

# A Year of Missed Opportunities and Insufficient Plans

What did the Republic of Serbia do to put in practice the GRECO recommendations from the fifth round of evaluation - the part related to the executive branch

Transparency Serbia

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## Contents

Note about the project .....	3
The Substantial Significance of the Recommendations from the Fifth Round of the GRECO Evaluation for Serbia .....	4
Important topics and concrete tasks.....	4
Advisors .....	5
Lobbying .....	5
Appeals against the Government and the President.....	6
Public hearings on laws .....	6
The Anti-Corruption Council.....	7
Competent prosecutor's office and immunity in the case of corruption .....	7
Other issues and a chapter on the police .....	7
What has (not) been done .....	9
Main observations .....	9
The work of the Government and the Assembly.....	9
Amendments to the Law on Prevention of Corruption .....	9
Strategy and Action Plan proposal .....	10
European priorities.....	11
Key recommendations .....	13

## Note about the project

The analysis was conducted in the course of 2023. The text uses parts of the proposals made by Transparency Serbia during the public hearing on the draft amendments to the Law on Prevention of Corruption, the proposal for a new Anti-Corruption Strategy, as well as earlier comments on GRECO's recommendations from the fifth round of evaluation.

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## The Substantial Significance of the Recommendations from the Fifth Round of the GRECO Evaluation for Serbia

### Important topics and concrete tasks

It often happens that the recommendations of international organizations to Serbia are such that the authorities, after ticking the boxes, can conclude that "progress has been achieved", even though not a single systemic problem has been solved. The recommendations made in the [fifth round of GRECO's evaluation](#) (adopted on March 25, and released on July 5, 2022) were not of that kind. At the same time, these recommendations were a very pleasant surprise after [the undeservedly favorable evaluations](#) by the same institution in 2020, which, to make matters even more interesting, partly related to the same topics that were in focus two years later - legislative procedure and rules from of the Law on the Prevention of Corruption.

The parliament that began its work in August 2022 and the Government formed at the end of October of the same year, thus got the opportunity for a makeup exam compared to those in the past (2016, 2020) - to fulfill everything that GRECO requested on time, by September 30, 2023, and to avoid [an international shaming](#) and writing [incoherent denials](#), as in the case of the (non)implementation of the recommendations from the fourth round (in the period 2015 - 2018). Since the recommendations, as can be seen from this analysis, were not fulfilled within that period, a new opportunity will be given to the Government whose election is expected in March 2024. Not long afterwards, at the session from June 17 to 21, 2024, GRECO will assess the performance so far in the plenary session.

Another challenge for both legislative and executive power holders could be that out of 14 recommendations in the part related to the executive branch, nine of them specifically refer to the President (and his advisers). Namely, that position is occupied by a person whom both [legislators](#) and [members of the Government](#) treat as their "boss", regardless of its constitutional powers.

According to the evaluations of Transparency Serbia, the recommendations from this round that could have the greatest effect refer to the following: regulating conflicts of interest among **advisors to the President**, Prime Minister and ministers and strengthening the **system for controlling the reports** of executive branch officials; regulation of **informal lobbying**; enabling citizens to file a complaint with the **Commissioner** when the Government of Serbia or the President refuse or ignore a request for access to information; obligation to hold **public hearings** on all laws; **limiting** the immunity of members of the government in the case of corruption-related crimes, expanding the jurisdiction of the Prosecutor's Office for Organized Crime and **strengthening the government's Council for the Fight Against Corruption**.

## Advisors

There have been many opportunities to regulate **conflicts of interest among advisors** to the highest public office holders, from 2004, when [the first law](#) regulating conflicts of interest was passed, to the current [Law on the Prevention of Corruption](#). All those laws dealt with public officials only and persons whose signatures appear on regulations, decisions and contracts. Since such decisions are often based on the consideration of cases and analysis made by civil servants, the legislator decided at one point to restrict these persons from performing additional work and to oblige them to refrain from working on cases in which they are somehow related to the parties concerned. However, such obligations have never been imposed on the closest collaborators - the advisors. They are not currently bound **by anything other than their own conscience** to disclose, at least to counsel, if not to the public, whether their opinion might be biased in a given matter, for example, because they own shares in a company that will greatly benefit from some government contract or change of regulations.

