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Second Evaluation Round

Evaluation Report on Bosnia and Herzegovina

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I. INTRODUCTION

1. Bosnia and Herzegovina was the 34th GRECO member to be examined in the second Evaluation round. The GRECO evaluation team (hereafter referred to as the "GET") was composed of Ms María DE LAS HERAS, Public Prosecutor, Attorney General's Office, Spain; Mr Ara NAZARYAN, Member of Civil Service Council, Armenia; Mr Keith McCARTHY, Head, Anti-Money Laundering Unit, Her Majesty's Revenue and Customs, Criminal Investigations Directorate, United Kingdom. This GET, accompanied by a member of the Council of Europe Secretariat, visited Bosnia and Herzegovina from 21 to 25 November 2005 and from 17 to 19 October 2006. Prior to the first visit, in 2005, the GET experts were provided with replies to the Evaluation questionnaire (document Greco Eval II (2005) 6E) as well as copies of relevant legislation.
2. The GET met with officials from the following institutions: State level: Public Prosecutor's Office (Chief Prosecutor, Special Department of Organised Crime and Corruption), State Court, Ministry of European Integration, Ministry of Security (State Investigation and Protection Agency), Ministry of Justice (Administrative Inspectorate), Indirect Taxation Authority, State Audit Bureau, Ombudsperson, Civil Service Agency, Election Commission, Council of Ministers (Public Administration Reform Coordinator Office, Directorate for Economic Planning and Unit for Monitoring the Implementation of the Bosnia and Herzegovina Medium-Term Development Strategy). Federation of Bosnia and Herzegovina: Public Prosecutor's Office, Supreme Court, Ministry of the Interior (Department for Economic Crime against Corruption, Money Laundering and Cybercrime), Ministry of Finance (Tax Department), Civil Service Agency, Ombudspersons. Republika Srpska: Public Prosecutor's Office, Supreme Court, Ministry of the Interior (Criminal Investigation Police Department, Special Investigation Unit), Ministry of Finance (Tax Department), Civil Service Agency, Ombudspersons. Brčko District: Court of the Brčko District. Moreover, the GET met with members of the following non-governmental institutions: the national chapter of Transparency International, Bar Association of the Republika Srpska, Civil Service and Police Union, Association of Accountants of the Federation of Bosnia and Herzegovina, Banking Agency of the Federation of Bosnia and Herzegovina, Banking Agency of Republika Srpska, Centre for Free Access to Information, and media representatives. Finally, given the country's particular situation, the GET also met with representatives of the Office of the High Representative (OHR) and the Delegation of the European Commission in Bosnia and Herzegovina.
3. It is recalled that GRECO agreed, at its 10th Plenary meeting (July 2002), in accordance with Article 10.3 of its Statute, that the 2nd Evaluation Round would deal with the following themes:
 - **Theme I - Proceeds of corruption:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173¹), by Articles 19 paragraph 3, 13 and 23 of the Convention;
 - **Theme II - Public administration and corruption:** Guiding Principles 9 (public administration) and 10 (public officials);
 - **Theme III - Legal persons and corruption:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.

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

4. The present report was prepared on the basis of the replies to the questionnaire and the information provided during the two on-site visits. The main objective of the report is to evaluate the effectiveness of measures adopted by the authorities of Bosnia and Herzegovina in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Bosnia and Herzegovina in order to improve its level of compliance with the provisions under consideration.

II. GENERAL OVERVIEW OF POLITICAL AND LEGAL STRUCTURES

5. The Dayton Agreement established Bosnia and Herzegovina as a State comprising two Entities, each with a high degree of autonomy: the Republika Srpska (RS) and the Federation (FBiH) and the Brčko District (BD). It functions as a single administrative unit of self-government existing under the sovereignty of Bosnia and Herzegovina. From a constitutional point of view, the current system bears the features of a very decentralised federal system, with each Entity having its own Constitution, President, Government, Parliament, judicial organisation and penal law. In fact, at the time of the visits, the State (BiH) was vested with a subsidiary competence. Contrary to the RS, the FBiH is itself a federation consisting of ten Cantons. At the lowest level, there are 147 Municipalities (regulated by their own statute) which elect their municipal council, headed by the mayor or prefect.
6. The Office of the High Representative (OHR) was created to oversee implementation of the civilian arrangements under the Dayton Agreement. It was vested with executive authority (through the so-called Bonn powers) to impose legislation and remove officials. It continues to provide political and economic direction in Bosnia and Herzegovina, but in 2006 its powers have been limited and most of its tasks have been handed over to the national authorities. The High Representative simultaneously serves as the EU Representative in Bosnia and Herzegovina. Definitive closure of the OHR is foreseen by 30 June 2007; in its place, but with a smaller presence and different mandate, the Office of the EU Special Representative is to be enhanced.
7. The legal/institutional situation in the country is the result of many compromises and ethnic/religious considerations. Penal legislation and penal procedure legislation have been adopted at BiH, Entity and BD levels. Entity and BD laws apply exclusively before Entity or BD Courts. State level legislation is applied before the State Court. As a general rule, the State judicial structures manage cases affecting the territory of more than one Entity or take over cases from Entities' Courts/Prosecutors where criminal proceedings may be at risk because of political interference. Judicial cooperation in criminal matters between the Entities and Brčko District is subject to the provisions of the Law on Legal Assistance and Official Co-operation in Criminal Matters between FBiH, RS and BD. The decisions of the courts and law enforcement bodies at the different levels of government are mutually acknowledged on a reciprocal basis and are valid within the entire national territory. Direct communication is possible among the different layers of Government and the various law enforcement agencies are entitled to take the necessary action in the territory of the other Entity and BD without consent of the level of government concerned.
8. Given the complexity of structures and laws in the country, this report presents a comprehensive overview of the three different Themes under evaluation in Bosnia and Herzegovina. It focuses on a detailed assessment of a particular level of government, whenever necessary, to highlight differences (whether achievements or challenges ahead) of the various institutions and legal systems within the country. In this connection, recommendations are addressed to the country as a whole, to the State level and/or to the Entities and Brčko District, as appropriate.

III. THEME I – PROCEEDS OF CORRUPTION

a. Description of the situation

Confiscation and other deprivation of instrumentalities and proceeds of crime

9. New criminal and criminal procedure legislation was adopted in 2003 at the different levels of government of Bosnia and Herzegovina, i.e., at State level, in FBiH, in RS and in BD. With respect to confiscation-related provisions, the four Criminal Codes (CC) largely follow a similar wording (Articles 110-112 CC BiH; Articles 114-116, CC FBiH; Articles 64, 93-96 CC RS; Articles 114-116 CC BD). The rules on confiscation apply with regard to property held by a physical as well as a legal person (Article 140 CC BiH; Article 144 CC FBiH; Article 143 CC RS; Article 144 CC BD).
10. Confiscation is a sui generis legal measure with a mandatory character, which does not affect the determination of the main penalty in a criminal case. Confiscation can only be decided by a court and the decision to confiscate is part of the criminal judgement of conviction. At State level, in FBiH and BD, in rem confiscation can be ordered in the course of a separate proceeding if (1) there is a probable/justifiable cause to believe that the gain derives from a criminal offence and (2) the owner or possessor is not able to give evidence that the gain was legitimately acquired (Article 110(3) CC BiH; Article 114(3) CC FBiH; Article 114(3) CC BD). The Criminal Code of RS does not include such possibilities.
11. At State level, in FBiH and BD, confiscation is to be used with regard to proceeds of crime, whether primary or secondary proceeds (Article 111(3) CC BiH; Article 115(3) CC FBiH; Article 115(3) CC BD). In particular, income or other benefits derived from the proceeds of a criminal offence (including corruption offences), from property into which proceeds of a criminal offence have been converted, or from which property with which proceeds of a criminal offence have been intermingled, are also liable to confiscation in the same manner and extent as the primary proceeds of the criminal offence (Article 111(3) CC BiH; Article 115(3) CC FBiH; Article 115(3) CC BD). The Criminal Code of RS, does not include any provision concerning confiscation of secondary proceeds.
12. Instrumentalities used or destined for use in a crime may be confiscated² if there is a danger that those objects will be used again for the perpetration of a criminal offence, or owing to strictly necessary public safety or moral reasons, if those objects are owned by the perpetrator (Article 74 CC BiH; Article 78 CC FBiH; Article 62 CC RS; Article 78 CC BD). Instrumentalities may also be confiscated, even if not owned by the perpetrator, when consideration of public safety or moral reasons so require.
13. Value confiscation is possible – the perpetrator is obliged to pay an equivalent amount of money which corresponds to the acquired material gain (Article 111(1) CC BiH; Article 115(1) CC FBiH; Article 95(1) CC RS; Article 115(1) CC BD). An estimation of the economic value of the asset is established by independent financial experts
14. The criminal proceeds subject to confiscation may be exacted from a third party if property was not acquired *bona fide* (Article 111(1) CC BiH; Article 115(1) CC FBiH; Article 95(2) CC RS; Article 115(1) CC BD).

² The English translation provided for all Criminal Codes refer to the term “forfeiture” with respect to instrumentalities of a criminal offence. In order to facilitate its reading, the present report uses the term confiscation for both proceeds and instrumentalities of crime.

15. The burden of proof in cases of confiscation of the proceeds of crime can never be reversed, however, in some cases a certain apportionment of the burden of proof is possible with respect to *in rem* confiscation where, when there is a probable/justifiable cause to believe that the gain derives from a criminal offence, the owner or possessor of the asset is to prove that the gain was legitimately acquired.
16. Confiscation property accrues to the State, to the Entities or to the Brčko District as a main rule, but it is possible to satisfy the claims corresponding to the damage occasioned to an individual who has exerted his/her civil rights in due time (Article 112 CC BiH; Article 116 CC FBiH; Article 96 CC RS; Article 116 CC BD).

