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## **Third Evaluation Round**

### **Compliance Report on Bosnia and Herzegovina**

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

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#### **"Transparency of Party Funding"**

Adopted by GRECO  
at its 61<sup>st</sup> Plenary Meeting  
(Strasbourg, 14-18 October 2013)

## **I. INTRODUCTION**

1. The Compliance Report assesses the measures taken by the authorities of Bosnia and Herzegovina to implement the 22 recommendations issued in the Third Round Evaluation Report on Bosnia and Herzegovina (see paragraph 2), covering two distinct themes, namely:
  - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
  - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
2. The Third Round Evaluation Report was adopted at GRECO's 51<sup>st</sup> Plenary Meeting (23-27 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](#)).
3. As required by GRECO's Rules of Procedure, the authorities of Bosnia and Herzegovina submitted a Situation Report on measures taken to implement the recommendations. This report was submitted on 30 November 2012, and subsequently updated on 17 April 2013, and served as a basis for the Compliance Report.
4. GRECO selected Malta and Slovenia to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Lara LANFRANCO, Criminal Prosecutor before the Superior Courts, Office of the Attorney General, on behalf of Malta, and Ms Vita HAJBANI BARBORIC, Chief Project Manager, Commission for the Prevention of Corruption, on behalf of Slovenia. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

## **II. ANALYSIS**

### **Theme I: Incriminations**

6. It is recalled that GRECO in its evaluation report addressed 13 recommendations to Bosnia and Herzegovina in respect of Theme I. Compliance with these recommendations is dealt with below.
7. Following the adoption of the Third Round Evaluation Report, a Team for Monitoring and Assessing the Application of Criminal Legislation in Bosnia and Herzegovina was set up; its tasks have now been overtaken by the Department for the Judicial Authorities of the Ministry of Justice. Draft amendments to the BiH Criminal Code were prepared thereafter, then approved by the Council of Ministers following a public consultation process and currently await discussion in Parliament. Republika Srpska amended its Criminal Code in 2013 (Law No. 67/13).

### **Recommendation i.**

8. *GRECO recommended to analyse and to clarify, for the sake of legal certainty, which functions are covered by the notion of “an official or a responsible person”.*
9. The authorities of Bosnia and Herzegovina indicate that criminal legislation provides a broad definition of public official/responsible person in the public sector, which encompasses any person who participates in carrying out a service on behalf of the public and according to public law. All Criminal Codes – State/Entity levels (CCs) contain identical definitions. This notion is further developed by case law and clarified in detail in the explanatory commentaries to the respective CCs.
10. GRECO takes note of the explanations provided by the authorities regarding the understanding of the concept of “official or responsible person”, as complemented by court jurisprudence and the respective explanatory notes accompanying criminal law provisions. It would appear that the wide definition provided in the criminal legislation includes the different categories of persons covered by the Criminal Law Convention on Corruption (ETS 173).
11. GRECO concludes that recommendation i has been implemented satisfactorily.

### **Recommendation ii.**

12. *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).*
13. The authorities of Bosnia and Herzegovina are of the opinion that the definitions in criminal legislation 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, are in line with the Criminal Law Convention on Corruption (ETS 173). Concerning the second part of the recommendation, Law No. 67/13 amending the CC of the Republika Srpska (RS) provides for a reworked definition of foreign and international public officials covering the different categories of persons enumerated in the Criminal Law Convention on Corruption (ETS 173): foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies, judges and officials of international courts; it further covers foreign jurors and arbitrators in line with the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).
14. GRECO reiterates its view that, as regards the international dimension of the bribery offences, the definition of foreign officials provided by the CCs of BiH - Article 1 (7) and (8), FBiH – Article 2 (8), and BD Article 2 (7) and (8), appears to cover the different categories of foreign public officials and international officials envisaged by Article 1.a of the Convention insofar as they are serving in the territory of BiH or its Entities/BD. This is not in line with the Convention, which aims at criminalising corruption wherever it occurs (Explanatory Report, paragraph 49). GRECO is pleased to note that this is not the situation anymore in the CC of RS following its recent amendment in 2013.

15. GRECO highlights that the issue of jurisdiction is a different matter than that of the criminalisation of corruption, and therefore, all applicable criminal legislation in the country needs to include harmonised provisions (including definitions of possible perpetrators) on bribery and trading in influence offences, and that these must follow the Criminal Law Convention on Corruption (ETS 173).