On the other hand, it is clear that advisors cannot be subject to the same prohibitions and restrictions as officials. People with proven knowledge in a specific field are often chosen as special advisors, who could probably make a living from their regular job - e.g. university professors. Therefore, concerning such persons, the essence of the law changes should be the regulation of conflicts of interest in connection with advisory, and not the imposition of prohibitions that would prevent the temporary engagement of experts who do not aspire to a career in the civil service.

GRECO has well noticed that it is necessary to ensure the transparency of information about who all the advisors of public officials are. The comical case of the Prime Minister's "[fake advisor](#)" from October 2016 is a good illustration of what is possible when such data is not readily available. The scope of the GRECO recommendations is limited, however, because the recommendations refer only to advisors whose status is clearly defined in the system of the executive branch (so-called special advisors). The situations when advisors [are hired according to an unknown legal procedure, with an unknown status, for an unknown amount and for an unknown client](#) are not included.

Based on the recommendations of GRECO, the Agency for the Prevention of Corruption should **control on a regular basis** the reports on the assets and income of the officials of the executive branch (which will include their advisors and chiefs of staff). However, the frequency of such controls is not clearly defined in the recommendations (for example, that it should be done every year).

## Lobbying

Since [the Law on Lobbying](#) was passed precisely on the recommendation of GRECO, which Law was positively evaluated at the time, it is very important that the same institution has now shown its willingness to point out the two biggest shortcomings of that Law, which were visible even while it was being written. Namely, in 2022, GRECO recognized as a problem that this Law regulates **only lobbying**

**that takes place according to formal rules**, and not that which takes place through informal contacts of lobbyists with the president, prime minister, ministers and their advisors and chiefs of staff. Another big problem observed by GRECO is that **there is no obligation for officials and state authorities to publish** the identity of all of the formal and informal lobbyists that have approached them.

The Law on Lobbying has been a dead letter for more than five years. It can be concluded that more than forty lobbyists completed training and [registered for nothing](#) - judging from the available data, there is not much work for them. Instead of going the hard way, the person who wants and knows how to "seal the deal" can informally get in touch with the decision-maker, not only in the cabinet, but on any private occasion. The current law does not recognize this as lobbying, but it does not prohibit such informal influence either.

### Appeals against the Government and the President

One of the points where resistance was expected is GRECO's recommendation that **the right to access to information about the work of the Government and the President of the Republic** should receive effective legal protection. The Law on Free Access to Information was amended at the end of 2021, and one of the key demands [of the Coalition for Freedom of Access to Information](#) was precisely that citizens can lodge an appeal with the Commissioner, when such a request is rejected by any authority. However, not only did [the legislator maintain the system](#) according to which appeals against six bodies (Government, Parliament, President, Constitutional Court, Supreme Court, Public Prosecutor of the Republic) are not allowed, but the National Bank of Serbia was also added to that list.

In the absence of the possibility of lodging an appeal with the Commissioner, citizens, journalists and associations can only press charges before the Administrative Court, the ruling on which is awaited for years, only for some of them to be rejected for [questionable reasons](#). Thus, one of the rare cases in which Transparency Serbia received legal protection, so the Government's decision was annulled, lasted as long as five years. [The request was submitted to the Government](#) in February 2017, and a feasibility study and a concession deed for the Belgrade airport were requested. The court annulled the Government's decision [with a verdict](#) from October 2022. However, the Government did not act on that verdict at all until the end of 2023, not even by re-enacting a decision rejecting the request.