Interim measures: seizure and attachment

17. The different Codes of Criminal Procedure (CPC) adopted at State level, in FBiH, the RS and BD include similar provisions concerning the use of seizure to secure proceeds of crime (Article 73 CPC BiH; Article 87 CPC FBiH; Article 137 CPC RS; Article 73 CPC BD). At any time during the investigative proceedings, the court may, following the request of the prosecutor, issue a seizure order to prevent any use, transfer or disposal of the illicitly gained property. Moreover, if risks of delay exist, authorised officials of the law enforcement agencies may temporarily seize property and must immediately inform the prosecutor of the measures taken; these measures must be confirmed by the court within 72 hours.
18. An appeal against a decision of seizure does not prevent the decision from being executed (Article 69 CPC BiH; Article 83 CPC FBiH; Article 133 CPC RS; Article 69 CPC BD).
19. As regards the management of seized property, objects seized must be managed by the court or secured in another way. After the seizure of objects and documentation, an inventory list is made and a receipt concerning the objects and documents seized is given. If making an inventory list of objects and documentation is impossible, the objects and documentation are to be wrapped and sealed and kept in a Court deposit.
20. Specific financial investigations – aiming at identifying, tracing and freezing proceeds of crime or monitoring a suspect's property – are not systematically conducted when corruption crimes are detected. The court, at the motion of the prosecutor, is empowered to require a bank to deliver information on financial records of the suspect or of persons who are reasonably believed to be involved in the financial transactions or affairs of the suspect, if such information could be used as evidence in the course of the criminal proceedings. However, in case of urgency, the prosecutor can request information on financial records even without authorisation of the court; the prosecutor must immediately inform the court, which must issue a court warrant within 72 hours. The court may also order the temporary suspension of a financial transaction; the amounts are temporarily seized and deposited in a special account and kept until the end of the proceedings (Article 72 CPC BiH; Article 86 CPC FBiH; Article 136 CPC RS; Article 72 CPC BD).
21. It is only possible to use special investigative techniques if 1) the criminal offence is subject to an imprisonment sanction of a minimum term of three years and 2) if evidence cannot be obtained in another way or its obtainment would be accompanied by disproportional difficulties. Authorisation can only be granted by the court upon motion of the prosecutor.

Statistics

22. Information on the type of criminal cases in which confiscation and seizure have been adjudicated is not available. However, the GET was informed that in the last three years, 17 confiscation orders concerning illegally gained property were issued. Seizure was ordered in 21 cases.

Money laundering

23. Money laundering has been criminalised as a separate offence in each of the Criminal Codes under review (Article 209 CC BiH; Article 272 CC FBiH; Article 280 CC RS; Article 265 CC BD); they all follow an "all crime" approach. Therefore, any corruption offence can be a predicate offence to money laundering. The State level is competent for all money-laundering offences of large value or endangering the common economic space of Bosnia and Herzegovina or having detrimental consequences on the operations of financing institutions of Bosnia and Herzegovina.
24. Sanctions consist of imprisonment for a term between six months and five years. The most severe sanction is provided in RS, where money laundering can be punished with imprisonment of up to twelve years (Article 280(4) CC RS).
25. The Law on the Prevention of Money Laundering at State level was enacted in December 2004; it repeals the different laws on money laundering that existed in FBiH, RS and BD. It lists the institutions compelled to report suspicious transactions (STRs), e.g. banks, investment and retirement agencies and funds, insurance agencies, exchange offices, pawnshops, as well as other legal persons licensed to perform financial transactions (Article 3). Lawyers, legal advisers, notaries, auditors and accountants are also obliged to report STRs, except when they received the information prior to, during or after court proceedings unless they know or should know that the party is requesting legal advice with the purpose of money laundering or funding terrorist activities (Article 4). A Book of Rules on Data Information, Documents, Identification Methods and Minimum Other Indicators Required for Efficient Implementation of Provisions of the Law on the Prevention of Money Laundering, which was adopted in March 2005, details the information required to be reported by service providers and provides guidelines for identification of suspicious transactions. Finally, an Action Plan for the Prevention of Money Laundering (2003) contains a list of measures to prevent money laundering, including implementing authorities and required financial means to complete these measures within the prescribed deadlines.
26. The Financial Intelligence Unit (FIU) has been placed within the State Investigation and Protection Agency (SIPA) which is under the responsibility of the Ministry of Security. It gathers and analyses STRs and subsequently reports grounded suspicions to the BiH Prosecutor's Office. The FIU was established in December 2004, it is vested with investigative powers and can temporarily suspend the execution of the reported suspicions transaction for a maximum of five days. Its Crime Investigation Division has been staffed with 17 financial inspectors, who investigate exclusively financial frauds and illegal transactions in BiH. Finally, the FIU, together with other law enforcement agencies in BiH, is responsible for the prevention of money laundering and funding of terrorist activity.
27. In 2005, the SIPA-FIU received 135,888 reports of which 90 related to suspicious transactions; it reported 29 of these to the relevant prosecutors and froze 2 million BAM (1,022,584 EUR). None of the STRs were made in relation to the predicate offence of corruption (the predicate offence was mostly dealing with tax evasion).

Mutual legal assistance: provisional measures and confiscation

28. International judicial cooperation on interim measures and confiscation is subject to the same rules and machinery as mutual assistance in criminal matters in general; thus, it is based on international³ and bilateral agreements (e.g., with neighbouring countries: Croatia, the FYROM, Montenegro, Serbia, etc.) and the relevant criminal procedure legislation in Bosnia and Herzegovina (Chapter XXX CPC BiH; Chapter XXXI CPC FBiH; Chapter XXXI CPC RS; Chapter XXX CPC BD).
29. When Bosnia and Herzegovina is the requesting State, the court or the prosecutor delivers the request to the competent Ministry of Justice of FBiH/RS/or the Judicial Commission of BD, which then forwards the request to the Ministry of Justice at State level. The reverse process occurs when Bosnia and Herzegovina receives a request by a foreign State. The prosecutor and the court are competent to decide as to the permissibility of and manner in which actions requested by the foreign authority are carried out, in accordance with their competencies and under the legislation of Bosnia and Herzegovina.
30. Direct communication between law enforcement agencies at international level is not possible, unless provided for by a specific agreement or memorandum of understanding between BiH and a given foreign country. Some experience has been developed concerning mutual legal assistance concerning seizure/freezing in corruption-related cases. As an example, Bosnia and Herzegovina made a request for a search warrant to the United Kingdom in a corruption-related case. Requests for freezing of financial transactions were made to Cyprus, Luxembourg, Montenegro and Switzerland. A request for freezing of a financial transaction was received from Lithuania.

b. Analysis

31. Bosnia and Herzegovina has recently made, and is continuing to make, substantial amendments to its criminal legislation and the organisation of the judicial/prosecutorial systems.⁴ In 2003, new Criminal Codes and Codes of Criminal Procedure were adopted at State, Entity (FBiH and RS) and Brčko district level. The GET welcomes these achievements and agrees with the interlocutors met during the on-site visits that the relevant amendments require stabilisation to further progress in their implementation.
32. The new provisions on confiscation and seizure are comprehensive and generally meet the standards of the Criminal Law Convention on Corruption (ETS No. 173). Despite the recent steps made to harmonise criminal legislation at all governmental levels, in the GET's view, a certain fragmentation of the criminal system remains. In this context, some differences, which could limit the effectiveness of the confiscation regime, still exist in the Criminal Code of the RS. In particular, no provision currently enables confiscation of indirect proceeds nor *in rem* confiscation. Therefore, **the GET recommends to enlarge the scope of the provisions of the Republika Srpska on confiscation of indirect proceeds of crime and with regard to situations where no conviction is possible (*in rem* confiscation).**

³ Bosnia and Herzegovina has ratified the 1959 European Convention on Mutual Assistance in Criminal Matters (ETS 30), the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (ETS 141), and finally, the United Nations Convention against Transnational Organised Crime and its Protocols.

⁴ The GET was informed after the visit, that a special working group to amend the existing Criminal Codes and Criminal Procedure Codes has been established.

33. The GET notes that existing legislation at the different levels of government does not provide for the reversal of the burden of proof. However, certain possibilities exist to lower the level of proof (i.e., legal provisions on attachment *in rem*), but it became clear from the interviews held that such possibilities had not been tested in practice. This may be seen as an obstacle for the system to work efficiently as it is often difficult to prove cases of corruption, bearing in mind the characteristics of this offence. However, in the present situation where the legislation has not been sufficiently tested, the GET refrains from issuing a recommendation in this respect.
34. The new legal provisions which have been introduced in this field during recent years have not been followed by prosecution practice as the GET understood from some interviews held during the on-site visits. Therefore, while it is mandatory to deprive the beneficiaries of the proceeds of crime, confiscation/seizure is not systematically ordered in cases of corruption. The GET discussed these problems at length with representatives from the prosecution service, who highlighted the difficulty of proving the unlawful origin of proceeds from crime. Furthermore, the GET was especially concerned about the indication from prosecutors that they had not developed any experience concerning confiscation of objects held by a third party. In view of that, the GET is of the opinion that the recent legislation must be coupled with follow-up measures to promote its effective implementation. The development of guidance for prosecutors (e.g. explanatory notes concerning seizure and confiscation provisions) and the provision of training concerning provisional seizure and confiscation of the proceeds from criminal offences for both the prosecution authorities and the judiciary appears to be necessary. Consequently, **the GET recommends to analyse the practical application of the legislation on confiscation and seizure of the instruments and proceeds of criminal offences, including corruption, with a view to developing harmonised guidance for prosecutors and to providing training for both prosecutors and judges; particular attention should be paid to making better use of legal provisions concerning confiscation of proceeds of crime held by a third party.**
35. Investigation in respect of property and other benefits obtained from crime is part of the general intelligence work in the context of the criminal procedure, and consequently, is not considered a separate investigative activity. There is a great multiplicity of agencies at State and Entity level which can address corruption and money laundering-related issues.⁵ To improve co-ordination at State level, a State Investigation and Protection Agency (SIPA) was established under the State Ministry of Security. The Department of Organised Crime and Corruption, within SIPA, undertakes criminal investigations at national level in close co-operation with the Crime Departments of the Court of BiH at State level (notably, Department II for Organised Crime, Economic Crime and Department III for other criminal offences – mostly related to tax evasion).
36. Despite the above-mentioned efforts to co-ordinate and centralise investigation of corruption-related services within the entire national territory, the prosecution services at Entity level are not properly acquainted of the attributions and special powers with which SIPA is vested. The Entity representatives interviewed by the GET often indicated that SIPA was not fully operational. In addition, the GET was not totally convinced that enough attention was paid at early stages of criminal proceedings to the importance of carrying-out a thorough economic investigation of the suspect to identify the proceeds of corruption with a view to preventing any dissipation of assets. It appeared to the GET that at the beginning of the investigation, the efforts of the investigators/prosecutors were focused primarily on obtaining the necessary evidence to set up a case and on identifying tax evasion cases.

