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Third Evaluation Round

Addendum to the Second Compliance Report on Bosnia and Herzegovina

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

"Transparency of Party Funding"

Adopted by GRECO
at its 85th Plenary Meeting
(Strasbourg, 21-25 September 2020)

I. INTRODUCTION

1. The Addendum to the Second Compliance Report assesses further measures taken by the authorities of Bosnia and Herzegovina, since the adoption of the Second Compliance Report, in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on Bosnia and Herzegovina. It is recalled that the Third Evaluation Round covers 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 on Bosnia and Herzegovina was adopted at GRECO's 51st Plenary Meeting (27 May 2011) and made public on 17 August 2011 (Greco Eval III Rep (2010) 5E, [Theme I](#) and [Theme II](#)).
3. The [Compliance Report](#) was adopted by GRECO at its 61st Plenary Meeting (18 October 2013) and made public on 7 January 2014. It 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 and requested the Head of Delegation to provide a report regarding the implementation of pending recommendations.
4. In the first [Interim Compliance Report](#), which was adopted by GRECO at its 64th Plenary Meeting (20 June 2014) and made public on 1 October 2014, GRECO concluded that the level of compliance with the recommendations remained “globally unsatisfactory”, considering that only little tangible progress had been made as regards the recommendations found either to be only partly, or not implemented in the Compliance Report. In accordance with Rule 32, paragraph 2 subparagraph (ii), GRECO instructed its President to address a letter to the Head of Delegation of Bosnia and Herzegovina, drawing the 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 to provide a report regarding the action taken to implement the pending recommendations.
5. In the [Second Interim Compliance Report](#), which was adopted by GRECO at its 68th Plenary Meeting (19 June 2015) and made public on 6 August 2015, GRECO concluded that while some progress had been achieved with respect to Theme I – Incriminations, it did not merit significantly altering the level of implementation of the recommendations found either to be only partly, or not 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 the 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. No such report was submitted, despite several reminders.

6. In the [Third Interim Compliance Report](#) which was adopted by GRECO at its 72nd Plenary Meeting (1 July 2016) and made public on 22 September 2016, GRECO noted that no further progress had been achieved as regards the implementation of the 15 recommendations found either to be only partly, or not implemented in the Third Round Interim Compliance Report (out of the 22 included in the Third Round Evaluation 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) c), GRECO invited the Secretary General of the Council of Europe to send a letter to the Minister of Foreign Affairs of Bosnia and Herzegovina, drawing the attention to the country's non-compliance. GRECO requested the Head of Delegation of Bosnia and Herzegovina to provide a report regarding action taken to implement the pending recommendations.
7. The [Fourth Interim Compliance Report](#) was adopted by GRECO at its 76th Plenary Meeting (23 June 2017) and made public on 2 August 2017 following authorisation by the authorities. It concluded that Bosnia and Herzegovina had made progress by fully implementing four recommendations since the former interim report, bringing the total of fully implemented recommendations to ten out of 22. Seven recommendations remained partly implemented and five not implemented. Bosnia and Herzegovina's level of compliance with the recommendations was no longer considered "globally unsatisfactory". GRECO requested the Head of Delegation of Bosnia and Herzegovina to provide a report regarding action taken to implement the pending recommendations.
8. The [Second Compliance Report](#) was adopted by GRECO at its 81st Plenary Meeting (7 December 2018) and made public on 22 February 2019. It concluded that Bosnia and Herzegovina had made very little progress by partly implementing only one further recommendation. Only ten out of the 22 recommendations remained implemented satisfactorily. Eight recommendations had been partly implemented and four had not been implemented. GRECO requested the Head of Delegation of Bosnia and Herzegovina to provide a report regarding action taken to implement the pending recommendations.
9. On 28 October 2019, the authorities submitted further information on the implementation of pending recommendations, which served as a basis for the present Addendum to the Second Compliance Report, drawn up by the rapporteurs, Mr Kevin VALLETTA (Malta) and Ms Vita HABJAN BARBORIČ (Slovenia), with the assistance of GRECO's Secretariat.
10. The Addendum to the Second Compliance Report evaluates the progress made since the adoption of the Second Compliance Report in implementing the pending recommendations and provides an overall appraisal of the level of compliance with these recommendations.