### Public hearings on laws

It is important that GRECO also pointed out the problem of non-compliance with the rules on **holding public hearings in the course of preparing the law**. In doing so, he also referred to the findings from [Transparency's study](#), about the drafting of regulations tailored to private interests. In addition to reminding of the fulfillment of this obligation and the need to specify the norms so that the exceptions are not misused, GRECO also recommended that they explain the reasons and impacts of the changes in

the law that occur after the end of the public hearing. This could also be very important. Not rare at all are cases where the law that the ministry presented for a public hearing, after changes of unknown origin that occurred during the Government session, are tabled before the deputies in a new form.

### The Anti-Corruption Council

A special recommendation has been set aside for **the Anti-Corruption Council**, with very specific tasks - to elect the members that the Council has already proposed and for the Government to stop ignoring the recommendations of its advisory body.

### Competent prosecutor's office and immunity in the case of corruption

In the field of repression, the recommendation to expand the competence **of the Prosecutor's Office for Organized Crime for possible corruption of all high-ranking officials**, including the President, is of great importance. Namely, Serbia passed a law regulating the prosecution of high-level corruption cases, for which it prescribed the competence of this special prosecutor's office, and the list of the highest officials against whom the prosecutor's office would conduct the investigation, including, for example, assistant ministers, but not the President and MPs.

In the description of the situation that precedes the recommendation, suspicions of corruption of government ministers are cited that have not been investigated. Since indicating to the prosecutors that they should investigate specific cases would probably be outside GRECO's mandate, the evaluators recommended something else - that the immunity of members of the Government be abolished for cases involving a corruption-related crime.

In truth, GRECO itself states that immunity was not an obstacle for prosecuting ministers because in practice it was undertaken only against former members of the Government. Currently, a member of the Government could be held accountable for what they do in their capacity as a minister, but not, for example, for voting at a Government session. In other words, a minister could hypothetically be held criminally liable if they sign a contract for rigged public procurement, but not if they vote at a session of the Government of Serbia for the adoption of a conclusion on the basis of which the state entered into a competition-less business arrangement with the company from which the minister received bribes.

### Other issues and a chapter on the police

In addition to the things already described, which at first glance seem to be the most important, GRECO also gave a number of other potentially useful recommendations, among which are checking the integrity

of candidates for ministerial positions before their election, adopting special plans and codes to prevent corruption at the top of the executive branch, strengthening the system internal audits in ministries, strengthening the competence of the Agency for the Prevention of Corruption and providing advice to officials on issues of integrity.

A separate chapter of the report is dedicated to **measures to prevent corruption in the police**. In this part, the most important recommendations relate to **the prevention of political influence in the deployment of police officers and a more transparent election** of police leaders. It is also envisaged to adopt planning documents, expand the Code of Police Ethics, organize training and provide advice regarding its implementation, security checks on integrity issues, rotation of police officers in sensitive positions, recording of additional work, monitoring of the practice of receiving gifts in the police, and investigation of complaints on the police to be sufficiently transparent and to promote the protection of whistleblowers.

In the text that follows, we do not deal with the issues of implementation of the recommendations related to the police (numbers xv to xxiv), but only those related to the executive branch.



## What has (not) been done

### Main observations

#### The work of the Government and the Assembly

The Government and the Assembly did not use the period of approximately one year of work (until [the dissolution of](#) the National Assembly and the entry of the Government into the "technical mandate", on November 1, 2023) to fulfill GRECO's recommendations related to the executive branch. The situation is somewhat better, as could be [heard in October 2023](#), regarding the fulfillment of the obligations in the part related to the police. It should be emphasized that the technical mandate of the Government, which at the time of publishing this report (March 6, 2024) is still ongoing, does not represent an obstacle to the drafting and public hearing of draft laws that should be improved, but only to proposing and adopting these laws. However, such activities are not known to take place.

