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Second Interim Report

Third Evaluation Round

Second *Interim* Compliance Report on Bosnia and Herzegovina

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

"Transparency of Party Funding"

Adopted by GRECO
at its 68th Plenary Meeting
(Strasbourg, 15-19 June 2015)

I. INTRODUCTION

1. The Third Round Evaluation Report on Bosnia and Herzegovina was adopted at GRECO's 51st Plenary Meeting (27 May 2011) and made public on 17 August 2011, following authorisation by Bosnia and Herzegovina (Greco Eval III Rep (2010) 5E, [Theme I](#) and [Theme II](#)).
2. In the [Compliance Report](#), which was adopted by GRECO at its 61st Plenary Meeting (18 October 2013), it was concluded that Bosnia and Herzegovina had implemented satisfactorily or dealt with in a satisfactory manner only four of the 22 recommendations contained in the Third Round Evaluation Report. In view of this result, GRECO categorised the very low level of compliance with the recommendations as "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decided to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.
3. In the [First Interim Compliance Report](#), which was adopted by GRECO at its 64th Plenary Meeting (Strasbourg, 16-20 June 2014), GRECO concluded that the level of compliance with the recommendations remained "globally unsatisfactory", considering that little tangible progress had been made by Bosnia and Herzegovina as regards the recommendations found either not to be or only partly implemented in the Compliance Report. Therefore GRECO, in accordance with Rule 32, paragraph 2 subparagraph (ii), instructed its President to transmit a letter to the Head of Delegation of Bosnia and Herzegovina, drawing his attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to achieving tangible progress as soon as possible. Furthermore, GRECO requested the Head of Delegation of Bosnia and Herzegovina to provide a report regarding the action taken to implement the pending recommendations (i.e. recommendations ii, iii, iv, v, vi, viii, ix, x and xii regarding Theme I and recommendations i to iv and vi to ix regarding Theme II) by 31 March 2015. This report was submitted on 31 March 2015, and served as a basis for the Second Interim Compliance Report.
4. GRECO selected Malta and Slovenia to appoint rapporteurs for the compliance procedure. The current [Second Interim Compliance Report](#) was drawn up by Mr Kevin VALLETTA (Malta) and Ms Vita HABJAN BARBORIČ (Slovenia), with assistance from the GRECO Secretariat. It assesses the further implementation of the pending recommendations since the adoption of the First Interim Compliance Report, and contains an overall appraisal of the level of Bosnia and Herzegovina's compliance with these recommendations.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO in its Evaluation Report addressed 13 recommendations to Bosnia and Herzegovina in respect of Theme I. According to the Compliance Report, recommendations i, vii, xi and xiii had been implemented satisfactorily and recommendations ii, iii, iv, viii and x had been partly implemented. According to the First Interim Compliance Report, recommendations v and xii had in addition been partly implemented. Recommendations ii, iii, iv, viii and x remained partly implemented and recommendations vi and ix not implemented.

Recommendations ii, iii, iv, v, vi, viii, ix, x and xii.

6. GRECO recommended:

- *(i) to ensure that the definition of foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies, as well as judges and officials of international courts is not limited in scope to those persons serving in Bosnia and Herzegovina/its Entities or Brčko District; (ii) to ensure that bribery of the aforementioned categories of foreign and international officials is explicitly criminalised in the Criminal Code of the Republika Srpska, in accordance with Articles 5, 6, 9, 10 and 11 of the Criminal Law Convention on Corruption (ETS 173) (recommendation ii);*
- *to ensure that bribery of foreign jurors and arbitrators is criminalised unambiguously, in accordance with Articles 4 and 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), and to sign and ratify this instrument as soon as possible (recommendation iii);*
- *to ensure that the provisions concerning active and passive bribery in the public sector cover all acts/omissions in the exercise of the functions of an official person, whether or not within the scope of his/her official powers or authority (recommendation iv);*
- *to ensure that the bribery offences are construed in such a way as to cover, unambiguously, instances of bribery committed through intermediaries, as well as instances where the advantage is not intended for the official himself/herself but for a third party (recommendation v);*
- *(to (i) clarify beyond doubt that bribery in the private sector is criminalised; and (ii) consider, for the sake of clarity, criminalising bribery in the public and the private sector in separate provisions (recommendation vi);*
- *(to (i) criminalise active trading in influence; (ii) review the provision on passive trading in influence to unambiguously cover a) the request of the offer or the promise of an undue advantage by the influence peddler; b) the direct and indirect commission of the offence; c) those instances where the advantage is not intended for the briber him/herself but for a third party; and d) instances of alleged influence (recommendation viii);*
- *to fully harmonise the existing sanctions for bribery and trading in influence offences (recommendation ix);*
- *to (i) carry out a proper overall survey and assessment of the obstacles affecting the implementation of bribery and trading in influence provisions; (ii) to adopt a specific plan to address and solve, within a specified timescale, any such obstacles identified by the assessment and thereby improve effectiveness of the criminal legislation on corruption; (iii) make the results of this exercise public (recommendation x);*