16. GRECO concludes that recommendation ii has been partly implemented.

#### **Recommendation iii.**

17. *GRECO recommended 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.*

18. The authorities of Bosnia and Herzegovina stress that ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) took place on 7 September 2011; the Protocol entered into force with respect to Bosnia and Herzegovina on 1 January 2012. The draft amendments to the CC specifically refer to domestic/foreign arbitrators in the relevant definitions of domestic and foreign public officials. As to foreign jurors, the authorities are of the view that, since there are no jurors in the domestic legal system, no further legislative adjustment is needed. Republika Srpska amended its CC to explicitly cover foreign jurors and arbitrators.

19. GRECO welcomes the ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191). GRECO takes note of the intention of the authorities to explicitly refer to arbitrators when detailing the categories of persons that are considered public officials for criminal law purposes. As to the authorities' considerations regarding jurors and the absence of this category of professionals in BiH's system, GRECO points out that recommendation iii refers to jurors of a foreign jurisdiction. This notion must be reflected in BiH law in order to be in line with ETS 191. In this connection, GRECO is pleased to note that Republika Srpska has expressly criminalised bribery of both foreign jurors and arbitrators.

20. GRECO concludes that recommendation iii has been partly implemented.

#### **Recommendation iv.**

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

22. The authorities of Bosnia and Herzegovina restate that the formulation of corruption offences in domestic legislation (not limited to bribery, but also comprising abuse of office and illegal interceding) covers all acts and omissions that a public official has the opportunity to commit because of the function s/he occupies. It is irrelevant whether the receiver could or could not perform the corrupt act, what actually matters is that s/he was offered an advantage to do so. It is also immaterial whether the bribe-giver knew or not that the official could effectively perform the requested action. Amendments were introduced to the RS CC to provide for a broader notion of breach of duty by referring to direct or related official duties.

23. GRECO notes that the CCs of BiH, FBiH and BD continue to refer to official acts performed or omitted "within the scope of the official's powers/authority". This was assessed as not entirely

satisfactory at the time of adoption of the Third Evaluation Round Report. In this connection, GRECO maintains its position, which has consistently been applied to other countries of the region with an analogous formulation of the breach of duty notion. In particular, GRECO has always expressed reticence as to accepting narrower requirements than those used in the Criminal Law Convention on Corruption (ETS 173): the notion of competence, as laid out in domestic legislation (“*within the scope of the official's powers/authority*”), adds a restrictive element to the criminalisation of bribery, which may make prosecution of the offence more difficult, i.e. by requiring proof that the official was expected to act within his/her official statutory competence. While GRECO takes note as to the explanation of the authorities stressing that any act or omission which is made possible in relation to the public official’s function (even if the act is a misuse of the official position) is covered, it remarks however that no case/court decision has been cited to corroborate such argumentation. Moreover, GRECO recalls that, at the time of the on-site visit, practitioners acknowledged that this could potentially constitute a loophole in the system (paragraph 89, Third Evaluation Round Report). GRECO is pleased to note that this issue has been reformulated in the RS CC which now provides with a broader notion of breach of duty.

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

**Recommendation v.**

25. *GRECO recommended to ensure that the bribery offences are construed in such a way as to cover, unambiguously, instances of bribery committed through intermediaries, as well as instances where the advantage is not intended for the official himself/herself but for a third party.*
26. The authorities of Bosnia and Herzegovina are of the view that the issues of intermediaries and third party beneficiaries are adequately covered in the CC.
27. GRECO notes that, with respect to the issues of intermediaries and third parties, the translations provided by the authorities coincide with those analysed at the time of the Third Evaluation Round Report. Thus, GRECO sees the same flaws (see also paragraphs 90-92, Third Evaluation Round Report): concerning the indirect commission of bribery/trading in influence offences, only the relevant provisions on active bribery explicitly provide for the commission of the offence by intermediaries (i.e. Article 218, BiH CC; Article 381, FBiH CC; Article 352, RS CC; and Article 375, BD CC). With respect to passive bribery, the relevant provisions remain silent in this respect.
28. Disparity also remains with respect to third party beneficiaries who are only specifically covered in the provisions on passive bribery of the BiH and the FBiH CCs (Article 217, BiH CC and Article 380, FBiH CC). No reference to third parties is included in the corresponding passive bribery provisions of the RS and BD. Likewise, the relevant provisions on active bribery, at the different levels of Government, remain silent as to the concrete coverage of third parties. GRECO reiterates how important it is for the sake of consistency and clarity that all corruption offences contain the same basic elements.
29. GRECO concludes that recommendation v has not been implemented.

