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## **Third Evaluation Round**

### ***Interim* 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 64<sup>th</sup> Plenary Meeting  
(Strasbourg, 16-20 June 2014)

## **I. INTRODUCTION**

1. The Third Round Evaluation Report on Bosnia and Herzegovina was adopted at GRECO's 51<sup>st</sup> 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. As required by GRECO's Rules of Procedure, Bosnia and Herzegovina submitted a Situation Report on measures taken to implement the recommendations. GRECO selected Malta and Slovenia to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Lara LANFRANCO, on behalf of Malta, and Ms Vita HABJAN BARBORIČ, on behalf of Slovenia. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
3. In the Compliance Report, which was adopted by GRECO at its 61<sup>st</sup> 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 twenty-two 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 and asked the Head of 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) by 30 April 2014 at the latest, pursuant to paragraph 2(i) of that rule.
4. The current [Interim Compliance Report](#) assesses the further implementation of the pending recommendations since the adoption of the Compliance Report, and performs 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, recommendations ii, iii, iv, viii and x had been partly implemented and recommendations v, vi, ix and xii had not been implemented. It is furthermore recalled that Republika Srpska (hereafter RS) had amended its Criminal Code in 2013 (Law No. 67/13) 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.
6. The authorities of Bosnia and Herzegovina now report that in order to implement the outstanding recommendations, the Ministry of Justice prepared a draft law on amendments to the BiH Criminal Code which was approved by the Council of Ministers on 8 May 2014. The draft law was adopted by the House of Representatives on 28 May 2014 and remains to be adopted by the House of People. It is built on the previous bill presented in the Compliance Report and includes some additional amendments.

## **Recommendation ii.**

7. *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).*
8. GRECO recalls that the recommendation was considered partly implemented in the Compliance Report. While no measures had been taken to address the first part of the recommendation, Law No. 67/13 amending the RS Criminal Code provided 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), as required by the second part of the recommendation.
9. The authorities now report that in accordance with article 1 of the above-mentioned draft law on amendments to the BiH Criminal Code, the terms "serving in Bosnia and Herzegovina with or without remuneration" in the definition of foreign and international officials (article 1(7) CC) would be deleted.
10. GRECO acknowledges the draft amendments to the BiH Criminal Code aimed at addressing the first part of the recommendation and invites the authorities to make every effort to have the amendments adopted as soon as possible. At the same time, GRECO strongly regrets that no (draft) amendments to the FBiH and BD Criminal Codes are under preparation.
11. GRECO concludes that recommendation ii remains partly implemented.

## **Recommendation iii.**

12. *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.*
13. GRECO recalls that according to the Compliance Report the recommendation was partly implemented. The Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) had been ratified, Republika Srpska had amended its CC to explicitly cover foreign jurors and arbitrators and the draft amendments to the BiH Criminal Code specifically referred to domestic/foreign arbitrators in the relevant definitions of domestic and foreign public officials. In contrast, the latter amendments did not address foreign jurors, and no measures had been taken to amend the FBiH and BD Criminal Codes.
14. The authorities now indicate that in accordance with articles 19 and 20 of the draft law on amendments to the BiH Criminal Code, the bribery provisions of articles 217 and 218 CC would explicitly refer to "arbitrators or judge jurors", in addition to "officials". Pursuant to article 1 of the draft law, an arbitrator is defined as "a person who is responsible for rendering a legally binding decision in dispute, on the basis of an arbitration agreement that has been submitted to him/her by the parties", and a judge juror is defined as "a person who is a member of the collegial body that has the responsibility of deciding on the guilt of the accused person at the trial proceedings".

15. GRECO welcomes these draft amendments to the BiH Criminal Code which would explicitly criminalise bribery of arbitrators and jurors but finds it most regrettable that no (draft) amendments to the FBiH and BD Criminal Codes are under preparation.
16. GRECO concludes that recommendation iii remains partly implemented.

#### **Recommendation iv.**

17. *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.*
18. GRECO recalls that in the Compliance Report, the recommendation was considered partly implemented as amendments had been introduced to the RS Criminal Code to provide for a broader notion of breach of duty by referring to direct or related official duties.
19. The authorities report in this connection that in accordance with article 19 of the draft law on amendments to the BiH Criminal Code, the words "his/her official powers" in the bribery provisions of articles 217 and 218 CC would be replaced by the words "his/her function". The explanatory notes to the draft law make it clear that this amendment aims to ensure that these provisions cover all acts or omissions by an official in the performance of an official function, regardless of whether they are part of his/her official duties.
20. GRECO acknowledges that the draft amendments to the BiH Criminal Code aimed at widening the scope of the bribery provisions go in the direction recommended but it very much regrets that no measures have been initiated to also revise the bribery provisions of the FBiH and BD Criminal Codes.
21. GRECO concludes that recommendation iv remains partly implemented.