and

- *to abolish the possibility provided by the special defence of effective regret to return the bribe to the bribe-giver who has reported the offence before it is uncovered (recommendation xii).*

7. GRECO recalls that, according to the Compliance Report, Republika Srpska (hereafter RS) had amended its Criminal Code in 2013 (Law No. 67/13), the Additional Protocol to the Criminal Law

Convention on Corruption (ETS 191) had been ratified and draft amendments to the Criminal Code of Bosnia and Herzegovina (State level, hereafter BiH) had been prepared which, at the time of adoption of the Compliance Report, were awaiting discussion in Parliament. In contrast, no (draft) amendments to the Criminal Codes in use at the level of the Federation of Bosnia and Herzegovina (hereafter FBiH) and of the Brčko District (hereafter BD) had been presented. Furthermore, according to the First Interim Compliance Report, the Ministry of Justice had prepared a draft law on amendments to the BiH Criminal Code which had been approved by the Council of Ministers on 8 May 2014. The draft law had been adopted by the House of Representatives on 28 May 2014 and remained to be adopted by the House of People. It was built on the previous bill presented in the Compliance Report and included some additional amendments.

8. The authorities now report that the draft law on amendments to the BiH Criminal Code which is aimed at implementing GRECO's recommendations – namely recommendations ii, iii, iv, v, viii and xii – has since been adopted by the House of People on 18 May 2015 and entered into force on 27 May 2015 following its publication in the Official Gazette (No. 40/15). As far as the provisions relevant to the implementation of the above recommendations are concerned, the law finally adopted is identical to the draft law as assessed by GRECO in the First Interim Compliance Report.
9. Regarding – more specifically – recommendation iii, the authorities indicate that, following the introduction of the concepts of “jurors” and “arbitrators”¹ in the offences of active and passive bribery and trading in influence of the BiH Criminal Code (articles 217, 218, 219 and 219a), all offences of bribery and trading in influence of foreign jurors and arbitrators, for which the country has jurisdiction, are now covered by the BiH Criminal Code. The authorities explain that the amended corruption provisions of the BiH Criminal Code refer to “jurors” and “arbitrators” generally – i.e. without the restriction “in the institutions of Bosnia and Herzegovina” which is employed with regard to other public officials (thus limiting the scope of the corruption provisions to offences involving public officials serving in institutions at State level).
10. In relation to recommendation x, the authorities report on the adoption by the Council of Ministers of Bosnia and Herzegovina, on 7 May 2015, of the Anticorruption Strategy 2015-2019 and the Action Plan for its implementation. The latter includes a range of measures and actions to improve the effectiveness and efficiency of the judicial and law enforcement bodies in the area of the fight against corruption (Strategic Objective 3), which are aimed more particularly at the strengthening of the integrity of law enforcement authorities; improvement in detection of corruption through creating, strengthening and applying effective mechanisms and techniques for a proactive approach to this process; establishment of effective cooperation and coordination between institutions in discovering, proving and prosecuting corruption; harmonisation of training programmes for officials of relevant institutions, provision of specific training for judicial and law enforcement authorities especially for the application of more advanced measures to prosecute perpetrators of corruption offences; more consistent application of extended financial investigations in cases of corruption; improvement in efficiency of the courts in cases of corruption, with the establishment of objective norms for operation, taking into account the complexity of the cases; improvement in efficiency of court procedures in cases of corruption through the establishment and use of a unique system for statistical analysis and reporting; improvement in the penal policy for corruption offences with the aim of proactive deterrence from corrupt activities; development of an efficient system of identification, freezing and confiscation of property and any other benefits that the perpetrators and their related parties have gained

¹ These concepts are defined in article 1(9) and (10) of the BiH Criminal Code as amended).

through corrupt actions; creation of conditions for supervision of the judicial authorities and institutions through publicly available statistical data on conduct in cases of corruption offences; strengthening of mechanisms of disciplinary and other forms of accountability of prosecutors and judges for improper conduct in the cases with elements of corruption. The authorities indicate that the Anticorruption Strategy 2015-2019 and the related Action Plan will shortly be made public on the website of the Agency for Prevention of Corruption and Coordination in Fight against Corruption and that the Agency is organising a public conference in order to officially present those documents (probably end of June 2015).

