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Groupe d'États contre la corruption

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## FOURTH EVALUATION ROUND

Corruption prevention in respect of members of  
parliament, judges and prosecutors

### COMPLIANCE REPORT BOSNIA AND HERZEGOVINA

Adopted by GRECO at its 79<sup>th</sup> Plenary Meeting  
(Strasbourg, 19-23 March 2018)

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## **I. INTRODUCTION**

1. The Compliance Report assesses the measures taken by the authorities of Bosnia and Herzegovina to implement the recommendations issued in the Fourth Round Evaluation Report on Bosnia and Herzegovina which was adopted at GRECO's 70<sup>th</sup> Plenary Meeting (30 November-4 December 2015) and made public on 22 February 2016, following authorisation by Bosnia and Herzegovina ([Greco Eval IV Rep \(2015\) 2E](#)). GRECO's Fourth Evaluation Round deals with "Corruption Prevention in respect of members of parliament, judges and prosecutors".
2. 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 received on 14 June 2017 and served, together with the information submitted subsequently, as a basis for the Compliance Report.
3. GRECO selected Spain (with respect to parliamentary assemblies) and "the former Yugoslav Republic of Macedonia" (with respect to judicial institutions) to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Rafael VAILLO, on behalf of Spain and Ms Ana PAVLOVSKA DANEVA, on behalf of "the former Yugoslav Republic of Macedonia". They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
4. 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**

5. GRECO addressed 15 recommendations to Bosnia and Herzegovina in its Evaluation Report. Compliance with these recommendations is dealt with below.

### *Corruption prevention in respect of members of parliament*

#### **Recommendation i.**

6. *GRECO recommended (i) introducing precise rules defining and facilitating public consultation processes of legislation in Parliament, and assuring effective compliance thereafter; and (ii) enhancing the transparency of the parliamentary process by introducing rules for parliamentarians on how to interact with third parties seeking to influence the legislative process.*
7. The authorities of Bosnia and Herzegovina report on different measures occurring on this front, some of which are implemented through international technical assistance projects. At the start, the authorities point at amendments in the Rules of Procedure of the respective parliaments, providing for transparency of both plenary and committee work as a general rule. A proposal is currently on the table regarding "corruption-proofing" of legislation (i.e. reviewing whether a given piece of legislation contains any corruption risks).
8. The 2016 report of the regional NGO ActionSEE (Accountability, Technology and Institutional Openness) highlights the need for a two-way interaction with the public. In an effort to open communication channels between citizens and

Parliament, an online platform (so-called [eKonsultacije](#)) was launched in April 2016. In addition, the so-called Civil Society Sustainability Project (2013-2018) helps civil society representatives to, *inter alia*, engage with public bodies through a more informed and active relationship.

9. GRECO acknowledges the new legislative and practical actions reported to facilitate public consultation of legislative proposals and their subsequent discussion in Parliament, including by further enhancing channels for public participation; the launching of the eKonsultacije website is certainly a welcome development. This part of the recommendation has been dealt with in a satisfactory manner. Since these are all recent measures, the authorities may wish to keep GRECO abreast of how the actual implementation of the applicable rules is being monitored in terms of their effective compliance.
10. As for the second part of the recommendation, GRECO notes that the issue of lobbying remains unregulated in Bosnia and Herzegovina. GRECO can only reiterate the outstanding need to develop principles, rules and procedures that give parliamentarians clear directions on how they are permitted to engage with lobbyists and other third parties seeking to influence the legislative process.
11. GRECO concludes that recommendation i has been partly implemented.

#### **Recommendation ii.**

12. *GRECO recommended that internal mechanisms be further articulated to promote and enforce the Code of Conduct for parliamentarians and thereby safeguard integrity within the legislature, including by (i) providing tailored guidance, counselling and training regarding ethical, integrity and corruption prevention related provisions, as well as (ii) developing effective oversight and compliance tools on these critical matters.*
13. The authorities of Bosnia and Herzegovina indicate that after GRECO's evaluation, Parliament amended its Code of Conduct, notably, to simplify appellate and penalty proceedings and thereby render liability more effective. In particular, the Joint Committee for Human Rights is responsible for supervision of implementation and monitoring of adherence with the Code. It is also entrusted with keeping records of all the activities pertaining to the implementation of the Code and making an annual report, which is then debated in plenary. Experience in implementation is being gained as the changes are recent: the first monitoring report will be released on the Parliament's website in the first half of 2018 (corresponding to 2017 activities). Sanctions consist of written warning, fine, and public warning published in the media. Appeals can be lodged before a Joint Collegium of both houses of Parliament. No complaints have been received in the period November 2017 (entry in force of the Code) – February 2018; one infringement case has been dealt with resulting in withdrawal.
14. GRECO notes that, regarding the first component of the recommendation, no new developments have been reported on integrity-related guidance, training and counselling opportunities. Concerning the second part of the recommendation, GRECO takes note of the changes introduced to the code, which are reportedly geared towards reinforcing ethical standards and accountability in Parliament. GRECO sees potential in the current (reviewed) oversight system, which specifically tackles a shortcoming of the previous Code regarding its enforcement and appeal channels. Time and experience will show how (and whether) the new system proves effective in practice. GRECO looks forward receiving more concrete details on the relevant monitoring reports - once they are published - regarding the Code's implementation.