⁵ Following the establishment of the SIPA-FIU, there is a gradual trend to centralise money laundering issues at State level.

37. The reform of the criminal legal system in 2003 provided for a leading role of prosecutors throughout the different stages of criminal proceedings (from the investigative phase to the final indictment) by abolishing the figure of the investigating judge. The reform has entailed a significant overload for the prosecution service. Furthermore, the GET was informed by certain interlocutors that prosecutors appeared to focus on securing imprisonment convictions, but did not pursue systematic financial investigations to secure criminal proceeds for their subsequent confiscation.
38. There is also a clear lack of coordination between the different data gathered at State/Entity levels. Throughout meetings during the on-site visits, the GET was told that the sharing of knowledge and intelligence between law enforcement agencies was particularly weak and dysfunctional. There are no centralised, accurate, up-to-date and coordinated databases/registers available for the every-day work of Courts and prosecutors, within the limits of their respective competences, that allow them to react *tempore criminis*. In the GET's view, proper coordination and cooperation between the authorities in charge of the fight against corruption and organised crime, including money laundering will enable them to enhance their effectiveness. In this context, the GET was hopeful that the structural reform of the Police would start to be implemented shortly to contribute to the development of a coherent approach to the fight against corruption.⁶
39. Concerning access to bank, financial and commercial records, the GET was told that the information needed to track money flows can sometimes be difficult to obtain from the banks, which are not obliged to communicate detailed information on specific banking operations to prosecutors, unless a written authorisation of the Court is presented. Furthermore, police officers and prosecutors had experienced some problems to obtain judicial warrants at preliminary stages of criminal investigations since the relevant Courts had found that there were not enough grounds to grant such authorisation. Finally, the evaluators were informed about problems with some banks that were either not cooperating in information disclosure obligations by relying on bank secrecy provisions or provided financial data with significant delays and/or in an insufficient way. On a positive note, and following the legal obligation established in the Law on the Prevention of Money Laundering to report suspicious transactions, cooperation of the banking sector with the SIPA-FIU in relation to money laundering suspicions appeared to be working in an effective manner.
40. With regard to financial investigations and for the reasons mentioned above, **the GET recommends to (i) improve the coordination and cooperation between the agencies involved in the detection, investigation and prosecution of corruption on a regular basis at early stages of criminal proceedings, by providing the prosecution with accurate and updated financial/economic information, in order to ensure that economic investigations are likely to result in the freezing of the proceeds of corruption; and (ii) develop specific multidisciplinary training for prosecutors and police officers to make full use of the practical and legal means available to effectively track offenders' assets.**
41. Despite the wide range of special investigative techniques provided for in legislation (i.e., surveillance and recording of communications, access to computer systems and data, use of undercover agents, simulated purchase of objects and simulated bribery, monitoring of transport and delivery of the objects of a criminal offence), these means are seldom used in practice. Furthermore, the GET was informed that the use of special investigative techniques does not

⁶ Police reform is being pursued with a triple aim 1) securing the exclusive state-level competences on police, 2) the elimination of political interference and 3) ensuring that police regions are determined on the basis of technical and professional criteria.

apply to ordinary forms of corruption and trading in influence. In this connection, the GET refers to Article 23 of the Criminal Law Convention on Corruption, which provides for an obligation to permit the use of special investigative techniques to facilitate the gathering of evidence related to all corruption and money laundering offences and to identify, trace and seize instrumentalities and proceeds of corruption, or property of corresponding value. **The GET therefore recommends to extend the application of the provisions on the use of special investigative techniques to cover a wider range of corruption offences in accordance with Article 23 of the Criminal Law Convention on Corruption and to provide the competent agencies with appropriate means and training in order to make the system of special investigative techniques work efficiently in practice.**

42. The GET took note of the “all crime approach” with regard to the predicate offence of money laundering. The problem of money laundering is essentially addressed at State level with the creation of a State Financial Intelligence Unit (FIU), which operates as a separate department of SIPA and is empowered to seize property and to temporarily freeze financial transactions. The establishment of the SIPA-FIU at State level is commendable. However, the SIPA-FIU was understaffed at the time of the visits: although its constitutional act foresaw a total staff of 39, there were only 17 employees and the recruiting of additional personnel is an ongoing process. Moreover, the GET was informed that plans are underway to increase the SIPA-FIU staff with 65 more persons specialised in financial investigation (namely, Entity personnel from the former financial police). In light of the relevant anti-money laundering tasks/powers (i.e., collection, analysis, dissemination of information and intelligence-related attributions) with which the SIPA-FIU is vested, **the GET recommends that the authorities ensure that the Financial Intelligence Unit of the State Investigation and Protection Agency reaches the required staff level as soon as possible.**
43. Concerning international cooperation in connection with corruption in general and with the freezing, seizure and confiscation of proceeds in particular, there appears to be good judicial cooperation with neighbouring countries, especially with those of the former Yugoslavia. The GET welcomes that targeted training of judges, prosecutors and officials of the Ministry of Justice dealing with mutual legal assistance requests, has been developed in the context of international assistance projects (e.g., CARDS, TAIEX, USAID).
44. There are no comprehensive statistics in the overall territory of Bosnia and Herzegovina permitting to evaluate the practical implementation of existing legislation on seizure and confiscation in general and of corruption proceeds and money laundering in particular. Therefore, it is impossible to know to what extent the perpetrators of corruption offences, including legal persons, are in fact deprived of their illicit benefits. There is also an absence of statistics on financial investigations, international co-operation and sanctions for failures to notify cases of corruption or money laundering by institutions that are obliged to do so. Although some steps have been taken at State level through the establishment of a centralised database gathering the decisions of the Supreme Court of Bosnia and Herzegovina, no similar records exist at Entity level. In this connection, *the GET observes that systematic and centralised statistics should be collected and analysed concerning the use of confiscation, interim measures and international cooperation in cases of corruption.*

IV. THEME II – PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

Definitions and legal framework

45. The existing legal framework in Bosnia and Herzegovina does not include a definition of public administration. The public sector in general and the public administration in particular provide most of today's employment in Bosnia and Herzegovina, which accounts for 60% of the annual GDP. Within the public sector, there are two main categories of employment: civil servants (with university degree) and employees (lower level of education, carrying out auxiliary tasks –e.g., IT technicians, secretarial and general maintenance staff). There are a total of 24,857 civil servants and employees working in Bosnia and Herzegovina (16,687 in the FBiH; 4,243 in RS; 2,994 in BD and 933 at State level); no breakdown was provided on the number of staff pertaining to each of these categories.⁷ Employees are subject to labour law contracts, while civil servants are governed, at each level of government, by the respective Law on Civil Service.⁸ Civil Service Agencies have been established at all levels of government to centralise personnel matters (e.g., recruitment procedures, personnel registries, training, codes of ethics, etc.).
46. On 19 November 2003, the different levels of government in Bosnia and Herzegovina agreed to launch a countrywide, crosscutting and comprehensive Public Administration Reform (PAR) aimed at establishing a cost-efficient, effective and professional body of civil servants. A series of EC-funded functional reviews of different areas of public administration (human resources, public finance, legislative drafting, administrative procedure, information technology and institutional communication) were completed in 2005. They concluded with a number of recommendations that were to be taken into account when developing the "PAR Strategy and Action Plan". The PAR Strategy and Action Plan were adopted on 24 July 2006. The PAR process is conducted by a National Co-ordinator and several working groups that provide leadership, guidance, monitoring and evaluation of the reforms to be taken. Agreement is being sought by the donor community and national authorities to create a "PAR fund", which will provide technical assistance to the reform process.

Anti-Corruption Policy

47. In March 2006, the "Strategy for the Fight Against Organised Crime and Corruption" was adopted. The focus of the Strategy is the establishment of an institutional and legal framework for fighting the above crimes, and more particularly the prevention of corruption, criminal prosecution as well as education and public awareness raising. Among the priorities envisaged in the area of public administration are: better regulation of declaration of assets of civil servants and elected persons, adoption and implementation of codes of conduct, enhancing transparency and control mechanisms with respect to public procurement, etc. The implementation plan covers a time span of four years (2006 -2009).

⁷ The GET was informed after the visit that, in the context of the PAR, a project to establish a human resources management database had been launched. It would provide statistics on the number of civil servants and employees working in Bosnia and Herzegovina.

⁸ Law on Civil Service in the Institutions of Bosnia and Herzegovina (May 2000); Act of 26 June 2003 on Public Service in the Federation of Bosnia and Herzegovina; Law on Civil Service of the Republika Srpska (September 2002); Law on Public Servants and Support Staff of the Brčko District (September 2004).