**Recommendation vi.**

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

31. The authorities of Bosnia and Herzegovina report on their intention to criminalise bribery in the private sector via an autonomous provision which would reportedly closely follow the wording of the Criminal Law Convention on Corruption (ETS 173), including with regard to the possible perpetrators of the offence.
32. GRECO welcomes this update, but notes that the intended plans have not yet been coupled with concrete legislative steps and therefore concludes that recommendation vi has not been implemented.

#### **Recommendation vii.**

33. *GRECO recommended to ensure that legislation concerning bribery in the private sector covers in an unequivocal manner the full range of persons who direct or work for, in any capacity, any private sector entity as provided for in Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173).*
34. The authorities of Bosnia and Herzegovina reiterate that criminal legislation provides a broad definition of responsible person, which covers all persons who direct or work for, in any capacity, in a private sector entity. They substantiate their point of view with court jurisprudence on the notion of responsible person covering indeed persons without managerial/directing/supervisory functions and low level employees (e.g. technical secretary of a soccer club, worker in a pharmacy, etc.).
35. GRECO accepts the explanation of the authorities, as complemented by court decisions, and concludes that recommendation vii has been implemented satisfactorily.

#### **Recommendation viii.**

36. *GRECO recommended to (i) criminalise active trading in influence; (ii) review the provision on passive trading in influence to unambiguously cover a) the request of the offer or the promise of an undue advantage by the influence peddler; b) the direct and indirect commission of the offence; c) those instances where the advantage is not intended for the briber him/herself but for a third party; and d) instances of alleged influence.*
37. The authorities of Bosnia and Herzegovina indicate that the draft amendments to the CC comprise a reworked criminalisation of trading in influence. In particular, active trading in influence is criminalised in a separate provision (Article 219a CC). The offence of passive trading in influence (Article 219 CC) has been reworded to explicitly refer to requests, intermediaries, third party beneficiaries and instances of alleged influence. Republika Srpska has already amended its CC, which now includes an offence of active and passive trading in influence (Article 353) covering all aspects of recommendation viii.
38. GRECO takes note of the reported changes. They all go in the right direction and have the potential of addressing the specific concerns raised in recommendation viii as to the need to criminalise active trading in influence and to remedy several shortcomings in the criminalisation of passive trading in influence. GRECO welcomes the amendments already introduced in the RS CC which bring the offence of trading in influence in line with ETS 173. However since the draft amendments to the CC of BiH, FBiH and BD still need to be adopted, GRECO can only conclude that recommendation viii has been partly implemented.

### **Recommendation ix.**

39. *GRECO recommended to fully harmonise the existing sanctions for bribery and trading in influence offences.*
40. The authorities of Bosnia and Herzegovina report on their intention to harmonise the existing sanctions for bribery and trading in influence offences across the national territory. The Ministry of Justice has delivered a communication to the Entities and Brčko District (BD) to this end.
41. GRECO welcomes this update, but notes that the intended plans have not yet been coupled with concrete legislative steps and therefore concludes that recommendation ix has not been implemented.

### **Recommendation x.**

42. *GRECO recommended 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.*
43. The authorities of Bosnia and Herzegovina indicate that the High Judicial and Prosecutorial Council gathered the experience of prosecutors and judges alike regarding the investigation and adjudication of corruption cases, as well as the obstacles hindering the effectiveness of the anticorruption fight. The Ministry of Security is now leading this exercise, and as part an Organised Crime Threat Assessment policy document, a chapter has been exclusively devoted to corruption matters, including recommendations to sharpen criminal policy and step up sanctions. All agencies (including judges and prosecutors) would then have to prepare their own action plans and define timelines and responsibilities accordingly. A Swiss technical assistance project is helping the prosecution service to strengthen its capacity to provide leadership to the criminal process and efficiently perform its investigative role.
44. GRECO welcomes the developments reported to gather the experience of prosecutors and judges in dealing with corruption cases, including by identifying potential shortcomings in law and in practice; this meets the requirements of part i of recommendation x. However, much more still needs to come up with a concrete plan to solve the problems identified and public awareness-raising measures on the schedule and the content of such a plan, as recommended (parts ii and iii of recommendation x).
45. GRECO concludes that recommendation x has been partly implemented.

### **Recommendation xi.**

46. *GRECO recommended to take additional measures (e.g. training, guidelines, circulars, etc.) to raise the awareness of the professionals who are to apply the criminal legislation on corruption.*
47. The authorities of Bosnia and Herzegovina provide detailed information on the type and frequency of corruption-related training courses for law enforcement authorities across the country (judges, prosecutors and police). In particular, they make reference to a vast catalogue of training events and materials comprising specific modules on national law and international

standards concerning the criminalisation of corruption, as well as on practical aspects in the implementation of legal provisions (e.g. mutual legal assistance requests, special investigative techniques, etc.). Training and advice for prosecutors on corruption-related investigations have also been reinforced through the Swiss technical assistance project mentioned before.