#### **Recommendation v.**

22. *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.*
23. GRECO recalls that according to the Compliance Report, the recommendation had been categorised as not implemented. The authorities had not deemed it necessary to take any legislative measures.
24. The authorities now report that in accordance with articles 19 and 20 of the draft law on amendments to the BiH Criminal Code, (1) the terms "or whoever mediates in such bribing of an official or responsible person" would be added in the passive bribery provisions of article 217 CC in order to cover cases of bribery committed through intermediaries; and (2) after the word "benefit" the terms "for him/her or any other person" would be added in the active bribery provisions of article 218 CC in order to include bribery cases where the benefit is not intended for an official but for a third party.<sup>1</sup>

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<sup>1</sup> It is to be noted that under current legislation, *active* bribery committed through intermediaries is already criminalised, and so is *passive* bribery involving a third party beneficiary.

25. GRECO notes that, with respect to the issues of intermediaries and third parties, it is planned to remove the existing flaws in the bribery provisions of the BiH Criminal Code. In contrast, no steps have been taken in this respect with regard to the bribery provisions of the FBiH, BD and RS Criminal Codes. The authorities are urged to speed up the reform process and to amend the bribery provisions of the four Criminal Codes as soon as possible.

26. GRECO concludes that recommendation v has been partly implemented.

**Recommendation vi.**

27. *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.*

28. GRECO recalls that according to the Compliance Report, the recommendation had not been implemented. The authorities had reported on their intention to criminalise bribery in the private sector via an autonomous provision but the intended plans had not yet been coupled with concrete legislative steps.

29. The authorities state that no further measures have been taken to implement the recommendation.

30. GRECO takes note of the information provided and concludes that recommendation vi has not been implemented.

**Recommendation viii.**

31. *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.*

32. GRECO recalls that in the Compliance Report, the recommendation was considered partly implemented. Amendments had been introduced to the RS Criminal Code which now includes an offence of active and passive trading in influence (article 353) covering all aspects of recommendation viii. Moreover, the draft amendments to the BiH Criminal Code comprised a reworked criminalisation of trading in influence. In particular, active trading in influence had been addressed in a separate provision (article 219a CC) and the offence of passive trading in influence (article 219 CC) had been reworded to explicitly refer to requests, intermediaries, third party beneficiaries and instances of alleged influence.

33. The authorities now indicate that the new draft law on amendments to the BiH Criminal Code includes the same provisions on active and passive trading in influence as the previous bill presented in the Compliance Report.

34. GRECO takes note of the information provided and urges the authorities to have the draft amendments to the BiH Criminal Code concerning trading in influence adopted as soon as possible and to also include such provisions in the FBiH and BD Criminal Codes.

35. GRECO concludes that recommendation viii remains partly implemented.

**Recommendation ix.**

36. *GRECO recommended to fully harmonise the existing sanctions for bribery and trading in influence offences.*

37. GRECO recalls that according to the Compliance Report, the recommendation had not been implemented. The authorities had reported on their intention to harmonise the existing sanctions for bribery and trading in influence offences across the national territory but the intended plans had not yet been coupled with concrete legislative steps.

38. The authorities state that no further measures have been taken to implement the recommendation.

39. GRECO takes note of the information provided and concludes that recommendation ix has not been implemented.

**Recommendation x.**

40. *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.*

41. GRECO recalls that the recommendation was considered partly implemented in the Compliance Report. Measures had been taken to gather the experience of prosecutors and judges in dealing with corruption cases, including by identifying potential shortcomings in law and in practice (first part of the recommendation). However, much more needed to be done, in particular, 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 (second and third parts of the recommendation).

42. The authorities indicate that no further measures have been taken to implement the recommendation.

43. GRECO takes note of the information provided and concludes that recommendation x remains partly implemented.

**Recommendation xii.**

44. *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.*

45. GRECO recalls that according to the Compliance Report, the recommendation had not been implemented. The authorities were of the view that the possibility to return the bribe to the bribe-giver who has reported the offence before it is uncovered was a useful tool to protect citizens who are solicited by corrupt officials.

46. The authorities now indicate that in accordance with article 20 of the draft law on amendments to the BiH Criminal Code, 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 (article 20(4) of the BiH Criminal Code) would be abolished.
47. GRECO acknowledges the information provided with regard to the draft amendments to the effective regret provision of the BiH Criminal Code. The authorities are urged to speed up the reform process, to have the planned amendments adopted as soon as possible and to also amend the FBiH, BD and RS Criminal Codes accordingly.
48. GRECO concludes that recommendation xii has been partly implemented.