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

**Recommendation iii.**

16. *GRECO recommended harmonising the legislation on conflicts of interest throughout the national territory.*

17. The authorities of Bosnia and Herzegovina indicate that a draft Law on Conflicts of Interest has been prepared by a group of members of Parliament, reportedly in close coordination with international donors (notably, Council of Europe, EU and the OSCE-ODIHR) and the NGO sector (Transparency International). The draft is undergoing consultation, among others, of the Government, the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (APIK), the Central Election Commission and other relevant bodies. The current draft is reportedly aimed at ensuring an effective and independent application of the conflict of interest institute, and at aligning and harmonising regulations in the field of conflict of interest and financial and asset declarations of public office holders. The following changes are proposed:

- Establishment of an independent, professional body for the implementation of the LCI, notably, the Commission for Deciding on Conflicts of Interest (CDCI), as a permanent, independent and autonomous body established by the Parliament, staffed with experts selected by Parliament on the basis of a public call;
- More detailed definition and expansion of the circle of persons upon whom the LCI applies, in order to ensure equal treatment across public service;
- Introduction of clear and consistent rules which limit the performance of public office, as well as for clear rules applicable to performance of duties, engagement and conduct of public office holders even after termination of office, to ensure impartiality in decision-making.
- Consolidation and harmonisation of regulations on asset declaration and conflict of interest, as well as clearer determination of the CDCI's competences regarding collection, publication and verification.
- Introduction of a system for verification of asset declarations (in particular, regarding data accuracy) and publication of a register of public officials' assets.
- Widening scope and type of sanctions and introduction of new enforcement mechanisms, e.g. annulment of the act resulting from a conflict of interest.

18. GRECO welcomes the preparation of a draft LCI, which aims at addressing key shortcomings identified by GRECO, including membership and procedures of the CDCI's objet and subjects covered by the financial reporting obligation, publication of reports, sanctions for non-submission/incorrect/and false reporting, etc. The draft also foresees consolidation and harmonisation of rules on asset declaration and conflicts of interest. These are all steps in the right direction, but still subject to further parliamentary consultation and agreement.

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

**Recommendation iv.**

20. *GRECO recommended (i) unifying the applicable requirements regarding financial disclosure in one single declaration form; (ii) introducing a duty to report the property of close relatives and to provide an update in the event of significant change in the information to be reported in the course of the legislative mandate; and (iii) ensuring the publication of and easy access to financial information, with*

*due regard to the privacy and security of parliamentarians and their close relatives subject to a reporting obligation.*

21. The authorities of Bosnia and Herzegovina reiterate that pursuant to the Election Law (Article 15) candidates for election and elected representatives are under an obligation to file asset declarations at the beginning and at the end of the mandate; there is no obligation to make updates while in office if significant changes in value occur. The submitted declarations must also include details of close relatives (spouse, children and members of the family household whom it is the official's obligation to support). The Central Election Commission (CEC) developed an application, in 2016, to make the filed declarations available online; the application has been in operation since December 2017 and declarations are publicly available on the [CEC's website](#) (personal data are excluded).
22. No changes have occurred as regards co-existence of two parallel reporting regimes for MPs and their recommended streamlining. Hence, pursuant to the LCI (Article 12), MPs also have to file a financial report, whose contents do not fully coincide with those required for asset declarations<sup>1</sup>, nor do they cover the assets of close relatives. Financial reports are not public, but the decisions of the CDCI, when it finds that an official has a conflict of interest, are public.
23. GRECO notes that there has been some progress as compared to the situation which was assessed at the time of the evaluation visit in June 2015. MPs still report on their assets via two parallel systems: one consisting of "asset declarations" as governed by electoral law (covering both election candidates and elected representatives), and the other relying on "financial reports" under the LCI (covering elected officials, executive office holders and advisors).
24. With respect to the asset declaration obligation under electoral law, GRECO welcomes the fact that declarations are now publicly accessible online at the CEC's website. This partially satisfies the last component of recommendation iv, but only with regard to asset declarations and not financial reports, which, pending adoption of the LCI amendments, are not made available to the public as yet. In this connection, and with particular reference to financial reports, no updates have been provided, other than that the related measures are on stand-by until the new LCI is adopted. In particular, the draft LCI introduces new requirements concerning regular reporting (updates when significant changes in the financial information reported occur), disclosure of close relatives' assets and publication of financial reports.
25. Pending adoption of this piece of legislation (and its subsequent effective implementation), GRECO concludes that recommendation iv has been partly implemented.