48. GRECO welcomes the information provided concerning the development of specialised training and the provision of guidance materials on the latter, so that the professionals applying the law become better acquainted with the content of corruption-related provisions.
49. GRECO concludes that recommendation xi has been implemented satisfactorily.

#### **Recommendation xii.**

50. *GRECO recommended to abolish the possibility provided by the special defence of effective regret to return the bribe to the bribe-giver who has reported the offence before it is uncovered.*
51. The authorities of Bosnia and Herzegovina are of the view that the possibility to return the bribe to the bribe-giver who has reported the offence before it is uncovered is a useful tool to protect citizens who are solicited by corrupt officials. The authorities emphasise that this is particularly important in relation to corruption in the health sector where citizens may need to accept to pay a bribe in order to be treated. Such solicitation cases do reportedly occur sometimes in Bosnia and Herzegovina. The authorities further stress that the return of the bribe is only a possibility which must be decided by the competent judge on the basis of the facts surrounding the case.
52. GRECO takes note of the explanation provided by the authorities. Nevertheless, it does not see any compelling reason to depart from the considerations already expressed at the time of adoption of the Third Evaluation Round Report, which took due account of the necessity of the effective regret defence in Bosnia and Herzegovina, but still questioned the possibility to restore the bribe to the bribe-giver. GRECO has consistently recommended to those countries in which such a possibility existed, that it be completely abolished.
53. GRECO concludes that recommendation xii has not been implemented.

#### **Recommendation xiii.**

54. *GRECO recommended to fully harmonise the existing jurisdiction provisions, notably by (a) abolishing the requirement of dual criminality with respect to the offences of bribery and trading in influence committed abroad, when applicable; (b) establishing jurisdiction over acts of corruption committed abroad by foreigners, but involving officials of international organisations, members of international parliamentary assemblies and officials of international courts who are, at the same time, nationals of Bosnia and Herzegovina.*
55. The authorities of Bosnia and Herzegovina explain that whenever an international dimension of corruption is involved, the case falls under the competence of the State level. Therefore, Entity courts would not have jurisdiction in this respect. The authorities recall that recommendation xiii was issued to address the deficiencies found in Entity/BD legislation.
56. GRECO accepts the clarifications provided by the authorities as to the lack of jurisdiction of Entity courts to adjudicate corruption offences with an international dimension in the case in question. Recommendation xiii was indeed targeting the specific deficiencies found in the Entities/BD

legislation. With respect to State level legislation, it was acknowledged that the relevant provision on jurisdiction in the BiH CC (Article 9) was compliant with the requirements of the Criminal Law Convention on Corruption (ETS 173) in this domain.

57. GRECO concludes that recommendation xiii has been implemented satisfactorily.

## **Theme II: Transparency of Party Funding**

58. It is recalled that GRECO in its Evaluation Report addressed 9 recommendations to Bosnia and Herzegovina in respect of Theme II. Compliance with these recommendations is dealt with below.
59. As introductory remarks to the Situation Report in respect of this theme, the authorities of Bosnia and Herzegovina indicate that the Central Electoral Commission (hereafter CEC), in its 2010 report on the enforcement of legislation under its jurisdiction, proposed to the State level Parliamentary Assembly to amend the Law on Financing of Political Parties (hereafter LFPP) and to adopt a State level Law on Political Parties in order to strengthen the institutional capacities of Bosnia and Herzegovina and to implement GRECO recommendations. Its first proposal was accepted by both Chambers of the Assembly, which decided to create an inter-ministerial Task Force to prepare amendments to the LFPP by 1 May 2012. The resulting bill of amendments to the LFPP was adopted by the BiH House of Representatives on 19 September 2012 and by the House of Peoples on 16 September 2012. The law came into force on 5 December 2012.

