procedures for lifting immunities are concerned, nothing new has been added to the information already reported at the time of adoption of the First Round Compliance Report. GRECO would have appreciated receiving details concerning the development of “model procedural rules”, which are required by the existing legislation, to govern the hearings of immunity requests and the designation of the courts which are competent for such hearings. Moreover, GRECO already highlighted in its First Round Compliance Report that the Laws on Immunities do not contain any indication as to the procedure applicable with a view to lifting the immunity; the situation in this respect appears unchanged.
15. GRECO acknowledges the positive steps taken with the adoption of the Laws on Immunity in order to establish a consolidated and harmonised legal framework at State and Entity level, as well as to reduce the categories of persons covered by immunities. However, in a context of uncertainty as to the applicable conditions and procedures for lifting immunities, GRECO cannot consider the review of the system of immunities as completed in order to satisfy all relevant concerns raised by recommendations xvi and xviii.
16. GRECO can therefore not change its previous position and concludes that recommendations xvi and xviii remain partly implemented.

III. CONCLUSION

17. In addition to the conclusions contained in the First Round Compliance Report on Bosnia and Herzegovina and in view of the above, GRECO concludes that recommendations xiv, xvi and xviii remain partly implemented. GRECO encourages the authorities of Bosnia and Herzegovina to pursue their efforts to establish a coherent framework for direct taxation and to further develop adequate mechanisms for cooperation and information exchange between the Entities’ tax authorities. Furthermore, GRECO urges the authorities of Bosnia and Herzegovina to promptly introduce clear conditions and procedures to be followed for the lifting of the immunities.
18. The adoption of the present Addendum to the Compliance Report terminates the First Evaluation Round compliance procedure in respect of Bosnia and Herzegovina.
19. Finally, GRECO invites the authorities of Bosnia and Herzegovina to authorise, as soon as possible, the publication of the Addendum, to translate it into the national languages and to make these translations public.