11. GRECO welcomes the adoption of the draft law on amendments to the BiH Criminal Code which is in line with recommendations ii, iii, iv, v, viii and xii. However, given that amendments to the FBiH and BD Criminal Codes are still not under preparation, GRECO cannot conclude on full implementation of those recommendations – except for recommendation iii. In this respect, GRECO accepts the explanations provided by the authorities that all offences of bribery and trading in influence of foreign jurors and arbitrators for which the country has jurisdiction are covered by the BiH Criminal Code. That said, for the sake of legal clarity and consistency, GRECO would have a clear preference for having the corruption provisions of the FBiH and BD Criminal Codes amended accordingly, i.e. by also including jurors and arbitrators. Regarding recommendation x, the first part of which had already been implemented (cf. the Compliance Report), GRECO acknowledges that the Anticorruption Strategy 2015-2019 and the related Action Plan – whose publication has already been prepared – include a set of measures (with specific timeframes) which have a clear potential to solve obstacles affecting the implementation of criminal legislation on corruption and to improve its effectiveness. GRECO therefore concludes that parts 2 and 3 of the recommendation have now been implemented as well. In contrast, GRECO has strong misgivings about the absence of any further measures to implement recommendations vi and ix. The authorities are urged to speed up the reform process and to present further tangible results.
12. GRECO concludes that recommendations iii and x have been implemented satisfactorily, recommendations ii, iv, v, viii and xii remain partly implemented and recommendations vi and ix not implemented.

Theme II: Transparency of Party Funding

13. It is recalled that GRECO in its Evaluation Report addressed nine recommendations to Bosnia and Herzegovina in respect of Theme II. According to the Compliance Report, recommendation ii had been partly implemented. According to the First Interim Compliance Report, recommendation v had in addition been implemented satisfactorily. Recommendation ii remained partly implemented and recommendations i, iii, iv, vi, vii, viii and ix not implemented.

Recommendations i to iv and vi to ix.

14. *GRECO recommended:*
 - *to review the provisions applicable to political parties, in particular as regards party and election campaign funding, which are currently dispersed in different legislative texts, with a view to ensuring that they are consistent, comprehensive and workable for practitioners and political parties, in particular by considering their consolidation within a single piece of legislation (recommendation i);*

- *i) to promote the use of the banking system for the receipt of donations and other sources of income, as well as for the payment of expenditure, by political parties and election candidates, in order to make them traceable, and (ii) to introduce the principle of a single campaign account for the financing of election campaigns (recommendation ii);*
- *(i) to take measures to prevent the rules on ceilings on expenses during election campaigns from being circumvented by effecting these expenses outside the campaign reporting period and (ii) to give the Central Electoral Commission a mandate to supervise the expenditure of political parties also outside election campaigns (recommendation iii);*
- *to increase the transparency of the accounts and activities of entities related, directly or indirectly, to political parties – or otherwise under their control – and to include, as appropriate, the accounts of such entities in the accounts of political parties (recommendation iv);*
- *(i) to strengthen the mechanisms for internal financial control of political parties, in close cooperation with the parties' local and regional branches; (ii) to establish clear, consistent and specific rules on the audit requirements applicable to political parties and (iii) to ensure the necessary independence of the professionals who are to audit their accounts (recommendation vi);*
- *to increase the financial and personnel resources allocated to the Audit Department of the Central Electoral Commission so that it is better equipped to perform effectively its monitoring and enforcement tasks concerning political financing, including by ensuring a more swift and substantial supervision of the political party and election campaigns financial reports (recommendation vii);*
- *(i) to introduce a requirement for the Central Electoral Commission to report suspicions of criminal offences to the law enforcement authorities and (ii) to strengthen the co-operation and coordination of efforts on an operational and executive level between the Central Electoral Commission and the tax and law enforcement authorities (recommendation viii);*