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<sup>1</sup> Financial reports (required by LCI to elected officials, executive office-holders and advisors) include personal details of official and his/her close relatives (name, date and place of birth, address), information on public office held, current income and sources of income (e.g. all incomes, wages, pension, profits, etc.); property in BiH and abroad which exceeds 1 000 KM (511 EUR) (e.g. money, business documentation, shares, bonds, real estate, etc.); liabilities (e.g. debts, disbursements, promissory notes, loans, etc.); and data on other positions (public enterprises, Agency for Privatisation, private company, associations and foundations). They are also required to declare the positions held (in public enterprises, Agency for privatisation and private companies) of their close relatives, but not their assets and income.

Asset declarations (required by the Election Law to candidates for election and elected representatives) comprise information on current income and sources of income (e.g. all incomes, wages, profit from property, etc.); property which exceeds 5 000 KM (2 554 EUR) in BiH and abroad (e.g. money, bank accounts, business documentation, shares, bonds, real estate, etc.); liabilities (e.g. debts, disbursements, promissory notes, loans, etc.)

### **Recommendation v.**

26. *GRECO recommended (i) coupling the disclosure system with an effective control mechanism (including random verifications) and (ii) introducing appropriate sanctions for false reporting.*
27. The authorities of Bosnia and Herzegovina indicate that the draft LCI strengthens oversight mechanisms (including looking into data accuracy, carrying out random verifications and cross-checking registers). The draft also introduces administrative sanctions for false reporting. The authorities further note that actual implementation of this recommendation will not only be conditioned to the adoption of the draft LCI, but also to amendments in the Election Law.
28. GRECO acknowledges the proposed legislative amendments, which are still at parliamentary consultation stage; it further notes that changes would also need to be introduced in electoral law. Moreover, it will be necessary to ensure that the law, once adopted, is effectively implemented in practice. The absence of operational mechanisms allowing asset declarations/financial reports to be effectively reviewed for both repressive (detection of irregularities) and preventive (as a basis for counselling on ways in which to avoid potential conflicts of interest) purposes is certainly a crucial weakness in the existing conflict of interest regime.
29. GRECO concludes that recommendation v has been partly implemented.

### **Recommendation vi.**

30. *GRECO recommended that the advisory, supervisory and enforcement regime regarding conflicts of interest be completely reviewed and properly articulated, notably, by ensuring its independence and timeliness, and by making it effective through a system of appropriate sanctions.*
31. The authorities of Bosnia and Herzegovina indicate that the draft LCI provides for a reviewed composition, form and terms of election of the members of the CDCI. Notably, the CDCI must be independent and impartial, and this must be ensured both in its organisational status and set-up and its membership and decision-making process (which should be free from political interference and politicisation). The CDCI is to be composed of experts with relevant experience and provided with adequate administrative and investigative powers, as well as personnel and financial support. Special care is placed in the selection and appointment procedure of the members of the CDCI to ensure their expertise, independence and impartiality (the draft establishes strict bans on political membership to this effect). Experts will be selected by Parliament (qualified majority) on the basis of a public call.
32. The CDCI would have unimpeded direct access to relevant information concerning public officials (e.g. information held by tax authorities, land records, company registration). The sanctioning system would also be upgraded and a double-instance review (administrative and judicial) would be available. Finally, the CDCI would have important corruption prevention responsibilities, including through providing training and the issuance of formal/informal opinions.
33. The authorities add that, pending adoption of the draft LCI, a number of practical steps have been taken to enable the CDCI to operate, including by sorting out basic procedures and logistics. As to concrete outputs from the CDCI since GRECO's evaluation visit, the authorities report on the following:

Activity	2015	2016
Opinions made with regard to whether an action or an omission represent a violation of provisions of the Law on conflict of interest in the government institutions of BiH	3	7
Adopted Decisions on initiating the proceedings	1	3
Adopted Decisions on not initiating the proceedings	33	1
Adopted Decisions on pronouncing sanctions for violation of provisions of the Law on conflict of interests in government institutions of BiH	-	2
Decisions made further to requests for access to information	3	2

34. Furthermore, the plan of vetting elected officials, holders of executive functions and advisors for 2017 was adopted. CDCI officials have also been quite proactive in seeking opportunities to engage and share experience and lessons learned with counterparts in third countries.
35. GRECO takes note of the activities carried out by the CDCI as well as the new additional improvements proposed in the draft LCI to ameliorate the advisory, supervisory and enforcement regime regarding conflicts of interest. As these are all proposals which will need to effectively materialise not only in law, but also in practice, the recommendation can only be considered partly implemented.
36. GRECO concludes that recommendation vi has been partly implemented.

#### **Recommendation vii.**

37. *GRECO recommended that the respective parliaments of the Republika Srpska, the Federation of Bosnia and Herzegovina and Brčko District of Bosnia and Herzegovina be invited, similarly, to take action in accordance with the recommendations issued in this section of the report.*
38. The authorities of Bosnia and Herzegovina indicate that efforts are being made at Entity level to enhance transparency, integrity and accountability in their respective legislatures. All Entities now have access to information and public consultation mechanisms in place to better interact with their citizens; changes in their respective rules of procedures have been made to this effect. The Federation of Bosnia and Herzegovina and Republika Srpska are in the process of adopting their codes of conduct, while Brčko District and several cantons of the Federation of Bosnia and Herzegovina (Sarajevo, Tuzla and Zenica-Doboj) have their own codes in place, including oversight/monitoring mechanisms for their implementation. As for conflicts of interest legislation and implementation arrangements, the situation should be clearer once the draft LCI is adopted.
39. GRECO is pleased to note that the Entities are proceeding at a steady pace towards fulfilment of the recommendations. This is an encouraging sign, all the more given the complexity of institutions and government levels in the country and the reiterated call from the international community to embark upon more coordinated action.
40. GRECO concludes that recommendation vii has been partly implemented.

#### *Corruption prevention in respect of judges and prosecutors*

#### **Recommendation viii.**

41. *GRECO recommended that determined legislative and operational measures be taken to strengthen the High Judicial and Prosecutorial Council's role in protecting*

*the holders of judicial and prosecutorial offices from undue influences – both real and perceived – including by (i) providing for separate judicial and prosecutorial sub-councils; and (ii) avoiding an over-concentration of powers in the same hands concerning the different functions to be performed by members of the High Judicial and Prosecutorial Council; and (iii) ensuring that decisions of the High Judicial and Prosecutorial Council on the appointment, promotion and disciplinary liability of judges and prosecutors are subject to appeal before a court.*

42. The authorities of Bosnia and Herzegovina indicate that the implementation of this recommendation will require amendment of the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC BiH). Both the Ministry of Justice of BiH and the Commission for legislation of the HJPC are currently preparing proposals to amend this law or draft a new one and are taking into account the recommendation in this process. The HJPC's draft is due by the end of June 2018.
43. GRECO notes the intention of the authorities to update the Law on the HJPC in accordance with this and other GRECO recommendations, but recalls that this process has been on-going since 2013, before the adoption of the Evaluation Report. It encourages the authorities to step up their efforts to make the changes necessary. Moreover, GRECO points out that the recommendation also calls for operational changes, for instance to avoid that the same HJPC members be involved in different aspects of a judge's or a prosecutor's career. Such measures could well be implemented without changes to the law.
44. GRECO concludes that recommendation viii has not been implemented.

#### **Recommendation ix.**

45. *GRECO recommended that further steps are taken to improve the performance appraisals (with a priority given to qualitative over quantitative criteria) to both enforce the high ethical and performance standards expected from judges and prosecutors and assist in identifying meritorious candidates for promotion.*
46. The authorities of Bosnia and Herzegovina explain that new criteria for the evaluation of the work of prosecutors were adopted by the HJPC on 7 July 2016. New criteria for the evaluation of the work of chief prosecutors, deputy chief prosecutors and heads of departments/sections in prosecutor's offices, which are harmonised with the former text, were adopted by the HJPC on 29 November 2016.
47. Among the changes introduced by the new criteria, the quality of indictments is now measured according to the complexity of the case, with cases of economic crime, organised crime and war crimes being monitored separately from other cases. Decisions not to prosecute or to discontinue prosecution have been added to the monitored criteria. A third change is that grounds have been added to award negative points to a prosecutor for the quality of his/her decisions if they are subject to significant corrections.
48. The HJPC also adopted on 7 July 2016 a Book of Rules on benchmarks for the work of prosecutors in BiH, which sets out annual norms on cases achieved or cases closed, which are broken down according to the types of crimes. It also sets out criteria for taking into account the complexity of cases, ways of closing cases and levels of penalty. The purpose of this Book of Rules is to ensure a uniform application of the evaluation rules throughout the territory of BiH. It will also help in determining the necessary allocation of human resources – both prosecutors and support staff – in an attempt to ensure more efficiency in the prosecution service.