Transparency

48. Separate Laws on Free Access to Information have been adopted since 2000 at State and Entity levels; their contents appear to be largely harmonised. Any physical or legal person has the right to obtain, free-of-charge, copies of any information held by the administration within a deadline of 15 days. Applicants do not have to prove a legal interest in the information sought. Exceptions to the right of public information are exhaustively listed by law (e.g., foreign policy, defence and security interests, protection of public safety, monetary policy interests, preliminary criminal investigations, etc.). These exceptions may be discarded in case of overriding public interest. Denials of information are to be notified in writing. The notification has to include information concerning the availability of appeal, the specific body to whom the appeal should be addressed including the necessary contact data, and the deadline for and cost of filing an appeal.
49. The Strategy for the Development of an Information Society (2004-2010), which aims *inter alia* at promoting and implementing the concept of e-government at all levels of government (including municipalities) will be managed by the Agency for Information Society. Pending adoption of the Law on the Agency for Information Society, the Centralised Identification and Personalisation System (CIPS), within the BiH Ministry of Civil Affairs, has been entrusted with implementation of the aforementioned strategy.
50. There seems to be no legal obligation on public authorities to carry out consultations of interested parties when taking decisions; whether or not such consultations are held in practice depends on the institution responsible for the process. In practice, inter-ministerial working groups are set up when drafting legislation and/or developing key policy documents. For example, a public consultation process on the draft of the Public Administration Strategy was launched in June 2006.

Control of Public Administration

51. Each level of government has enacted its own piece of legislation concerning administrative procedures; the Cantons have no separate legislation in this area. The four different Laws on Administrative Procedure⁹ establish a similar appeal system for administrative decisions.¹⁰ If the interested parties or any other authorised person (e.g., public prosecutor) wish to appeal an administrative decision, they may start an administrative procedure before the so-called “second instance” administrative body. The nature of the second-instance body varies largely in the different levels of government. In the Entities the principle of hierarchical supervision applies and appeals are usually decided by the respective Cantonal or Federation ministry. BD has established a separate review body, i.e., the Appellate Board to make decisions in the second-instance administrative procedure. The second-instance authority is empowered to reverse the administrative decision, including on substantive grounds; however, in practice, it often invalidates the original decision on procedural grounds and returns the case to the first-instance body. If the appellants are not satisfied with the decisions taken by the second-instance administrative body concerned, they can bring the case before the respective administrative division of the relevant court of jurisdiction.

⁹ Law on Administrative Procedure of BiH, Law on Administrative Procedure of the FBiH, Law on General Administrative Procedure of the RS, and Law on Administrative Procedure of the Brčko District.

¹⁰ The PAR Strategy includes a number of measures to simplify administrative procedures.

52. External audits are carried out by the three Supreme Audit institutions¹¹ that function in FBiH, RS and at State level. They are all responsible for carrying out financial and performance audits of public expenditure. The results of financial reviews are published and an annual report is submitted to the respective Parliament. All audit bodies are bound to report to the competent enforcement authority their suspicions of corruption-related offences; no instances of corruption have been reported to date.
53. Ombudspersons have been instituted in FBiH, RS and at State level. At the time of the visits, there were a total of nine Ombudspersons and 14 different Ombudspersons' offices¹² within the territory of Bosnia and Herzegovina. However, the Law on Amendments to the Law on an Ombudsman for Human Rights in Bosnia and Herzegovina, which was adopted in April 2006, establishes the merger of all existing institutions at State and Entity levels into a single Ombudsbody as from 1 January 2007. Ombudspersons are entrusted with the protection of citizens' rights in cases of maladministration of acts taken by the Entities/State administration or any other body vested with public authority. In this context, they issue recommendations to the public authorities concerned. If, while working on an individual case of violation, the Ombudspersons become aware that a grounded suspicion of corruption exists, they must report to the competent prosecutor's office.

Recruitment, career and preventive measures

54. The general conditions for admission to the civil service at the different levels of government comprise a minimum age of 18, citizenship of Bosnia and Herzegovina, university degree and suitable professional experience for the post to be filled. Screening of personal criminal records does not take place during the recruitment process, but civil servants are required to provide a certificate proving a clean criminal record prior to taking up their duties. A system of merit-based recruitment is organised by the respective Civil Service Agency in BiH, FBiH and RS and by the Human Resources Unit in BD: vacancies are advertised in the "Official Gazettes" and in at least three newspapers distributed all over Bosnia and Herzegovina and the website of the level of government concerned, and candidates are tested via competitive examinations. A Selection Committee is then appointed by the relevant Civil Service Agency in BiH, FBiH and RS, and by the Mayor in BD. Selection Committees are composed of at least five members: three civil servants from the institution concerned with demonstrable academic and professional expertise in the area covered by the competition and two other experts appointed from a list of experts approved by the respective Civil Service Agency. The Selection Committee is responsible for drawing up a list of successful candidates, but the appointing power rests with the institution where the position is to be filled. Promotion within the civil service is based on seniority and relevant work experience.

Training

55. There is no legal obligation to develop regular training for civil servants about fundamental principles, ethics and anti-corruption issues, etc. Information on such topics is released via the different "Official Gazettes" that circulate within the national territory and are available through subscription. In addition, the Civil Service Agency of the level of government concerned is

¹¹ Office for Auditing of the Financial Operations of the Institutions of Bosnia and Herzegovina, Office of Budget Audit of the Federation of Bosnia and Herzegovina and Supreme Office for the Republic of Srpska Public Sector Auditing.

¹² The State Ombudspersons have their headquarters in Sarajevo and a branch office in Banja Luka. The FBiH Ombudspersons have a central office in Sarajevo and branch offices in Mostar, Livno, Travnik, Bihać, Tuzla and Zenica. The RS Ombudspersons have a central office in Banja Luka and branches in Prijedor, Dobo, Bijeljina and Foča.

responsible for organising training and information seminars on public service ethics, as appropriate. A number of training seminars on public ethics have been sporadically organised, e.g., by the Council of Europe – PACO Programme, the United Nations Development Programme, Transparency International, etc.

Conflicts of interest

56. The Laws on Civil Service at State and Entity levels establish that civil servants must not exercise a function, an activity or hold a position, which entails a conflict of interest (engaging in an additional remunerative activity unless authorised by his/her Minister or Head of Institution, being employed by an employer over whom s/he exercised supervision regularly, being a member of a governing or other similar board of a political party). Civil servants must disclose all information of property and income. Their close family members are also subject to this obligation. Failure to do so may lead to disciplinary sanctions. Financial declarations are to be recorded in the different Civil Service Registers.
57. In addition, the Law on Conflicts of Interest in Governmental Institutions of Bosnia and Herzegovina aims at ensuring that financial or other interests or undertakings of elected officials, executive office holders and advisors¹³ do not compromise the performance of their public duties. In particular, they are to refrain from “serving on the management, steering, supervisory or executive board, or acting in the capacity of an authorised person, of a public enterprise” and “serving on the management board or directorate, or as a director, of a privatisation agency”. It also contains provisions on incompatibility of functions, ethics, acceptance of gifts and asset disclosure. Failure to comply with the obligations included in the Law on Conflicts of Interest may entail sanctions consisting of fines from 1,000 BAM to 10,000 BAM (511 EUR to 5,113 EUR) and temporary removal from public office for a maximum period of four years. In the latter case, the official must sit a public competition in order to re-enter the public administration at the end of the period of ineligibility. The Election Commission supervises the implementation of the obligations included in the aforementioned law; appeals against its decisions may be lodged before the Administrative Division of the Court of Bosnia and Herzegovina. According to Article 22 of the Law on Conflicts of Interest, the Entities and BD were to enact their own laws within 60 days after the adoption of the State law (i.e., in early 2003), only BD had done so at the time of the GET’s visits. In the absence of specific legislation in the FBiH and RS, the State law is being applied at Entity level.
58. There is no general provision at any of the different levels of government about rotation of staff in public administration.
59. Measures preventing civil servants from moving to the private sector have been introduced at State and FBiH level. In particular, former civil servants may not, within two years of termination of their contracts, be employed or receive any income from an employer over whom they exercised regular supervision while performing their civil service duties (Article 16.1b, Law on Conflicts of Interest in Governmental Institutions of Bosnia and Herzegovina; Article 19 Law on

¹³ Law on Conflicts of Interest in Governmental Institutions of Bosnia and Herzegovina, Article 3.

c) *Elected officials* include: Members of the Presidency of Bosnia and Herzegovina (hereinafter BiH), Delegates and Members of the Parliamentary Assembly of BiH, Secretaries of both Houses of the Parliamentary Assembly of BiH, Directors, Deputy Directors and Assistant Directors of State Administration authorities, agencies and directorates, institutes, appointed by the Council of Ministers of BiH or the Parliamentary Assembly of BiH or the Presidency of BiH.

d) *Executive office holders* include Ministers and Deputy Ministers in the Council of Ministers of BiH.

e) *Advisors* include the advisors to the elected officials and to executive officeholders as defined under the Law on Civil Service in Governmental Institutions of BiH.

Civil Service of the FBiH). In RS and BD, there are no specific restrictions imposed on civil servants taking up employment in the private sector.

Codes of conduct/ethics

60. Codes of Conduct for civil servants have been adopted at Entity levels, but there is no Code of Conduct at State level.
61. In addition, the Law on Conflicts of Interest includes a specific article entitled "Code of Conduct" which lists six guiding principles that elected officials, executive office holders and advisors are bound to observe when carrying out their public duties: public accountability, impartiality, efficiency, etc (Article 2). Moreover, specific illicit acts are forbidden under Article 9 (e.g., receiving additional compensation and gifts, compromising public procurement decisions, abusing official position, etc.). Breaches of Article 9 may entail sanctions consisting of fines and temporary removal from public office for a maximum period of four years.