and

- *to clearly define infringements of political finance rules and to introduce effective, proportionate and dissuasive sanctions for these infringements, in particular, by extending the range of penalties available and by enlarging the scope of the sanctioning provisions to cover all persons/entities (including donors) upon which the Law on Financing of Political Parties and the Election Law impose obligations (recommendation ix).*
15. GRECO recalls that according to the First Interim Compliance Report, upon the decision by the Council of Ministers of 16 April 2014, the Central Electoral Commission (CEC) was setting up an Interdepartmental Working Group tasked to prepare a draft proposal on amendments to the Law on Financing of Political Parties (LFPP), in order to revise the law in line with the outstanding recommendations.
16. The authorities now report that the Agency for Prevention of Corruption and Coordination in Fight against Corruption has submitted to the Council of Ministers the initiative for the appointment of the working group for drafting amendments to the LFPP in line with GRECO's recommendations. They add that in the most recent report by the CEC to Parliament, adopted by the latter on 10 June 2015, the CEC expresses its readiness to actively participate in proposing solutions for implementing GRECO's recommendations if the Interdepartmental Working Group is established,

and it proposes three members of the CEC as members of the working group. The CEC also mentions the need to reconsider the LFPP in line with GRECO's recommendations.

17. GRECO notes that the situation remains largely the same as it was at the time of the adoption of the First Interim Compliance Report. GRECO reiterates its previous concerns that the pace of reform is very unsatisfactory, given that the working group for drafting amendments to the LFPP has not yet even been established. In this connection, GRECO acknowledges the recent declaration of support to the reform process by the CEC. GRECO strongly urges the authorities to accelerate the process and to take determined action to implement the pending recommendations.
18. GRECO concludes that recommendation ii remains partly implemented and recommendations i, iii, iv and vi to ix not implemented.

III. CONCLUSIONS

19. **In view of the above, GRECO notes that while some progress has been achieved by Bosnia and Herzegovina, it is still not sufficient to significantly alter the level of implementation of the recommendations found either not to be or only partly implemented in the Third Round Interim Compliance Report. In total, only seven of the twenty-two recommendations have been implemented satisfactorily.**
20. More particularly, with respect to Theme I – Incriminations, recommendations iii and x have been implemented satisfactorily, recommendations ii, iv, v, viii and xii remain partly implemented and recommendations vi and ix not implemented. With respect to Theme II – Transparency of Party Funding, recommendation ii remains partly implemented and recommendations i, iii, iv, vi, vii, viii and ix not implemented.
21. Concerning the criminalisation of corruption offences, GRECO welcomes the adoption of the Anticorruption Strategy 2015-2019 and the related Action Plan – which include a set of measures aimed at improving the effectiveness of criminal legislation on corruption – and of the draft amendments to the Criminal Code of Bosnia and Herzegovina which are in line with six pending recommendations. However, GRECO regrets that the reform only concerns the State level and does not attempt to harmonise criminal legislation in the country (there are four criminal codes in use at the different levels of Government). No (draft) amendments to the Criminal Codes of the Federation of Bosnia and Herzegovina and of the Brčko District are under preparation. In addition, several issues of concern, in particular, the recommendation to fully harmonise the existing sanctions for bribery and trading in influence offences across the national territory, have not yet been addressed at all. As far as transparency of party funding is concerned, no tangible progress has been achieved. An initiative for the appointment of the working group for drafting amendments to the Law on Financing of Political Parties has been submitted to the Council of Ministers, but the working group has still not been established. GRECO strongly urges the authorities to accelerate the reform process and to take determined action to implement the pending recommendations both in the area of party funding and of the criminal law of corruption.
22. In view of the above, GRECO concludes that the current level of compliance with the recommendations clearly remains “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure.

23. In accordance with Rule 32, paragraph 2 subparagraph (ii) b), GRECO invites the President of the Statutory Committee to send a letter to the Permanent Representative of Bosnia and Herzegovina to the Council of Europe, drawing his attention to the non-compliance with the relevant recommendations, and the need to take determined action with a view to achieving tangible progress as soon as possible.
24. Pursuant to Rule 32, paragraph 2, subparagraph (i) of the Rules of Procedure, GRECO requests the Head of Delegation of Bosnia and Herzegovina to provide a report regarding the action taken to implement the pending recommendations (i.e. recommendations ii, iv, v, vi, viii, ix and xii regarding Theme I and recommendations i to iv and vi to ix regarding Theme II) by 31 March 2016.
25. Finally, GRECO invites the authorities of Bosnia and Herzegovina to authorise, as soon as possible, the publication of the present report, to translate it into the national languages and to make these translations public.