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Third Evaluation Round

Third *Interim* Compliance Report on Bosnia and Herzegovina

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

"Transparency of Party Funding"

Adopted by GRECO
at its 72nd Plenary Meeting
(Strasbourg, 27 June-1 July 2016)

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. In the [Second Interim Compliance Report](#), which was adopted by GRECO at its 68th Plenary Meeting (Strasbourg, 15-19 June 2015), GRECO concluded that while some progress had been achieved by Bosnia and Herzegovina with respect to Theme I – Incriminations, it did not merit significantly altering the level of implementation of the recommendations found either not to be or only partly implemented in the Third Round Interim Compliance Report. The rating of Bosnia and Herzegovina's performance as "globally unsatisfactory" was therefore maintained and, in accordance with Rule 32, paragraph 2 subparagraph (ii) b), the President of the Statutory Committee, invited by GRECO, sent a letter to the Permanent Representative of Bosnia and Herzegovina to the Council of Europe, drawing his attention to the country's non-compliance. Furthermore, GRECO requested the Head of Delegation of Bosnia and Herzegovina to provide a report regarding action taken to implement the pending recommendations by 31 March 2016. No such report was submitted, despite several reminders.
5. GRECO selected Malta and Slovenia to appoint rapporteurs for the compliance procedure. The current [Third 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 Second 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

6. 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. According to the Second Interim Compliance Report, recommendations iii and x had been implemented satisfactorily. Recommendations ii, iv, v, viii and xii remained partly implemented and recommendations vi and ix not implemented.

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

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) (recommendation ii);*
- *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);*

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).*

8. 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 Second Interim Compliance Report, a draft law on amendments to the BiH Criminal Code – which was built on the previous bill presented in the Compliance Report and included some additional amendments – had been adopted on 18 May 2015 and entered into force on 27 May 2015. GRECO concluded that the amendments to the BiH Criminal Code were in line with recommendations ii, iii, iv, v, viii and xii. However, given that amendments to the FBiH and BD Criminal Codes were still not under preparation, GRECO could not conclude on full implementation of those recommendations – except for recommendation iii, given 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.
9. The authorities, for the purposes of the present report, do not refer to any new developments.
10. GRECO has strong misgivings about the absence of any further measures reported and urges the authorities to speed up the reform process and to present further tangible results.
11. GRECO concludes that recommendations ii, iv, v, viii and xii remain partly implemented and recommendations vi and ix not implemented.

Theme II: Transparency of Party Funding

12. 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. The situation remained unchanged at the time of adoption of the Second Interim Compliance Report.

Recommendations i to iv and vi to ix.

13. *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).*
14. 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. According to the Second Interim Compliance Report, the Agency for Prevention of Corruption and Coordination in Fight against Corruption had 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.
 15. The authorities, for the purposes of the present report, do not refer to any new developments.
 16. GRECO has strong misgivings about the absence of any further measures reported and urges the authorities to accelerate the reform process and to take determined action to implement the pending recommendations.
 17. GRECO concludes that recommendation ii remains partly implemented and recommendations i, iii, iv and vi to ix not implemented.

III. CONCLUSIONS

18. **In view of the above, GRECO notes that no further progress has been achieved by Bosnia and Herzegovina as regards the implementation of the fifteen recommendations found either not to be or only partly implemented in the Third Round Interim Compliance Report (out of the twenty-two included in the Third Round Evaluation Report).**
19. More particularly, with respect to Theme I – Incriminations, 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.
20. GRECO is deeply concerned about the complete lack of any further progress with regard to both evaluation themes. It has serious misgivings about the fact that more than five years after the adoption of the Evaluation Report, the large majority of recommendations have still not been addressed satisfactorily. 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 on corruption. Moreover, it is unacceptable that the authorities have not presented any update on the action taken (or difficulties encountered) in view of the current report and in response to the request to submit such information by 31 March 2016 followed by several reminders.
21. 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.
22. In accordance with Rule 32, paragraph 2 subparagraph (ii) c), GRECO invites the Secretary General of the Council of Europe to send a letter to the Minister of Foreign Affairs 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.
23. 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 30 April 2017.
24. 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.