Gifts

62. According to the existing Laws on Civil Service, civil servants are prohibited from accepting any advantages for themselves or for their close relatives other than those authorised by law. In this connection, only token gifts may be accepted.
63. Additional safeguards are provided by Article 10 of the Law on Conflicts of Interest in Governmental Institutions of Bosnia and Herzegovina, which prescribes that elected officials, executive office holders and advisors may only keep a gift of an amount not exceeding 50 BAM (25 EUR) without having to report it. Any gift that exceeds the afore-mentioned value is to be reported to the Election Commission and subsequently becomes national property. Unlawful acceptance of gifts may lead to sanctions consisting of fines, temporary removal from public office, and the obligation to return the gift or its equivalent value.

Reporting corruption

64. In addition to the general obligation to report suspicions of criminal offences (including corruption-related offences) which is established in the different Criminal Codes for all citizens (Article 230(1) CC BiH Article 345(1) CC FBiH; Article 362(1) CC RS; Article 339(1) CC BD), civil servants are specifically subject to the aforementioned obligation (Article 230(2) CC BiH; Article 126-148 CC FBiH; Article 125-146 CC RS; Article 126-148 CC BD). Failure to report is punishable by a fine or imprisonment for a term not exceeding three years.
65. There are no legal measures in place to ensure confidentiality and protection of civil servants reporting corruption.

Disciplinary proceedings

66. The different Laws on Civil Service regulate disciplinary proceedings for infringements of official duties. An ad-hoc Disciplinary Commission, which is appointed by the Director of the relevant Civil Service Agency, carries out the investigation; appeals to its final decision are possible before the respective Civil Service Board and competent court. Disciplinary sanctions include written warnings, temporary suspension of duties and salary, and dismissal. In addition, the Election Commission is entitled to carry out disciplinary enquiries with respect to elected officials, executive office holders and advisors, whether following an official's request, an anonymous

report or on its own initiative. Disciplinary proceedings are discontinued as soon as a criminal procedure is initiated. Criminal liability does not exclude disciplinary liability.

b. Analysis

67. Despite the absence of a legal definition of public administration, the adoption of the respective Laws on Civil Service at the State, Entities and Brčko District levels, as well as the evolving programme of “Public Administration Reform” (PAR), show progress in the process of establishing a developed system of public administration. In this context, a “Strategy and Action Plan for Public Administration Reform” was adopted in July 2006. The Strategy comprises a set of public administration reform measures to be undertaken until 2014, which are aimed at establishing a public administration that is more efficient, effective and accountable while meeting all conditions set by the EU integration process.¹⁴ The drafting of the Strategy was preceded by extensive preparatory work, including making analyses to identify the outstanding problems that the authorities have to contend with (e.g., lack of coordination at all levels leading to contradictory legislation and policies, fragmented mechanisms for accountability and control, administrative complexity, ineffective information flows from the administration to the citizens) and developing plans for specific sectors within the administration. The key activities of the PAR Action Plan include *inter alia*: strengthening the policy role of the Civil Service Agencies to ensure better coordination and cooperation across government levels, reform of salary system, continuous training of personnel based on personal, organisational and performance needs, establishment of an Institute for Public Administration for the whole of the country. The GET noted that the PAR Strategy acknowledges that administrative reform is critical for the success of the government efforts to fight corruption, but fails to mention any actual instruments geared to combating corruption. The GET is of the opinion that a coordinated approach in the implementation of the PAR Strategy and the “Strategy for the Fight Against Organised Crime and Corruption” will necessarily reinforce the role that each of these instruments is to play in the coming years. For this reason, *the GET observes that the authorities should ensure adequate co-ordination between the “Strategy for the Fight Against Organised Crime and Corruption” and the PAR Strategy, including effective channels for co-operation in monitoring the implementation of these strategies.*
68. The “Strategy for the Fight Against Organised Crime and Corruption” was adopted in March 2006. It includes a range of specific measures, institutions responsible for implementation and deadlines. There are plans to involve the general public in the implementation of the Strategy; the GET welcomes this approach as it believes that public involvement in the development of national policies is a key tool to promote ownership and responsibility for reform. However, the GET was concerned about the envisaged deadlines (mostly short-term), which risk to be unrealistic in view of the magnitude of some of the activities to be undertaken (e.g. consistent implementation of the Law on Public Procurement, establishment of uniform databases on criminal statistics, harmonisation of BiH anti-corruption legislation with international instruments, etc.). The GET also feared that no real cost analysis had been made to estimate the financial implications of implementation and to identify and subsequently secure the necessary funding. Moreover, no indicators of achievement have been specified to assess whether tasks and

¹⁴ The PAR reform includes three types of objectives and corresponding timeframes: (1) Short-term objectives until the end of 2007 (initiate, consolidate and further reform horizontal systems and structures of governance, in particular those referring to public finance, human resources management, administrative procedures, policy making, and therefore, also the legislative drafting, institutional communication and IT management); (2) Medium-term objectives until the end of 2010 (streamline sectoral and vertical functions at all levels of government to enable effective adoption and implementation of the EC *acquis*); (3) Long-term objectives until the end of 2014 (reach the quality level of common public administration standards in EU member states).

deadlines have been met. The GET is of the opinion that if the recently adopted Strategy is to overcome its current descriptive and programmatic character, it must be provided with an adequate mechanism to assess its impact on the prevention and the fight against corruption. In this connection, the Strategy foresees the establishment of a special State-level body responsible for its implementation. The GET considers that the current trend to centralise anti-corruption activities at State level provides for greater policy coherence and would ultimately strengthen the efficiency of anti-corruption efforts. Consequently, **the GET recommends to ensure a systematic assessment and evaluation of the effectiveness of the Anti-Corruption Strategy and its Action Plan through the setting up of an independent anti-corruption body with sufficient resources.**

69. The information gathered by the GET during the visits suggests that administrative transparency in Bosnia and Herzegovina has improved since 2000, when the different Freedom of Information Acts were adopted. The Action Plan for implementation of the Anti-Corruption Strategy indicates that informing the public on the activities of public administration is an important measure in the fight against corruption; to this effect, it includes activities to intensify cooperation with the media, NGOs and the public at large. The GET welcomes the inclusion of these activities in the Anti-Corruption Strategy and its Action Plan, but notes that it appeared from the interviews held during the on-site visits that effective implementation of transparency measures is still lagging behind. This has been highlighted, for example, in the Annual Reports for 2005 of the Ombudspersons of the RS and FBiH (published in May 2006), which indicated that denials of requests for information were more common than may have been proper under the law; furthermore, administrative silence with respect to an individual request for public information appears to be a common practice¹⁵. Although steps have been taken to improve public awareness of the law, e.g. through the establishment of specialised NGOs carrying out research on implementation (Mediacentar) and providing support with respect to information requests (Centre for Free Access to Information), the number of citizens' requests for information still remains very limited.
70. The GET notes that while the different Freedom of Information Acts contain the basic provisions that are important to providing access to government information and thus transparency of government (e.g., with respect to appointment of information officers, development of indexed registers and guidelines on types of information held by public authorities, publication of statistics on information requests, etc.), their actual implementation and application still remain critical in an effective fight against corruption. In addition, concerns were shared with the GET concerning the lack of effective appeal channels. It appears that the current mechanism for communicating denials of information (i.e., notification) do not allow for the right to appeal under administrative law since the different Laws on Administrative Procedure do not recognise notification as an administrative decision. Finally, monitoring of the different laws falls under the responsibility of the Ombudsperson(s), who have been issuing recommendations concerning measures to be taken by public authorities to enhance access to public information. The non-binding character of these recommendations and the lack of specific sanctions for those officials who fail to meet the legal obligations on access to information hamper effective enforceability of the laws. In the light of the above, **the GET recommends to (i) pursue effective implementation of the legal provisions on access to public information; (ii) provide the possibility to effectively challenge denials of access to information; (iii) hold civil servants accountable for failure to comply with the law; and (iv) properly monitor the enforcement of the afore-mentioned measures.**

¹⁵ A research project entitled "Monitoring Democratic Development in Bosnia and Herzegovina: Accessibility Index of Public Institutions, Organisations and Agencies", which was carried out by Mediacenter in 2006, indicates that 31.7% of the information requests submitted to public bodies in the course of the research project received no response.