49. Chief prosecutors are responsible for proper implementation of the Book of Rules. They have to organise a record keeping system based on the automatic management system of prosecutorial cases and to report periodically. Their correct implementation of the system is in turn monitored by the chief prosecutors of BiH and its entities, as well as by the HJPC.
50. Moreover, the HJPC adopted on 14 December 2016 a Book of Rules on the process of appraisal of chief prosecutors, deputy chief prosecutors, heads of departments/sections and prosecutors. It stipulates the appraisal procedures, their monitoring, the appeal procedure against an appraisal, the content of appraisal and appraisal monitoring forms.
51. The adoption of a new Book of Rules on benchmarks for the work of judges and further improvement of the criteria for performance appraisal of judges is foreseen in the HJPC's 2017 work plan. The work plan also foresees the implementation of expert recommendations on the system of appraisal and appointment into by-laws and practice of the HJPC. These activities are under way.
52. Finally, the authorities add that the draft law on the HJPC that is currently under preparation by the Ministry of Justice envisages an improvement of the provisions related to the performance appraisal of holders of judicial and prosecutorial functions. However, a possibility will be left for certain issues to be elaborated in greater detail through by-laws of the HJPC – for example as regards promotion criteria.
53. GRECO welcomes the different documents adopted by the HJPC with a view to improving prosecutors' performance appraisals, which represent an attempt at increasing the objectivity and uniformity of the appraisal system. Much will depend, however, on how the system will be implemented in practice. Moreover, GRECO notes that the chief prosecutors of the Prosecutor's Office of Bosnia and Herzegovina, the Federal Prosecutor's Office of the Federation of Bosnia and Herzegovina, the Republic Prosecutor's Office of Republika Srpska and the Prosecutor's Office of the Brčko District of Bosnia and Herzegovina are currently exempt from the evaluation system. It invites the HJPC to adopt evaluation criteria also for these professionals. Finally, the performance appraisal system for judges still needs to be upgraded.
54. GRECO concludes that recommendation ix has been partly implemented.

#### **Recommendation x.**

55. *GRECO recommended (i) carrying out an analysis of the budgetary and staff situation in courts and prosecution offices, with a view to ensuring that the resources necessary are available and efficiently used across the judicial systems; and (ii) seeing to it that judicial resources are better prioritised with due regard for the gravity of cases.*
56. The authorities of Bosnia and Herzegovina explain that Chapter 6 of the Strategy for reform of the justice sector in BiH for the period 2014-2018<sup>2</sup> (SRJS) foresees an upgrade in the budget planning procedures for all 14 Governments with competences over the justice sector in BiH. Accordingly, each justice sector institution will make its own detailed financial plan, taking into account: a) its current financial standing; b) an assessment of its dependence on international financing; c) possible savings and d) creative testing for activities' financing.

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<sup>2</sup> [http://www.mpr.gov.ba/organizacija\\_nadleznosti/planiranja\\_koordinacija/strateska\\_planiranja/strategija/13%204%20SRSP%20u%20BiH%20-%20EJ.pdf](http://www.mpr.gov.ba/organizacija_nadleznosti/planiranja_koordinacija/strateska_planiranja/strategija/13%204%20SRSP%20u%20BiH%20-%20EJ.pdf)

57. GRECO's recommendation was examined by the Commission for judicial administration and court and prosecutorial budgets of the HJPC, which decided that an analysis of expenses per court/prosecution office will be carried out. Data on expenses and case flows in courts/prosecution offices for 2016 are currently being gathered and will form the basis of the analysis.
58. GRECO welcomes the fact that an analysis of courts' and prosecutorial offices' expenses and case flows has been decided. However, this process is still at an early stage and GRECO cannot, therefore, consider that the recommendation has been implemented, even partly.
59. GRECO concludes that recommendation x has not been implemented.