### **Recommendation i.**

60. *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.*
61. The authorities of Bosnia and Herzegovina explain that, as mentioned above, the CEC advocated in its 2010 annual report the adoption of a uniform law on political parties at the level of BiH. This proposal was reiterated in subsequent annual reports, but it has not yet borne fruit. Nevertheless, the BiH Council of Ministers decided in November 2012 to form an inter-ministerial task force to draft such a bill. In January 2013, the Council of Ministers decided that the task force would be composed of representatives of relevant state-level ministries, namely the Ministry of Justice, Ministry of Civil Affairs, Ministry for Human Rights and Refugees, Ministry of Finance and Treasury, Ministry of Foreign Affairs, as well as representatives from both chambers of the state-level Parliament and from the CEC. The task force held its first meeting on 26 August 2013.
62. GRECO welcomes the intention of the authorities of Bosnia and Herzegovina to prepare a unified Law on Political Parties at state level, the absence of which was criticised in the Evaluation Report (paragraph 74). It appears, however, that work on this issue is still at a very preliminary stage. Moreover, GRECO recalls that this recommendation was given in response to the fact that the previous LFPP and the Electoral Code were insufficiently consolidated, creating uncertainties in their interpretation and application. It does not appear that the clarification and consolidation required have been carried out.
63. GRECO concludes that recommendation i has not been implemented.

## **Recommendation ii.**

64. *GRECO recommended (i) to promote the use of the banking system for the receipt of donations and other sources of income, as well as for the payment of expenditure, by political parties and election candidates, in order to make them traceable, and (ii) to introduce the principle of a single campaign account for the financing of election campaigns.*
65. The authorities of Bosnia and Herzegovina report that article 5 of the new LFPP (membership fees and donations) provides that: *“Political parties are obliged to keep records on receiving membership fees and voluntary contributions, and to issue receipts for membership fees and voluntary contributions. An authorised person in the political party deposits the membership fees and voluntary contributions directly to the transaction account of the political party no later than ten days from the day the payment was received”*. Article 6 paragraph 2 of the LFPP adds that *“Voluntary contributions in cash shall be paid on the transaction account of a political party headquarters”*. They explain that under the previous law, there was no obligation to keep records of membership fees, only of donations. There was no obligation for the party to deposit the funds on an account in a commercial bank and in practice, such sources of income were mainly received in cash at parties’ lower organisational levels. Transparency of and control over such financial sources were hampered, as sometimes even the headquarters of the political parties had no complete information about donations and membership fees received at lower levels.
66. GRECO takes note of the new information provided agrees that articles 5 and 6 of the LFPP represent an attempt at answering the problems of unaccounted financial flows that were highlighted in the Evaluation Report (see paragraph 75). Yet, this answer is incomplete. The fact that the funds received have to be deposited by an authorised person on a party’s account still leaves room for possible manipulations, for instance by only issuing receipts and depositing a fraction of the money received. Payment of voluntary contributions and membership fees directly and exclusively onto parties’ accounts would be a much more straightforward and transparent solution. Moreover, it does not appear that the other concerns raised by the recommendation, namely the use of the banking system also by election candidates and the payment of expenditure by political parties, as well as the introduction of the principle of a single bank account, have been resolved.
67. GRECO concludes that recommendation ii has been partly implemented.

## **Recommendation iii.**

68. *GRECO recommended (i) to take measures to prevent the rules on ceilings on expenses during election campaigns from being circumvented by effecting these expenses outside the campaign reporting period and (ii) to give the Central Electoral Commission a mandate to supervise the expenditure of political parties also outside election campaigns.*
69. The authorities of Bosnia and Herzegovina make reference to article 4 of the new LPFF, which states that political parties’ financial resources, as described in article 3, paragraph 1 of the law, may only be used by the political party for achieving objectives defined by its programme and statutes.
70. GRECO takes note of the introduction in the LFPP of a new article stating the purposes of political parties’ expenses. It takes the view, however, that the definition of allowed expenses is not sufficiently precise to fulfil the objectives of the first part of the recommendation. No link

seems to be made between this provision and the relevant articles of the Election Law on election campaigns' ceilings of expenses. Specific categories of allowed expenses are not defined, which clearly hampers any accurate picture of the use of funds by political parties and the detection of possible circumvention of the rules on campaign expenses. Moreover, no mention is made of an extension of the CEC's mandate to supervise the expenditure of political parties outside election campaigns, as required by the second part of the recommendation.

71. GRECO concludes that recommendation iii has not been implemented.

**Recommendation iv.**

72. *GRECO recommended to increase the transparency of the accounts and activities of entities related, directly or indirectly, to political parties – or otherwise under their control – and to include, as appropriate, the accounts of such entities in the accounts of political parties.*

73. The authorities indicate that article 8 of the LFPP contains a list of prohibited sources of funding for political parties, which includes funding by foreign states, foreign political parties and foreign legal entities, funding from administrative bodies and public institutions, public companies, humanitarian organisations, anonymous donations, legal persons in which public capital has been invested in the amount of at least 25% and private companies which have concluded public procurement contracts with bodies of the executive power at all levels of state, entity and local administration, provided the value of the contract exceeds 10 000 KM (about 5 113 Euros). Exceptions are foreseen when funding by foreign states and entities is intended for education programmes aiming at promoting democratic principles and for the use of business premises of administrative bodies, upon a decision of these bodies. This article also prohibits donations in cash or in kind by way of third persons/intermediaries.