71. Although there is no legal obligation on public authorities to carry out consultations of interested parties when taking decisions, the different interlocutors met throughout the on-site visits (both from the governmental and the NGO sectors) confirmed that this was a normal practice in Bosnia and Herzegovina. Some of the NGOs were concerned about the way in which those consultations were carried out (e.g., late delivery of relevant documents that had to be commented in the context of public consultation processes). The GET learned that by-laws on public consultation procedures have now been drafted in the context of a technical assistance project developed by the EastWest Institute.¹⁶
72. The GET noted that there are several internal and external control mechanisms to ascertain the functioning of public administration, including the Ombudspersons, the State Audit Offices and the Civil Service Complaint Boards which have been established at all levels of government. As far as internal control mechanisms are concerned, the GET noted that laws on Administrative Procedure at all levels of the government (State, FBiH, RS and BD levels) provide for an appeal system to control the legality of administrative decisions.¹⁷ Concerning institutions for external control, the Ombudspersons of RS and FBiH have been actively involved in the fight against corruption by issuing decisions and recommendations with regard to citizens' complaints concerning illegal action of public authorities and by participating in awareness raising campaigns. The Supreme Audit Institutions seem to be aware of the need to take a preventive approach in the fight against corruption and highlighted their plans to introduce forensic auditing aimed at identifying at early stages presumptive fraud and corruption within governmental bodies, as well as at gathering evidence that could be presented in a court of law. The GET acknowledges the steps undertaken to date by both the Ombudspersons and the Supreme Audit Institutions; that said, cooperation between these bodies and the respective Prosecutor offices with regard to the reporting of corruption offences could be strengthened. Moreover, at present, there does not appear to be any meaningful follow-up as to the measures taken to further investigate or otherwise deal with the suspicions of corruptions reported. In this connection, *the GET observes that the Ombudsperson(s) and the Supreme Audit Institutions should continue to enhance their role in the fight against corruption, notably by reporting suspicions of corruption to prosecutors, if necessary, and by requesting feedback from the prosecuting authorities concerning the handling of such suspicions.*
73. The GET welcomes the measures introduced by the Laws on Civil Service at the State and Entity levels to promote professionalism and integrity in the civil service, which refer *inter alia* to systems of recruitment and professional career advancement of the civil servants, based on open competition and professional merit, rights and responsibilities of civil servants, disciplinary action, etc. The respective Civil Service Agencies are responsible for the implementation of these laws. The GET acknowledges the efforts developed to date, especially those related to recruitment policy, but considers that the Civil Service Agencies could be more proactive if they are to accomplish the full range of tasks provided by law, including monitoring, issuing of guidelines and advice, sharing and communicating good practice, data collection/analysis, and training. The authorities appear to be aware of the situation and the PAR Strategy envisages specific measures to strengthen the policy role of Civil Service Agencies so that they fully assume their legal responsibility of human resources policy development and implementation.
74. The GET noted that the legislation on the civil service has certain provisions concerning the participation of civil servants in various training and educational activities. The Civil Service

¹⁶ The GET was informed after the visit that the PAR Strategy includes specific actions to ensure that impact assessments, with corresponding public consultation procedures, are carried out prior to the adoption of a legal act.

¹⁷ The GET was informed after the visit that the PAR Strategy includes a number of measures to strengthen internal controls within public administration.

Agencies are responsible for developing such activities; however, during meetings with the representatives of the Civil Service Agencies at the State and Entity levels, the GET learned that the training for civil servants, which usually takes the form of seminars, generally does not contain topics on fundamental principles, ethics or anti-corruption issues. Only the representative from the Civil Service Agency of the RS stated that for managerial civil service positions the relevant training course contains a corruption-related topic.

75. Codes of Conduct for civil servants were introduced in the FBiH and RS in 2004 and 2002, respectively. These Codes have been published in the respective Official Gazettes and circulated among civil servants; however, no training activities/guidelines have been developed to effectively promote their contents. Moreover, the Code of Conduct of FBiH is too general and does not take sufficient account of preventive aspects and the risks of corruption (as advocated in Recommendation No. R (2000) 10 of the Committee of Ministers of the Council of Europe on Codes of Conduct for Public Officials). In addition, a Code of Conduct for civil servants employed at State level is still lacking and although behavioural principles are listed under Article 2 of the Law on Conflicts of Interest in Governmental Institutions of Bosnia and Herzegovina, these are only applicable to elected officials, executive office holders and advisers. Finally, some administrative bodies have begun to develop their own codes of conduct. In this connection, the GET was impressed by the Code of Conduct developed by the Indirect Taxation Authority (ITA), which contained detailed provisions on ethics as well as targeted guidance for staff, including practical examples on how to react on situations involving conflicts of interest, acceptance/offering of gifts and hospitality, etc. The GET welcomes the practical approach taken by ITA as it shares the view that ethical codes are intended not to lay down legal regulations on a given matter, but to guide conduct of public officials on how to act when confronted with situations that may give rise to conflict or partiality with regard to civil servants' duties and responsibilities. In the light of the foregoing considerations, **the GET recommends to (i) adopt a Code of Conduct for civil servants at State level; (ii) expand the Code of Ethics of the Federation of Bosnia and Herzegovina to include explicit references to ethical issues and risks of corruption; and (iii) develop regular training at all levels of government on public ethics and risks of corruption, including the resolving of practical, specific cases (e.g. reactions to gifts, conflicts of interest, etc.).**
76. The duty to avoid conflicts of interest and other inappropriate official conduct is addressed administratively for civil servants through the Laws on Civil Service and for elected officials, executive office holders and advisors by the Law on Conflicts of Interest in Governmental Institutions of Bosnia and Herzegovina. The restrictions in these laws focus primarily on potential conflicts such as outside compensated activities, management rights, memberships, non-official income and gifts. There is a general prohibition of acceptance of gifts by civil servants. With respect to elected officials, executive office holders and advisors, the Law on Conflicts of Interest in Governmental Institutions of Bosnia and Herzegovina allows them to keep certain gifts without a duty to report them. The GET noted that, due to contradictions in the wording of the law, the authorities interviewed were not certain of the monetary value of the gifts that could be accepted, i.e., 50 BAM (25 EUR, according to Article 10) or 100 BAM (50 EUR, according to Article 3.1.h). The GET was hopeful that appropriate amendments would shortly be introduced to the Law on Conflicts of Interest in Governmental Institutions of Bosnia and Herzegovina to provide for its uniform interpretation.
77. Civil servants are required to file a declaration of property and income. The corresponding civil servants' financial disclosure reports are to be recorded in the civil service registers. At the time of the GET's visit, these registers were not operative. In addition, the Election Commission is responsible for monitoring financial declarations of elected officials, executive office holders and

advisors and their close relatives (around 130,000 persons). The Election Commission has 11 employees, 3 of them are investigators. In seeking information on how the financial declarations are reviewed and used by both the Civil Service Agencies and the Election Commission, the GET was informed that the accuracy of the information provided is not effectively coordinated with other authorities, e.g., with tax bodies, public prosecutors, etc. Furthermore, the GET noticed that the financial declarations submitted are not systematically used in any proactive way to help advise public officials on how to avoid potential conflicts of interest with their specific interests or activities or incompatibilities. The GET is of the opinion that the current system does not meet its intended purpose to deal with conflicts of interest in a credible manner. Consequently, **the GET recommends to introduce an effective system for reviewing financial declarations (including random verifications) by the respective Civil Service Agency at each level of government and the Election Commission, and to allow that such declarations be used in a preventive manner by providing individual counselling on the prevention of conflicts of interest.**

78. Another issue of concern are situations where civil servants move into the private sector where the particular information/knowledge acquired in his/her former position may be used to the disadvantage of the public interest. This matter is not regulated in the RS and BD and therefore, **the GET recommends to develop clear rules/guidelines in the Republika Srpska and the Brčko District for situations where civil servants move to the private sector, in order to avoid conflicts of interest.**
79. The GET noted that the existing legislation does not contain any provisions establishing a system of regular/periodic rotation of staff most exposed to the risks of corruption. However, the GET was informed that the Indirect Taxation Authority (ITA) had introduced such a system as a tool to reduce risks of corruption in a vulnerable area. The GET welcomes the approach taken by the ITA and *observes that the approach used by the Indirect Taxation Authority should serve as a model for other sectors of public administration which are most exposed to risks of corruption.*
80. With regard to reporting corruption, the legislation of Bosnia and Herzegovina prescribes the obligation for citizens in general, as well as for civil servants in particular, to report suspicions of criminal offences, including corruption related offences. It is not always clear to civil servants whether certain types of misconduct observed within public administration (which might on occasions constitute significant breaches of duty or ethical rules, including corruption) qualify as criminal offences to be reported. This important question is not covered by the respective Laws on the Civil Service, nor by the adopted Codes of Conduct at Entity level. The GET understood from the interviews held during the evaluation visit that opinions varied as to the course of action to be taken when reporting suspicions of corruption and the available mechanisms, if any, to ensure confidentiality and to protect civil servants who report suspicions of corruption in good faith from possible retaliation or defamation suits. The GET considers that providing a framework for the protection of civil servants reporting in good faith against reprisals would significantly enhance efforts to prevent and detect corruption. Therefore, **the GET recommends to (i) introduce clear rules/guidelines and training for civil servants concerning the reporting of suspicions of corruption in public administration; and (ii) ensure that civil servants who report suspicions of corruption in good faith are adequately protected from adverse consequences.**

V. THEME III – LEGAL PERSONS AND CORRUPTION

a. Description of the situation

Definition of legal persons

81. Each level of government has its own company legislation.¹⁸ In general, there are four types of companies/legal persons:
- a. *Sole proprietorship*, which is liable for its personal assets. There is no minimum capital required to start operating.
 - b. *General partnerships* are established by two or more physical persons who are liable with their personal assets. There is no minimum capital requirement.
 - c. *Limited liability companies* are formed by one or more individuals or legal persons who invest their property and thereby participate in the previously agreed share capital. Shareholders are not personally liable for obligations of limited companies. The limited liability company is the most widely used type of company in Bosnia and Herzegovina.
 - d. *Joint stock companies* may be founded by one or more shareholders. Shareholders are not personally liable for the obligations of the company. A joint stock company must have a board of directors and a supervisory board.

Registration and transparency measures

82. New business registration laws were introduced at the end of 2004 to ensure uniform business registration procedures, application forms and certificates throughout the country. Registration of legal entities is mandatory and constitutes a pre-condition for acquiring legal capacity. It is performed at the municipal level by the commercial courts with territorial jurisdiction where the company will be located. There are a total of 16 courts of registration: 10 in FBiH, 5 in RS and 1 in BD, respectively. The registration procedure is basically formalistic; the court does not carry out any material checks other than the required information which is submitted with each application (name of the company, founders, amount of registered and paid capital, activities of the company, registered signature of the person authorised to represent the company). A company is only allowed to conduct business activities for which it is registered. Every change of activity must be registered. Registries are publicly accessible.
83. The authorities of Bosnia and Herzegovina did not report any restrictions on legal persons to hold interests in another legal person, nor appear to be any limitations on the nationality of the founders, members or shareholders, or the number of accounts a company may hold.