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

49. 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 and recommendations i, iii, iv, v, vi, vii, viii and ix had not been implemented.

### **Recommendations i to ix.**

50. *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);*
- *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 (recommendation v);*

- *(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).*

51. The authorities report that upon the decision by the Council of Ministers of 16 April 2014, the Central Electoral Commission (CEC) is 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.
52. Regarding more specifically recommendation v, the authorities furthermore report that in order to improve transparency in the financing of political parties and election campaigns, the CEC issued two regulations, namely the "Rulebook on annual financial reports of political parties" and the "Rulebook on pre-election and post-election financial reports of political entities".<sup>2</sup> They state that the CEC thereby established the manner of filing annual financial reports of political parties and pre-election and post-election reports of political entities participating in the election, as well as the content and form of financial reports. They also prescribed the control of the financial reports as well as public access to information contained in those reports and in audit reports drawn up by the CEC, together with the audit's findings and auditor's opinions on the financing of political parties in accordance with the LFPP. The authorities indicate that the Rulebooks stipulate that the complete financial reports of political parties and of political entities participating in elections must be published, including information on private donations above a threshold of €50.00, the identity of donors (names of natural persons or legal entities), the amounts of the donations and dates of payment in case of monetary donations, the total value of gifts or services, including the date of receipt of gifts or services rendered in case of non-monetary donations. The authorities add that the CEC has published on its website<sup>3</sup> the 2013 financial reports of political parties, including information on private donations above € 50.00. Finally, the above regulations allow political parties to submit financial reports in electronic form which, as the authorities expect, will result in more timely availability of financial information.

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<sup>2</sup> Official Gazette No. 96/13.

<sup>3</sup> See [www.izbori.ba](http://www.izbori.ba)

53. GRECO notes that the situation remains largely the same as it was at the time of the adoption of the Compliance Report. Tangible progress has been achieved only with regard to recommendation v, through two regulations issued by the CEC which stipulate that the complete financial reports of political parties and of political entities participating in elections must be published, including information on private donations and the identity of donors. Overall, the pace of reform is very unsatisfactory, given that the working group for drafting amendments to the LFPP has not yet even been established. GRECO strongly urges the authorities to speed up the reform process and to take determined action to implement the pending recommendations.
54. GRECO concludes that recommendation v has been implemented satisfactorily, recommendation ii remains partly implemented and recommendations i, iii, iv and vi to ix not implemented.

### **III. CONCLUSIONS**

55. **In view of the above, GRECO concludes that Bosnia and Herzegovina has made little tangible progress as regards the implementation of the recommendations found to be not or partly implemented in the Third Round Compliance Report. In total, only five of the twenty-two recommendations have now been implemented satisfactorily.**
56. More particularly, with respect to Theme I – Incriminations, recommendations v and xii have now been partly implemented. Recommendations ii, iii, iv, viii and x remain partly implemented and recommendations v, vi, ix, and xii not implemented. With respect to Theme II – Transparency of Party Funding, recommendation v has now been implemented satisfactorily. Recommendation ii remains partly implemented and recommendations i, iii, iv, vi, vii, viii and ix not implemented.
57. GRECO strongly regrets that the situation remains largely the same as it was at the time of adoption of the Compliance Report. Concerning the criminalisation of corruption offences, the draft amendments to the Criminal Code of Bosnia and Herzegovina (State level) have been further revised to take account of several comments made in the Compliance Report. That said, the draft law – which has already been adopted by one of the Chambers of Parliament, the House of Representatives – 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). This is a serious shortcoming. 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. Concerning transparency of party funding, concrete action has been taken only with respect to one recommendation, regarding the publication of information on the finances of political parties and of political entities participating in elections. Apart from this, a meaningful reform process has not even started. It is difficult to dispel the impression that, three years after the adoption of the Evaluation Report, there is no genuine political will to increase transparency in the funding of political parties and election campaigns. The fact that the planned working group for the revision of the Law on Financing of Political Parties has still not been established cannot but reinforce this impression. GRECO strongly urges the authorities to speed up 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.
58. In view of the above, and despite some first positive signals concerning the implementation of recommendations in the future, 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.

59. GRECO furthermore decides, in accordance with Rule 32, paragraph 2 subparagraph (ii), that the President of GRECO will send a letter, with a copy to the President of the Statutory Committee, to the Head of Delegation of Bosnia and Herzegovina, drawing his attention to non-compliance with the relevant recommendations and the need to take determined action with a view to achieving tangible progress as soon as possible.
60. Pursuant to paragraph 2(i) of Rule 32 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, 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.
61. 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.