74. GRECO takes note of the information provided, which in its view does not respond to the aim of the recommendation. It recalls that this recommendation was given to provide for more transparency and/or a consolidation of political party accounts so as to reflect the income and expenditure of entities related to them, such as non-governmental organisations, which may be involved in indirect campaigning for political parties by organising events or producing promotional materials, or by shouldering expenses for political parties. GRECO fails to see how article 8 of the new LFPP contributes to this aim. It contains many of the same prohibitions already established under article 8 of the previous law. In fact, the new article 8 is less stringent than the former one. GRECO is concerned that the new exceptions introduced by the law – foreign funding being allowed for education programmes, use of administrative bodies' business premises, funding from companies entered into public procurement contracts, when the contract is below a certain value – validate certain practices that used to be illegal under previous legislation.

75. GRECO concludes that recommendation iv has not been implemented.

**Recommendation v.**

76. *GRECO recommended to take measures to ensure that more meaningful information from the annual party accounts and the accounts of election campaigns, including on private donations above a certain threshold and the identity of donors, is published in a way which provides for easy and timely access by the public.*

77. The authorities of Bosnia and Herzegovina state that the LFPP has not been able to offer a satisfactory solution as regards transparency of donations, due to the provisions of the Law on Personal Data Protection. Article 13 paragraph 5 of the LFPP does provide for the transparency of political parties' financial reports, but the Law on Personal Data Protection limits the communication of personal data on political parties' donors. The CEC tries to overcome this situation, in accordance with the Law on Freedom of Access to Information. It enables interested persons who have filed a written request for access to information to consult on its premises information on donors contained in the financial reports of political parties.
78. GRECO notes that the situation as reported is essentially the same as that already described in the Evaluation Report (see paragraphs 53 and 78). The Law on Personal Data Protection is used as an argument not to disclose any information on private donations and the identity of donors. While it is not in a position to assess the content of that law, GRECO underlines that a number of member states, whose domestic law also gives effect to the common European standards in the field of personal data protection, have been able to strike an appropriate balance between the right of donors to privacy and the interests of transparency in the field of political financing. The authorities explain that the only way in which the public may access information on private donations and donors is by making a written request, establishing an interest and consulting this information on the premises of the CEC. In GRECO's view, this hardly qualifies as easy and timely access. Finally, the information submitted only relates to private donations, while the publicity measures advocated in the recommendation have a broader scope, covering the whole of party and election campaign accounts. No new publicity measures have been reported regarding the rest of these accounts and the argument and the personal data protection argument is not relevant in this context. GRECO recalls that the Evaluation Report contemplated other possible measures, such as requiring political parties to publish financial information on their own initiative and increasing the level of detail of the financial information that is published by the CEC on its website.
79. GRECO concludes that recommendation v has not been implemented.

**Recommendation vi.**

80. *GRECO recommended (i) to strengthen the mechanisms for internal financial control of political parties, in close cooperation with the parties' local and regional branches; (ii) to establish clear, consistent and specific rules on the audit requirements applicable to political parties and (iii) to ensure the necessary independence of the professionals who are to audit their accounts.*
81. The authorities make reference to article 11 of the LFPP, which obliges political parties to keep their books in accordance with accounting regulations, the Law on Accounting and Auditing and the International Accounting Standards, the implementation of which is mandatory on the whole territory of Bosnia and Herzegovina. According to them, these provisions oblige political parties to establish mechanisms for internal control and monitoring over their accounts.
82. GRECO points out that the Evaluation Report (paragraph 47) already establishes that political parties, like all other legal persons in Bosnia and Herzegovina, have to apply the provisions of the Accounting and Audit Law and of the International Accounting Standards. No changes to these texts are reported. Nothing in the information submitted, therefore, enables GRECO to conclude that the situation has evolved positively.
83. GRECO concludes that recommendation vi has not been implemented.