II. ANALYSIS

Theme I: Incriminations

11. It is recalled that GRECO, in its Evaluation Report, addressed 13 recommendations to Bosnia and Herzegovina in respect of Theme I. In the compliance procedure, until the preparation of the present report, Bosnia and Herzegovina had implemented satisfactorily recommendations i, ii, iii, iv, vii, viii, x, xi and xiii. Recommendations v, vi and xii had been partly implemented. Recommendation ix had not been implemented.

Recommendations v, vi, ix and xii

12. *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 (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 fully harmonise the existing sanctions for bribery and trading in influence offences (recommendation ix);*
- *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).*

13. It is recalled that recommendation v was partly implemented in the Second Compliance Report. GRECO noted the entry into force of a new Criminal Code of the Republika Srpska (RS) on 18 July 2017 and of amendments to the Criminal Code of the Brčko District (BD) on 24 November 2018. GRECO regretted that the adoption of the new RS Criminal Code was not used to correct the flaws in the bribery provisions: cases of bribery committed through intermediaries were not covered by the new passive bribery provision of the RS Criminal Code and the concept of third party beneficiaries was missing from both the active and passive bribery provisions of the RS Criminal Code. Moreover, the concept of third party beneficiaries was also missing in the active bribery provisions of Criminal Code of the Federation of Bosnia and Herzegovina (FBiH).

14. It is recalled that recommendation vi was partly implemented in the Second Compliance Report. While GRECO welcomed the criminalisation of bribery in the private sector, the RS Criminal Code and the BD Criminal Code did not cover the concept of third beneficiaries. Also other codes did not clearly and broadly criminalise private sector bribery.

15. It is recalled that recommendation ix was not implemented in the Second Compliance Report. No progress was reported in the harmonisation of sanctions for bribery and trading in influence offences between various Criminal codes applicable throughout the national territory.

16. It is recalled that recommendation xii was partly implemented in the Second Compliance Report. The FBiH and RS Criminal Codes remained to be amended to abolish the possibility provided by

the special defence of effective regret to return the bribe to the bribe-giver who reported the offence before it is uncovered.

17. The authorities now report that the Ministry of Justice of Bosnia and Herzegovina (BiH) has thoroughly considered the remaining recommendations in this section and found that none of the recommendations relates to taking measures within its competencies. The implementation of recommendations v, vi, ix and xii regarding Theme I - "Incriminations" is the responsibility of the Entity Ministries of Justice and of the Judicial Commission of the Brčko District of Bosnia and Herzegovina.
18. The authorities specify that in the Entity of the Federation of Bosnia and Herzegovina (FBiH), after the entry into force of the Law on Amendments to the Criminal Code of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of BiH, 75/17), there have been no subsequent amendments to the FBiH Criminal Code.
19. Furthermore, the authorities indicate that the Judicial Commission of the Brčko District, after the amendments to the Criminal Code of the Brčko District from 2017 and 2018, did not undertake additional activities to implement the remaining recommendations. At the session of the BD Judicial Commission held on 29 April 2019, the Judicial Commission Expert Service was entrusted with the task to monitor changes and amendments to the criminal laws and to initiate drafting of the amendments to the BD Criminal Code, to implement the GRECO recommendations of the Third Evaluation Round.
20. The authorities clarify that, as the incrimination in the private sector is under the entities/district jurisdiction, it is precisely the FBiH Criminal Code that does not clearly and broadly criminalise private sector briber (recommendation vi).
21. The authorities also clarify that it is in the RS Criminal Code that the sanctions for bribery and trading in influence continue to diverge largely from the ones contained in the remaining three Criminal codes in force in Bosnia and Herzegovina. In the case of accepting gifts and other forms of benefits, the sanction in the FBiH Criminal Code is also different from the ones contained in the BiH Criminal Code and BD Criminal Code (recommendation ix).
22. GRECO takes note of the information provided. Although further implementation of the pending recommendations appears to be contemplated, there has been no meaningful progress in practice. GRECO calls on the authorities to take determined measures to fully implement the outstanding recommendations under Theme I.
23. GRECO concludes that recommendations v, vi and xii remain partly implemented and recommendation ix remains not implemented.

Theme II: Transparency of Party Funding

It is recalled that GRECO, in its Evaluation Report, addressed nine recommendations to Bosnia and Herzegovina in respect of Theme II. In the compliance procedure, until the preparation of the present report, Bosnia and Herzegovina implemented satisfactorily recommendation v and partly implemented recommendations ii, iv, vi, viii and ix. Recommendations i, iii, and vii were not implemented.

Recommendations i to iv and vi to ix.