**Recommendation xi.**

60. *GRECO recommended significantly strengthening and further developing – for judges and prosecutors – confidential counselling and dedicated training of a practical nature on issues of ethics and integrity.*
61. The authorities of Bosnia and Herzegovina report that the standing committee for education of the HJPC deliberated possible solutions for the implementation of this recommendation, in view of a statement of disinterest of the judicial community to attend certain training. Possible modalities considered included the possibility of introducing a compulsory one-day training event on matters of ethics for all judges and prosecutors, the possibility of such training being part of a distance training module and the possibility for such training or part of it to be conducted in courts and prosecutor's offices themselves, with educators and representatives of the Office of the Disciplinary Council.
62. Moreover, one-day training events on development of judicial and prosecutorial integrity plans were organised on 4-7 April 2017 in four different cities (Tuzla, Banja Luka, Mostar and Sarajevo) by USAID in cooperation with the HJPC, the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (APIK) and the Regional Anti-Corruption Initiative (RAI). Over 170 participants from all courts and prosecutor's offices in BiH participated in these events.
63. In 2018, integrity training has been made part of the initial training programme for newly appointed judges and prosecutors. The HJPC also sent out letters to all judicial institutions highlighting the importance of this type of training and inviting members of the judiciary to attend seminars on integrity. During the preparation of the training programmes for 2018, the HJPC advised the entity training centres to include more practical seminars on ethics, integrity, disciplinary procedures, guidelines for the prevention of conflicts of interest etc. Such training events will be available for all participants in judicial training: judges, prosecutors, court associates and interns. The first seminars on integrity are planned for April 2018.
64. Finally, the authorities refer to the initial and continuous training activities provided by the Centre for education of judges and prosecutors in the Federation of BiH, following the instructions and under supervision of the HJPC. Topics such as ethics, professional standards in the judiciary and communication between the judiciary and the general, scientific and professional public have been routinely covered in such activities since 2012.
65. GRECO takes note of the training activities organised so far to implement the recommendation. It encourages the authorities to develop them further, both at state and at entity levels. Furthermore, GRECO recalls that the recommendation

also calls for a further development of confidential counselling on issues of ethics and integrity.

66. GRECO concludes that recommendation xi has been partly implemented.

**Recommendation xii.**

67. *GRECO recommended developing rules on conflicts of interest that apply to all judges and prosecutors, along with an adequate supervisory and enforcement regime.*

68. The authorities of Bosnia and Herzegovina indicate that the HJPC adopted in July 2016 Guidelines for the prevention of conflicts of interest in the judiciary<sup>3</sup>. These Guidelines had been prepared by a working group comprised of representatives of the HJPC, associations of judges and prosecutors and professional experts, with the support of USAID. They cover: a) incompatibilities; b) reporting on property, income, obligations and interests; c) gifts and other benefits; d) contacts with third persons and abuse of confidential information; e) nepotism; and f) education and awareness-raising. The Guidelines recall the existing legislation and code of ethics and go into further detail with practical "do's and don'ts" in a variety of situations.

69. Oversight over implementation of the Guidelines is based on the existing legislative and institutional framework. The HJPC is responsible for preventing, monitoring and sanctioning conflicts of interest among judicial office holders. It decides on incompatibilities and collects and keeps annual financial statements. It does not, however, perform a thorough systematic check due to the lack of appropriate mechanisms, pending an amendment of the Law on the HJPC. The working group also recommended a more significant role for the standing committee of the HJPC for judicial and prosecutorial ethics, incompatibility and independence. Disregard for the provisions of the Guidelines represent a serious breach of official duties or compromise the public confidence in the impartiality or credibility of the judiciary and could constitute a disciplinary offence. Finally, the authorities indicate that there has been no case of disciplinary action taken so far upon breach of the Guidelines.

70. GRECO welcomes the adopted Guidelines for the prevention of conflicts of interest in the judiciary. They provide valuable illustrations and explanations of the existing legislation, along with clear instructions on how (not) to act. However, the supervision and enforcement regime has not been upgraded, which prevents compliance by judicial office holders from being closely monitored, as required by the recommendation.

71. GRECO concludes that recommendation xii has been partly implemented.

**Recommendation xiii.**

72. *GRECO recommended (i) developing an effective system for reviewing annual financial statements, including adequate human and material resources, co-operation channels with relevant authorities and appropriate sanctions for non-compliance with the rules or false reporting and (ii) considering ensuring the publication of and easy access to financial information, with due regard to the privacy and security of judges, prosecutors and their close relatives.*

73. The authorities of Bosnia and Herzegovina explain that the HJPC's Strategic plan for 2014-2018 foresees activities towards the introduction of a functioning system for

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<sup>3</sup> <http://usaidjp.ba/assets/content/guidelines-for-conflict-of-interest-eng-1486656678.pdf>

the submission and monitoring of annual financial statements from judicial office holders. These activities are primarily directed at introducing an electronic declaration system, verification mechanisms and making data available to the public.