### **Recommendation vii.**

84. *GRECO recommended to increase the financial and personnel resources allocated to the Audit Department of the Central Electoral Commission so that it is better equipped to perform effectively its monitoring and enforcement tasks concerning political financing, including by ensuring a more swift and substantial supervision of the political party and election campaigns financial reports.*
85. The authorities of Bosnia and Herzegovina state that the CEC's Audit Department has the task to annually supervise the financing of 94 political parties. During election years, it has to control the election campaign expenses for more than 400 political entities (474 political entities took part in the 2012 local elections: 85 political parties, 59 coalitions of political parties and 330 independent candidates). However, the number of employees in the Audit Department remains unchanged.
86. In the absence of any new development reported, GRECO concludes that recommendation vii has not been implemented.

### **Recommendation viii.**

87. *GRECO recommended (i) to introduce a requirement for the Central Electoral Commission to report suspicions of criminal offences to the law enforcement authorities and (ii) to strengthen the co-operation and coordination of efforts on an operational and executive level between the Central Electoral Commission and the tax and law enforcement authorities.*
88. The authorities report that the CEC, in accordance with the provisions of criminal law and of articles 4 and 41 of the Law on Fighting Money Laundering and Terrorist Financing is required to cooperate with competent institutions, judicial and tax authorities. Reference is made in particular to article 213 of the Code of Criminal Procedure, which obliges all officials and responsible persons in governmental bodies in Bosnia and Herzegovina to report without delay to a competent official or the Prosecutor's Office any suspicion of criminal offences of which they have knowledge. The following examples of such co-operation may be given:
- The CEC submitted to the competent courts in Bosnia and Herzegovina 147 proposals for removal of political parties from the court registers because of suspicions that these parties had not performed activities defined in their statutes for longer than one year (according to articles 24 and 23 of the Entities' Laws on Political Organisations (Official Gazette of the Socialist Republic of Bosnia and Herzegovina 27/91, taken over by the Federation of Bosnia and Herzegovina; Official Gazette of the Republika Srpska 15/96; Official Gazette of the Brčko District 12/02, 19/07 and 2/08). 76 parties were removed by the courts from their registers of political parties. Only the Basic Court in Banja Luka did not act on the CEC's proposals and failed to remove 71 political parties from its register;
  - The CEC submitted during the first quarter of 2011 to the competent prosecution offices at State and Entity levels a case regarding the National Party Work for Prosperity (*Narodna stranka Radom za boljitak*), for suspicions of violations of the Criminal Law of the state and the entities during the 2006 and 2010 general elections. Suspicions related to the signature of contracts between the party and physical persons to manipulate votes at a number of polling stations. According to one of the contracts, 30 KM (about 15 Euros) were paid for each vote and the party's financial report shows that in 2006, the total amount of 732 067 KM (about 374 300 Euros) was paid to physical

persons in accordance with such contracts. The CEC also received reports from citizens from the municipalities of Cazin and Novi Grad Sarajevo, stating that, for the 2010 general elections, the National Party Work for Prosperity promised to pay 100 KM (about 50 Euros) to every voter giving it their vote, as well as fees for intermediaries securing a certain number of votes;

- The audit of the National Party Work for Prosperity for 2006 and 2007 also revealed a number of violations of the applicable tax laws concerning the granting and reimbursement of loans to finance its activities. This information was forwarded by the CEC in March 2009 to the FBiH Tax Administration, which reported back in December 2009 to the CEC, stating that the lending entities had been inspected and found guilty of tax law offences. The FBiH Tax Administration also forwarded the information about the loans to the State Investigation and Protection Agency, which is competent for the implementation of the Law on Fighting Money Laundering and Terrorist Activities.

89. GRECO takes note of the information provided, from which it does not appear that a specific provision requiring the CEC or its Audit Department to report suspicions of criminal offences has been included in the LFPP, as requested by the first part of the recommendation. As to the second part of the recommendation, the information provided concerns the financial situation of only one political party, for facts that occurred before or around the time of adoption of the Evaluation Report in 2011. Therefore, GRECO is not able to conclude that the co-operation between the CEC and tax and law enforcement authorities has improved in any way as a result of measures taken to implement the recommendation.

90. GRECO concludes that recommendation viii has not been implemented.

#### **Recommendation ix.**

91. *GRECO recommended to clearly define infringements of political finance rules and to introduce effective, proportionate and dissuasive sanctions for these infringements, in particular, by extending the range of penalties available and by enlarging the scope of the sanctioning provisions to cover all persons/entities (including donors) upon which the Law on Financing of Political Parties and the Election Law impose obligations.*

92. The authorities of Bosnia and Herzegovina explain that articles 19 and 20 of the LFPP prescribe fines for political parties, in the amount of 500 to 5 000 KM (about 255 to 2 550 Euros), for the following infringements:

- if the political party does not use its funds for achieving goals defined by its programme and statute;
- if part of the funds raised by the party from property or companies it owns, which exceed 20% of its total revenue, are not transferred to charities;
- if the party does not keep records of received membership fees and donations and issues receipts for them;
- if a party takes a loan from banks in which the share of state capital exceeds 25%.