24. 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);*
- *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).*

25. It is recalled that in the Second Compliance Report no progress was noted in the implementation of any of the pending recommendations. Recommendations ii, iv, vi, viii and ix remained partly implemented and recommendations i, iii, and vii remained not implemented. The Report mentioned the Rulebook which was only valid for the 2018 general elections and did not state unambiguously that a single campaign account had to be used. GRECO recalled that this principle had to be stated in a law and applied to all election campaigns (recommendation ii). At the previous stage, in its Compliance Report, GRECO had regretted the lack of progress in reviewing the legal provisions on political parties to make them consistent and comprehensive, despite an intention to prepare a unified law on political parties at state level (recommendation i). Recommendations ii, iv, vi, viii and ix had been partly implemented with amendments to the Law on Financing of Political Parties (LFPP) and the Election Law (in force since June and May 2016), while the outstanding issues include: promotion of the use of the banking system for income and expenditure of political parties and election candidates, introduction of the principle of a single campaign account, increased transparency over the accounts and activities of entities linked to political parties, more robust financial control over the finances of political parties, strengthened cooperation between the Central Electoral Commission and the tax and law enforcement authorities and dissuasive sanctions for infringements of political financing rules. No or insufficient measures had been taken to implement recommendations iii and vii.
26. The authorities now indicate that, according to information received from the BiH Central Election Commission, there have been no changes in the implementation of the recommendations in the previous period. The Central Election Commission of Bosnia and Herzegovina will continue to work, within the Interdepartmental working group for amending the electoral legislation, on amendments to the Law on Financing of Political Parties to implement the GRECO recommendations. Moreover, activities are underway to draft amendments to the Rulebook on Internal Organisation of the Secretariat of the Central Election Commission of Bosnia and Herzegovina, which will strengthen the Personnel for Audit of the Financing of Political Parties.
27. In the absence of any new developments reported, GRECO concludes that recommendations ii, iv, vi, viii and ix remain partly implemented and that recommendations i, iii and vii remain not implemented.

III. CONCLUSIONS

28. **In view of the above, GRECO notes that Bosnia and Herzegovina has not made any progress since the last Second Compliance Report of December 2018. In total, only 10 out of 22 recommendations have been implemented satisfactorily.** Eight recommendations remain partly implemented and four remain not implemented.
29. More specifically, it is recalled that with respect to Theme I – Incriminations, recommendations i, ii, iii, iv, vii, viii, x, xi and xiii have been implemented satisfactorily. Recommendations v, vi and xii remain partly implemented and recommendation ix remains not implemented. With respect to Theme II – Transparency of Party Funding, recommendation v has been implemented satisfactorily. Recommendations ii, iv, vi, viii and ix remain partly implemented and recommendations i, iii and vii remain not implemented.
30. GRECO regrets that there has been no meaningful progress since the adoption of the Second Compliance Report.

31. Concerning incriminations (Theme I), GRECO recalls what was stated in the Second Compliance Report (paragraph 43) : *“GRECO is pleased that the new Criminal Code of the Republika Srpska and the Criminal Code of the Brčko District incriminate private sector bribery in specific provisions, distinct from those on public sector bribery. This is, however, not the case for the other criminal codes. Other deficiencies also remain both in the new Criminal Code of the Republika Srpska and in other criminal codes, for instance as regards the harmonisation of sanctions throughout the national territory. The authorities are urged to continue the reform process so as to provide a fully harmonised and consistent legal framework for the criminalisation of corruption offences throughout the national territory, in keeping with the Convention”*. This situation remains the same.
32. Concerning political party funding (Theme II), GRECO recalls what was stated in the Second Compliance Report (paragraph 44): *“GRECO is disappointed that no progress has occurred since the Fourth Interim Compliance Report of 2017. Much more needs to be done, inter alia, to harmonise the complex legal framework, promote the use of the banking system for contributions to political parties and increase the financial and personnel resources allocated to the Central Electoral Commission for the supervision of political financing”*. This situation remains the same.
33. Pursuant to Rule 31 revised, paragraph 9 of its Rules of Procedure – GRECO asks the Head of Delegation of Bosnia and Herzegovina to submit additional information, namely regarding the implementation of recommendations v, vi, ix and xii (Theme I – Incriminations) and of recommendations i to iv and vi to ix (Theme II – Transparency of Party Funding), by 30 September 2021 at the latest.
34. 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 language and to make the translation public.