74. Carrying out these activities is among others connected to the amendment of the Law on the HJPC, which is under preparation as explained under recommendation viii. As part of a project financed by the Swedish Government, there is also a plan to establish an electronic system for submitting, registering, processing and monitoring financial statements. Project staff is currently being recruited. The issue of judges' and prosecutors' financial statements will also be considered within the upcoming peer review process organised by the European Commission.
75. GRECO takes note of the information provided and concludes that recommendation xiii has not been implemented.

#### **Recommendation xiv.**

76. *GRECO recommended that (i) the independence, capacity and transparency of the activity of the Office of the Disciplinary Counsel be increased; and that (ii) the disciplinary procedure and sanctions in case of misconduct of judges and prosecutors be revised in order to ensure that cases are decided in a timely manner and that misconduct is effectively subject to proportionate and dissuasive sanctions.*
77. The authorities of Bosnia and Herzegovina indicate that the HJPC adopted in July 2016 Guidelines for drafting and implementing integrity plans in judicial institutions in BiH<sup>4</sup>, as well as supporting documents, namely a Methodological instruction for drafting integrity plans and a Model integrity plan. As described under recommendation xii, Guidelines for the prevention of conflicts of interest in the judiciary were also adopted, as well as Guidelines for determining disciplinary measures in disciplinary proceedings<sup>5</sup>.
78. These sets of guidelines have been prepared under a USAID project<sup>6</sup>, following recommendations contained in a Diagnostic analysis of integrity of the justice sector and possible risks of corruption and unethical conduct in the judiciary<sup>7</sup>, carried out by USAID in cooperation with the HJPC and the Agency for prevention of corruption and coordination of the fight against corruption (APIK).
79. The Guidelines for determining disciplinary measures aim at providing support to the HJPC disciplinary bodies in determining and pronouncing sanctions against judicial office holders and expert associates, in order to ensure both consistency and fairness in all cases with similar circumstances and infringements.
80. The authorities also state that the implementation of this recommendation mainly depends on the amendment of the Law on the HJPC (see recommendation viii). The need to strengthen the independence, capacity and transparency of the work of the Office of the Disciplinary Counsel was also recognised in the Peer Review Report of the European Commission expert. The recommendations of this report are to be implemented into the by-laws and practice of the HJPC, according to its Action Plan for 2017.

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<sup>4</sup> <http://usaidjp.ba/assets/content/guidelines-for-integrity-plans-for-bih-institutions-eng-1486656891.pdf>

<sup>5</sup> <http://usaidjp.ba/assets/files/publication/1470216400-high-judicial-and-prosecutorial-councils-guidelines-for-determining-disciplinary-measures.pdf>

<sup>6</sup> [http://usaidjp.ba/assets/files/Project\\_Overview\\_Brief\\_en.pdf](http://usaidjp.ba/assets/files/Project_Overview_Brief_en.pdf)

<sup>7</sup> <http://usaidjp.ba/assets/files/publication/1454581034-diagnostic-analysis-of-the-integrity-of-the-judicial-sector-in-bih-and-potential-risks-of-corruption-and-unethical-conduct-in-judiciary.pdf>

81. GRECO takes note of the adoption by the HJPC of a set of guidelines on integrity plans, conflicts of interest and disciplinary measures. While welcome, these guidelines do not contribute to the objectives of the recommendation, with the exception of the latter. That said, these guidelines alone are not sufficient to consider that the recommendation has been implemented, even partly. The implementation of the first part of the recommendation is contingent on an amendment of the Law on the HJPC which has not yet materialised. As to the second part of the recommendation, it was given in view of the mildness and inadequacy of the sanctions applied by the HJPC's disciplinary panels. Therefore, GRECO expects information showing that the practice of these panels has evolved and that disciplinary sanctions applied in concrete cases are now more dissuasive.
82. GRECO concludes that recommendation xiv has not been implemented.