93. The authorities add that fines of up to three times the amount of the received funds are prescribed in cases a political party or candidates receives funds from illegal sources or funds in excess of the allowed amounts, fails to report such funds and to transfer them to the state budget.

94. GRECO points out that some of the sanctions referred to by the authorities already existed in the previous version of the LFPP (see paragraph 83). Other types of violations, such as the failure to submit a financial report, the obligation to report contributions and the identity of donors, the failure to provide invoices for in-kind services etc., still appear to lack corresponding sanctions in the law. GRECO also has serious doubts about the dissuasive character of fines ranging from 500 to 5 000 KM, since it was already noted in the Evaluation Report that fines twice as high as this maximum amount had no deterrent effect on political parties. Finally, it does not seem that sanctions have been designed to apply to other entities than political parties, nor that the Election Law was amended to comply with this recommendation.
95. GRECO concludes that recommendation ix has not been implemented.

### **III. CONCLUSIONS**

96. **In view of the above, GRECO concludes that Bosnia and Herzegovina has implemented satisfactorily or dealt with in a satisfactory manner only four of the twenty-two recommendations contained in the Third Round Evaluation Report.** Moreover, of the remaining recommendations six have been partly implemented and twelve have not been implemented. With respect to Theme I – Incriminations, recommendations i, vii, xi and xiii has been implemented satisfactorily, recommendations ii, iii, iv, viii and x have been partly implemented and recommendations v, vi, ix, and xii have not been implemented. With respect to Theme II – Transparency of Party Funding, recommendation ii has been partly implemented and recommendations i, iii, iv, v, vi, vii, viii and ix have not been implemented.
97. Concerning the criminalisation of corruption offences, in September 2011, Bosnia and Herzegovina ratified the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191). Drafting of legislative amendments followed thereafter to meet GRECO's recommendations regarding bribery of arbitrators, active trading in influence and bribery in the private sector; however, with the exception of Republika Srpska which amended its Criminal Code in 2013, the proposed changes are still at incipient stages of the legislative process and need to materialise in practice. More decisive action must be taken to harmonise criminal legislation in the country (there are four criminal codes in use at the different levels of Government: State level, Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District) and to do so fully in line with the Criminal Law Convention on Corruption (ETS 173). While some effort has been devoted to further acquainting legal professionals with corruption-related provisions, as well as to identifying challenges in the investigation and adjudication of cases, overall the action taken by the authorities to address GRECO's recommendations in the almost two and a half years that have elapsed since the Third Evaluation Round Report was adopted must be assessed as rather limited.
98. Concerning transparency of party funding, the overall picture is very disappointing. GRECO welcomes the intention stated by the authorities of Bosnia and Herzegovina to adopt a uniform law on political parties at State level, but work on this issue is still at a very initial stage. The Law on Financing of Political Parties was amended in December 2012, but GRECO regrets that it does not significantly impact most of the deficiencies highlighted in the Evaluation Report. Some measures were taken to encourage the use of bank accounts by political parties, but GRECO is concerned that they still leave room for the use of cash and related manipulations. Transparency of the accounts of political parties is still insufficient, especially as regards donations and the identity of donors. No measures were taken to strengthen the internal control mechanisms of political parties, nor the monitoring capacity of the Central Electoral Commission and its Audit

Service. The range of available sanctions has not been extended, there are still no specific sanctions for several violations of the law and the amount of some fines was even decreased. More worryingly, some changes introduced in the law run counter to the objectives of GRECO recommendations and seem to validate certain formerly illegal political parties' practices, such as the use of administrative bodies' business premises, or the receipt of funding from companies entered into public procurement contracts, when the contract is below a certain value.

99. In view of the above, GRECO therefore concludes that the current very low level of compliance with the recommendations is "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the Head of the delegation of Bosnia and Herzegovina to provide a report on the progress in implementing the outstanding recommendations (i.e. recommendations ii, iii, iv, v, vi, viii, ix, x and xii regarding Theme I and recommendations i to ix regarding Theme II) as soon as possible, however – at the latest – by 30 April 2014, pursuant to paragraph 2(i) of that Rule.
100. Finally, GRECO invites the authorities of Bosnia and Herzegovina to authorise, as soon as possible, the publication of the report, to translate the report into the national languages and to make these translations public.