Limitations on exercising functions in legal persons

84. All criminal codes establish security measures related to the disqualification system, whereby perpetrators of an offence are deprived of the right to exercise certain activities in companies or other legal persons (Articles 69 and 114 CC BiH; Articles 71 and 118 CC FBiH; Articles 64 and 98 CC RS; Articles 71 and 118 CC BD).

¹⁸ FBiH: Law on Business Companies (1999); RS: Law on Enterprises (1998) ; BD: Law on Enterprises (2001).

Liability of legal persons

85. All Criminal Codes include a specific chapter on criminal liability of legal persons with almost identical provisions (Articles 122-144 CC BiH; Articles 126-148 CC FBiH; Articles 125-146 CC RS; Articles 126-148 CC BD). Legal persons may be held liable for all criminal offences under the respective CC and for other criminal offences defined by law, unless the criminal offence excludes or limits punishment for legal persons. In this connection, corporate criminal liability applies to active bribery, trading in influence and money laundering. In particular, criminal liability applies for criminal offences committed by the perpetrator in the name of, for account of or in favour of the legal person (1) when the purpose of the criminal offence is arising from the conclusion, order or permission of its managerial or supervisory bodies; or (2) when its managerial or supervisory bodies have influenced the perpetrator or enabled him to perpetrate the criminal offence; or (3) when a legal person disposes of illegally obtained property gain or uses objects acquired in the criminal offence; or (4) when the managerial or supervisory bodies of the legal person failed to carry out due supervision over the legality of work of the employees (Article 124 CC BiH; Article 128 CC FBiH; Article 127 CC RS; Article 128 CC BD). It is possible to punish attempts at a criminal offence (Article 127 CC BiH; Article 131 CC FBiH; Article 130 CC RS; Article 131 CC BD).
86. Foreign legal entities can be held criminally liable if they have committed the act within the territory of Bosnia and Herzegovina. They are also liable for criminal offences committed abroad, if a legal person has its headquarters or carries out activities in the territory of Bosnia and Herzegovina, if the offence was perpetrated against the State of Bosnia and Herzegovina, its citizens or domestic legal persons (Article 123 CC BiH; Article 127 CC FBiH; Article 126 CC RS; Article 127 CC BD).
87. It is possible to assign liability to a legal person even when no natural person has been convicted or identified (Article 125(1) CC BiH; Article 129(1) CC FBiH; Article 128(1) CC RS; Article 129(1) CC BD). Liability of the legal person does not exclude criminal liability of the physical perpetrator. (Article 125(2) CC BiH; Article 129(2) CC FBiH; Article 128(2) CC RS; Article 129(2) CC BD). The liability of a legal person is determined within the framework of the same proceedings as those against the physical perpetrator and a single decision is taken.

Sanctions

88. All Criminal Codes include two types of punishment where a legal person is found criminally liable: (i) penalties consisting of fines of 5,000 BAM (2,556 EUR) and up to 5,000,000 BAM (2,556,000 EUR), confiscation of property (for criminal offences for which a punishment of imprisonment for a term of five years or more is imposed) and dissolution of the legal entity; and (ii) security measures, including debarment from 6 months to five years and publication of the verdict. It is also possible to confiscate the illegitimate material gain acquired by a legal person. In the event that, by perpetration of the criminal offence, the legal person has come into possession of an unlawful material gain, the scope of the imposed fine may be twice as much as the amount of the damage or benefit. Finally, safeguards are provided to prevent companies and their officers from avoiding a punishment through changes in their legal status - e.g., bankruptcy, re-establishment (Article 126 CC BiH; Article 130 CC FBiH; Article 129 CC RS; Article 130 CC BD).
89. Due to the recent establishment of criminal liability in 2003, no statistics exist on the number of proceedings and related sanctions instituted against legal persons for corruption offences. According to information provided by the FBiH, there have been 23 indictments against legal

persons (sanctions imposed were fines) and 5 investigations are under way (none of the cases relate to corruption). No statistics were provided for the State level, RS and Brčko District.

Tax deductibility and fiscal authorities

90. It is generally understood that deductibility of illegal payments within the meaning of the Criminal Code (including bribes and other expenses linked to corruption offences) is not allowed under the current tax legislation.
91. In 2003, a single Indirect Tax Authority (ITA), including a single merged customs administration, was established. The ITA is responsible for collecting and administering all indirect taxes, including customs duties and value added tax. Direct taxes are collected at Entity level. Tax authorities are subject to the general obligation to detect and subsequently report corruption-related offences (Article 230(2) CC BiH; Article 126-148 CC FBiH; Article 125-146 CC RS; Article 126-148 CC BD). Failures to report are punished by a fine or imprisonment for a term not exceeding three years. In addition, tax authorities are empowered to provide expertise for investigation of corruption-related offences, upon request of the prosecutor's office, to establish direct contacts with foreign tax authorities and to provide the relevant law enforcement bodies with tax-related information upon request.

Accounting Rules

92. The Law on Accounting and Auditing was adopted in 2004 with the aim at establishing uniform accounting and auditing standards throughout the country. All legal persons in Bosnia and Herzegovina are obliged to keep accounting records or books. Different book-keeping timeframes are established depending on the type of accounting document involved, which may vary from a minimum period of two years to an indefinite period and until termination of the legal entity, e.g. annual financial reports and payroll lists. There are no exceptions to the requirement to keep and preserve proper accounting records for legal entities.
93. The use of accounting documents or records containing false or incomplete information, as well as its destruction or concealment is sanctioned in the Criminal Codes of the Entities and BD (Article 261 CC FBiH; Article 274 CC RS; Article 255 CC BD). These crimes are punished with fines or imprisonment of up to three years. In addition, the drawing up of a false balance sheet with the aim of acquiring material gain or of damaging a third person may be sanctioned with imprisonment for a term between six months and five years (Article 249 CC FBiH; Article 263 CC RS; Article 249 CC BD).

Role of accountants, auditors, and legal professionals

94. The Law on Prevention of Money Laundering obliges investment-related institutions (e.g., banks, financial service institutions/companies, etc.), as well as those professionals dealing with payment operations (lawyers, legal advisers, notaries, auditors and accountants) to undertake the necessary measures to identify and prevent money laundering and to subsequently report grounded suspicions to the State Investigation and Protection Agency (Articles 3 and 4). Failure to report is punishable by fines of 5,000 BAM (2,556 EUR) and up to 20,000 BAM (10,224 EUR). In addition, accountants, auditors and legal professions are subject to the general obligation for all citizens provided in the relevant Criminal Codes to report suspicions of criminal offences (Article 230(1) CC BiH Article 345(1) CC FBiH; Article 362(1) CC RS; Article 339(1) CC BD). Failure to report may result in fines or imprisonment of up to 3 years

95. The Law on Accounting and Auditing refers to principles of professional ethics established by international auditing standards (i.e. International Standards of Auditing, Code of Ethics for Professional Accountants, and any related instructions, explanations and guidance issued by the International Federation of Accountants). Seminars for accountants and auditors have been organised to raise their awareness about the need to report suspicions of corrupt practices to the authorities in charge of detecting, investigating and prosecuting corruption offences.

b. Analysis

96. The regulation of legal persons within Bosnia Herzegovina is without doubt dysfunctional and mirrors in no short measure the fragmented manner in which the structure of governance is performed between State, Entity and Canton levels generally within the country.

97. Throughout the interviews held, the GET heard that there was no central register maintained for legal persons and that, as a consequence, law enforcement officials and regulators faced particular problems with “phantom companies” which the GET was advised are often used within Bosnia and Herzegovina to perpetrate all forms of fraudulent and corrupt activities. The GET learned that it was possible for a legal person to be established in two different entities within Bosnia and Herzegovina, whilst performing the same activities. At the time of the visits, the registration process in general was rather cumbersome and old fashioned. In this connection, the GET was told that the registration process could last up to four months. The relatively long delays for handling the applications could create potential for corruption by those who need decisions promptly. It is foreseen to introduce a “one-stop-shop-system” in 2007, which should reduce the number of days required for registration to ten. The GET is hopeful that this new system will have the ability to reduce potential instances of corruption in the future.

98. A Court representative of the FBiH advised the GET that locally within Sarajevo Cantonal Court they unilaterally began sharing information on legal persons with the tax authorities during the year 2000 and that, by 2001, they had established and created a web-site detailing registrations and insolvencies. This was a local initiative that the judicial representative said had not been expanded throughout the country. But the GET took the view that this is a crucial area in a country which is in the process of developing a market-orientated private sector and that it would be worthwhile to extend this initiative throughout Bosnia and Herzegovina leading to a centralised register of all legal persons, which is currently missing. Consequently, **the GET recommends to establish an inter-linked system for the registration of legal persons that is able to provide information in a timely and reliable manner.**

99. It is of crucial importance that the information available in the registers is correct. To this effect, a thorough control of the data submitted to the registration authorities is necessary. In this respect, the GET noticed that the control carried out by the courts consists only of a formal check that the required documents have been submitted. No control of the identity of the persons behind the legal person is made. **The GET therefore recommends to strengthen the controlling functions of the courts in charge of the registration of legal persons with regard to the identity of the founders of legal persons as well as other pertinent information necessary for registration.**

100. All criminal Codes provide for criminal liability of legal persons. Corporate liability covers, among others, active and passive bribery, trading in influence and money laundering committed by a natural person in a leading position for the benefit or on behalf of the legal person, as well as in those cases where lack of supervision within the legal person makes it possible to commit the respective offences. Corporate liability does not exclude individual liability of the perpetrator. The

scope of application of the law with regard to the categories of legal persons which may be liable for offences appears, overall, to be in line with Article 18 of the Criminal Law Convention on Corruption. The criminal sanctions provided for (fines, confiscation, dissolution of legal entity, debarment) also seem to be in conformity with the requirements established by Article 19(2) of that convention.