**Recommendation xv.**

83. *GRECO recommended that a communication policy, including general guidelines and training on how to communicate with the media and the relevant civil society organisations, be developed for the judicial system (judges and prosecutors) with the aim of enhancing transparency and accountability.*
84. The authorities of Bosnia and Herzegovina make reference to several training events organised by the HJPC in cooperation with judicial training centres in the Entities. The Centre for education of judges and prosecutors of the Federation of BiH organised: three seminars on "judiciary and the media" in Teslić (29 June 2012), Tuzla (6 November 2012) and Sarajevo (9 June 2015); one seminar on "law, media and the internet" in Sarajevo on 4 March 2015; and one seminar on "judiciary and the public" in Sarajevo on 9 June 2015. These events were attended by spokespersons of courts and prosecutors' offices, as well as judges and prosecutors.
85. The Centre for education of judges and prosecutors of the Republika Sprska has organised, over the past three years, an annual training event on "contemporary communications with the media" which is intended for managers of judicial institutions, judges and prosecutors.
86. Finally, the authorities mention that a communication strategy is currently being drafted by the HJPC. The HJPC action plan for 2017 contains a line of activities pertaining to the improvement of public trust, transparency and cooperation, as a contribution to the implementation of the recommendation. In this framework a series of meetings, seminars and workshops took place on the relations and communication between the judiciary, the media and the public. These meetings provided input which the HJPC is using in devising its communication strategy. A first draft has been presented and is currently being refined by a working group. Several surveys on court users' satisfaction have also been carried out.
87. GRECO takes note of the training activities organised. However, many of them predate the adoption of the Evaluation Report and it seems that the activities organised since then simply represent a continuation rather than an intensification of efforts. GRECO also recalls that the recommendation calls for such training activities to be part of a more comprehensive policy aimed at restoring public trust and improving the judiciary's negative image. It welcomes therefore indications that the preparation of such a communication strategy is under way. GRECO also recalls that the Evaluation Report made reference to several promising initiatives contained in the Justice Sector Reform Strategy 2014-2018, such as setting up a regular practice of informing the public about the role and work of judicial institutions, ensuring that all communication by all judicial institutions follows the

same principles and publishing more detailed statistics on some types of criminal offences. It would be helpful to know if these initiatives have materialised.

88. GRECO concludes that recommendation xv has been partly implemented.

### **III. CONCLUSIONS**

89. **In view of the foregoing, GRECO concludes that Bosnia and Herzegovina has implemented satisfactorily none of the fifteen recommendations contained in the Fourth Round Evaluation Report.** Eleven recommendations have been partly implemented and four have not been implemented.

90. More specifically, recommendations i-vii, ix, xi, xii and xv have been partly implemented and recommendations viii, x, xiii and xiv have not been implemented.

91. With respect to members of parliament, timid steps have been made by Parliament to strengthen its integrity system. A long-awaited amendment of the Code of Conduct took place in 2015 to reportedly step up enforcement and oversight mechanisms for ethical breaches, but it remains to be seen how it is indeed implemented in practice. Further, much more needs to be done in terms of the provision of advisory and training opportunities on corruption prevention matters for members of Parliament. The new proposed legislation on the prevention of conflicts of interest is a promising development, which could go a long way in meeting GRECO's recommendations. At present, however, there is still no credible and independent mechanism to deal with conflict of interest or to check up on asset declarations by parliamentarians at State level. This calls for determined and priority action. It is nevertheless encouraging to see a more coordinated action being taken in the country, with Entities and Brčko District proceeding at a steady pace towards fulfilment of GRECO recommendations in this area, and thereby better promoting integrity principles in their respective legislatures.

92. As far as judges and prosecutors are concerned, the High Judicial and Prosecutorial Council has adopted new criteria to improve prosecutors' performance appraisals, guidelines on preventing conflicts of interest in the judiciary, guidelines on integrity plans, as well as guidelines on disciplinary sanctions. These represent worthwhile steps toward the implementation of some of the recommendations, which will need to be confirmed in practice. Many of the changes required, however, are subject to amendments to the Law on the High Judicial and Prosecutorial Council. This process was already on-going when the Evaluation Report was adopted and it is disappointing that it has not yet been successfully completed. GRECO calls upon the authorities of Bosnia and Herzegovina to pursue their efforts to this end with determination.

93. In view of the above, GRECO notes that in the present absence of final achievements, further significant material progress is necessary to demonstrate that an acceptable level of compliance with the recommendations within the next 18 months can be achieved. However, bearing in mind that several substantial reforms are underway and on the understanding that the Bosnia and Herzegovina authorities will further pursue their efforts, GRECO concludes that the current low level of compliance with the recommendations is not "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of GRECO's Rules of Procedure. GRECO invites the Head of delegation of Bosnia and Herzegovina to submit additional information regarding the implementation of all recommendations (i-xv) by 30 September 2019.

94. Finally, GRECO invites the authorities of Bosnia and Herzegovina to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.