101. The GET was advised on several occasions that when considering corporate crime it was impossible not to talk about corruption. The authorities met were aware of the fact that it was possible for legal persons to be held liable for corruption offences, but it was confirmed to the GET that no such cases had been pursued, despite the fact that the legislation had been in place from June 2003. The GET was led to conclude that this situation was due to an inability to recognise the problem in a timely fashion and to undertake appropriate remedial action rather than any failure in the legislation. In the GET's view, the level of awareness of corporate liability of the Police, the prosecution authorities and the judiciary is to be increased. This calls for extensive information and training to be provided to the aforementioned authorities. Consequently, **the GET recommends to ensure that investigators, prosecutors and judges are given the necessary training in order to fully apply the existing provisions on corporate criminal liability.**
102. The GET was informed by several interlocutors that fictitious/phantom companies were a significant contributing factor to the facilitation of money laundering and corruption at all levels in BiH. The tax administration for FBiH indicated that they were planning to carry out investigations into all legal persons in existence over the last five years who they suspect may have been set up by natural persons for corrupt purposes. Tax officials whilst recognising the problems that such companies had caused in the past, stated that with the introduction of VAT on 1 January 2006¹⁹, they were now in a better position to identify the *bona fides* of the companies, including addresses and ownership. They nevertheless anticipated that other methods, e.g. VAT carousel type frauds, and some not yet established were being used by money launderers and corrupt companies.
103. The GET was advised by FBiH tax officials that they had recruited 17 new tax inspectors in 2006. They also indicated that because of the fact that they had 10 cantonal tax offices and 120 municipal tax offices, corruption issues relating to local staff within such close knit local communities did arise. In this context, in the last year 2 heads of department within FBiH were removed from office and charges are being considered by the prosecutors office relating to potential corruption matters. Regrettably the officials reported that the procedures to report to the prosecutor's office took a long time and they did not often get any feedback from the prosecutor's office. The tax officials concerned stated that they have now adopted a more proactive approach in this area, notably by contacting the prosecutors for regular updates.
104. Since the setting up of the State-level Indirect Taxation Authority (ITA) 130 experienced Tax Inspectors had left the Entity Tax Departments and as a consequence it was difficult for those Tax Inspectors remaining to identify corrupt payments claimed as deductions due to a general lack of understanding and experience. The GET was told that the Tax Inspectors questioned deductions when suspicious and that, whilst the legislation would disallow corrupt payments, the identification of such payments would prove problematic given the drain of experienced staff. In view of the reduction of skill sets in this specialist area of tax work, **the GET recommends that**

¹⁹ The Indirect Taxation Authority (ITA) had registered since 1 January 2006 a total of 36,966 VAT tax payers; 24,645 of those were legal persons .

specific training be provided to Tax Inspectors to increase awareness of the use of disguised deductions in order to hide corrupt payments.

105. In respect of accountants and auditors, whilst international accounting and auditing standards apply to all auditors operating within the country, they are not in the main undertaking internal audit controls. The GET was told auditors were, overall, not independent of the legal persons which were subject to his/her controlling functions and would often not report irregularities, given that their salaries fees were paid by the respective legal person. In essence, the GET noted that auditors simply prepared an account based on information provided and would not go beyond basic checks. The GET found this approach unprofessional and a contributory factor in the phenomenon previously experienced in BiH of "phantom companies". The GET understood that audits within BiH needed to be brought to a higher level as auditors were simply adding up figures and accepting what they had been told without proper scrutiny. In this connection, *the GET observes that a proper independent audit regime should be developed to give full effect to the existing legislation in this area.*
106. The GET learned from the SIPA-FIU that there were very few suspicious transaction reports filed by accountants, lawyers and auditors. The GET was concerned with this and raised the issue with the representatives of those bodies, who appeared to be inadequately aware of their obligations in this area. In particular, it appeared that as clients paid for their services, it was considered not appropriate for the professionals to report any suspicions. This situation clearly indicates that a concerted effort co-ordinated at State level is needed to ensure that all those involved with the setting up of legal persons are made fully aware of their obligations under the existing legislation. Therefore **the GET recommends that the authorities seek agreement with the professional bodies of lawyers, notaries, accountants and auditors on guidelines to be issued to encourage and assist the professionals concerned to understand better and meet their reporting obligations under the law.**

VI. CONCLUSIONS

107. Bosnia and Herzegovina has recently made, and is continuing to make, substantial amendments to its criminal legislation and the organisation of the judicial/prosecutorial systems. The new provisions on confiscation and seizure are comprehensive and generally meet the standards of the Council of Europe Criminal Law Convention on Corruption; that said, there is a clear need to implement the new legal framework and this calls for improved coordination, effective cooperation and extensive training of the agencies involved in the detection, investigation and prosecution of corruption. With regard to public administration, a Strategy for the Fight against Organised Crime and Corruption was adopted in March 2006; much could be done to ensure its success, notably by regular monitoring of its implementation by an independent anti-corruption body. Further improvements are recommended with respect, for example, to effective implementation of access to information legislation, training on ethics, review of financial declarations, procedures for reporting suspicions of corruption and protection of civil servants reporting in good faith. The registration of legal persons leaves much to be desired and mirrors the fragmented manner of governance at State, Entity and Canton levels generally within the country: the access to registers is not centralised/interlinked, nor are material checks of the physical persons behind legal persons carried out. This makes registration a weak instrument to control and prevent legal persons from illegal activity, including corruption. The introduction of corporate liability is commendable; however, the provision of specific training to investigators, prosecutors and judges could contribute to improving the effectiveness of the existing legal framework. There is finally a need for greater collaboration with professionals in the private

sector (e.g., auditors, accountants and legal professionals), to encourage and assist them in meeting their obligation to report corruption.

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

- i. to enlarge the scope of the provisions of the Republika Srpska on confiscation of indirect proceeds of crime and with regard to situations where no conviction is possible (*in rem* confiscation) (paragraph 32);
- ii. to analyse the practical application of the legislation on confiscation and seizure of the instruments and proceeds of criminal offences, including corruption, with a view to developing harmonised guidance for prosecutors and to providing training for both prosecutors and judges; particular attention should be paid to making better use of legal provisions concerning confiscation of proceeds of crime held by a third party (paragraph 34);
- iii. to (i) improve the coordination and cooperation between the agencies involved in the detection, investigation and prosecution of corruption on a regular basis at early stages of criminal proceedings, by providing the prosecution with accurate and updated financial/economic information, in order to ensure that economic investigations are likely to result in the freezing of the proceeds of corruption; and (ii) develop specific multidisciplinary training for prosecutors and police officers to make full use of the practical and legal means available to effectively track offenders' assets (paragraph 40);
- iv. to extend the application of the provisions on the use of special investigative techniques to cover a wider range of corruption offences in accordance with Article 23 of the Criminal Law Convention on Corruption and to provide the competent agencies with appropriate means and training in order to make the system of special investigative techniques work efficiently in practice (paragraph 41);
- v. that the authorities ensure that the Financial Intelligence Unit of the State Investigation and Protection Agency reaches the required staff level as soon as possible (paragraph 42);
- vi. to ensure a systematic assessment and evaluation of the effectiveness of the Anti-Corruption Strategy and its Action Plan through the setting up of an independent anti-corruption body with sufficient resources (paragraph 68);
- vii. to (i) pursue effective implementation of the legal provisions on access to public information; (ii) provide the possibility to effectively challenge denials of access to information; (iii) hold civil servants accountable for failure to comply with the law; and (iv) properly monitor the enforcement of the afore-mentioned measures (paragraph 70);
- viii. to (i) adopt a Code of Conduct for civil servants at State level; (ii) expand the Code of Ethics of the Federation of Bosnia and Herzegovina to include explicit references to ethical issues and risks of corruption; and (iii) develop regular training at all levels of government on public ethics and risks of corruption, including the

resolving of practical, specific cases (e.g. reactions to gifts, conflicts of interest, etc.) (paragraph 75);

- ix. to introduce an effective system for reviewing financial declarations (including random verifications) by the respective Civil Service Agency at each level of government and the Election Commission, and to allow that such declarations be used in a preventive manner by providing individual counselling on the prevention of conflicts of interest (paragraph 77);**
 - x. to develop clear rules/guidelines in the Republika Srpska and the Brčko District for situations where civil servants move to the private sector, in order to avoid conflicts of interest (paragraph 78);**
 - xi. to (i) introduce clear rules/guidelines and training for civil servants concerning the reporting of suspicions of corruption in public administration; and (ii) ensure that civil servants who report suspicions of corruption in good faith are adequately protected from adverse consequences (paragraph 80);**
 - xii. to establish an inter-linked system for the registration of legal persons that is able to provide information in a timely and reliable manner (paragraph 98);**
 - xiii. to strengthen the controlling functions of the courts in charge of the registration of legal persons with regard to the identity of the founders of legal persons as well as other pertinent information necessary for registration (paragraph 99);**
 - xiv. to ensure that investigators, prosecutors and judges are given the necessary training in order to fully apply the existing provisions on corporate criminal liability (paragraph 101);**
 - xv. that specific training be provided to Tax Inspectors to increase awareness of the use of disguised deductions in order to hide corrupt payments (paragraph 104);**
 - xvi. that the authorities seek agreement with the professional bodies of lawyers, notaries, accountants and auditors on guidelines to be issued to encourage and assist the professionals concerned to understand better and meet their reporting obligations under the law (paragraph 106).**
109. Moreover, GRECO invites the authorities of Bosnia and Herzegovina to take account of the *observations* (paragraphs 44, 67, 72, 79 and 105) made in the analytical part of this report.
110. Finally, in conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Bosnia and Herzegovina to present a report on the implementation of the above-mentioned recommendations by 30 June 2008.