Three attempts to do something about the GRECO recommendations have taken place. The first refers to the amendments to the Law on Prevention of Corruption, the second to the development of a new anti-corruption strategy, and the third to the work of the Anti-Corruption Council of the Government of Serbia. None of these attempts led to the realization of the recommendations.

#### Amendments to the Law on Prevention of Corruption

The draft amendments to the Law on the Prevention of Corruption, which were put up for [public hearing](#) in the period from August 3-22, 2023, were never turned into a bill. Moreover, the report from the public hearing, which was expected to be published at the beginning of September, is still not available. The reasons for this are unknown.

Although this draft was mainly prepared to meet some of GRECO's recommendations, it was not done [satisfactorily](#) .

The main change in the draft amendments to the law refers to the definition of the term "public official". The adoption of this change would be very important because in this way the unfounded and harmful authentic interpretation of this law, which was adopted by the Assembly in February 2021, will be practically invalidated, as a result of which several thousand officials lost that status (e.g. school principals). In the new definition, it is expressly stated that officials will be chiefs of staff and advisors, but only those who perform these tasks as part of the Government of Serbia and ministries. This is a formal response to GRECO's recommendation, which referred exclusively to the top of the executive branch, because that was the only subject of their evaluation. However, there is no substantial reason why

advisors and chiefs of staff in the assemblies of Serbia and AP Vojvodina, in the provincial government, other national-level bodies and larger cities would be omitted from the definition of official.

Another shortcoming of the proposed definition of an official is that it could be interpreted so that representatives of the state of Serbia would not have this attribute in companies where the state is a minority owner or does not have a controlling stake (e.g. "Beograd na vodi d.o.o." (Waterfront Ltd.). Amendments to the law should clearly provide for the deadline in which incumbent officials, who have not had that status until now, will have to submit reports on assets and income and harmonize their status with statutory obligations (e.g. officials who are exempted by the authentic interpretation, officials of joint stock companies owned by the state, advisors and chiefs of staff).

While the proposed changes related to giving an opinion on the risks of corruption in the regulations are positive, they are insufficient. Among other things, it would be necessary to set a deadline in which the ministries must request such an opinion, and to impose the obligation to give opinions on the risks of corruption on bills too, and not only draft laws.

The provision on the reporting of conflicts of interest has not been changed in full in line with the GRECO recommendation, as it should have been ensured that information on whether a public official has declared a conflict of interest is made public. Similarly, the rules that set restrictions upon termination of public office should be made more specific.

The draft amendments to the law do not foresee additional rules on "regular substantive checks" of the assets and income of executive branch officials. Whether these checks will be carried out and to what extent currently depends solely on the annual control plan adopted by the Director of the Agency for the Prevention of Corruption, and it would be the same after the possible adoption of the proposed changes.

### [Strategy and Action Plan proposal](#)

When it comes to the Anti-Corruption Strategy, things are similar as with the Law. Due to the different adoption procedure, here the public hearing was conducted on the bill, and not on the draft, because it was planned that this Strategy is adopted by the Government of Serbia. [The public hearing](#) was open from August 16 to September 5, 2023, but no report was published on it, nor did the Government adopt the documents. In contrast to the draft amendment to the Law, here it is clear that the reason was the criticisms that came from the European Commission, and perhaps partly also those of the participants of the public hearing.

GRECO's recommendations are stated in these documents and solutions are sought for the application thereof, but this is done in an inconsistent and incomplete manner. In the description of the situation, it is stated that the GRECO reports indicate the need to improve the normative and institutional framework "in many areas". The realization of GRECO's recommendations is taken as an indicator of the achievement of goals in two areas, that is, two specific goals of the Strategy. One is "Improving the normative framework for more effective suppression of corruption" (specific objective 1), and the other is

"strengthening integrity" (specific objective 4). In both cases, however, the desired goal was set very low - the Government of Serbia would be satisfied if it fulfilled only 35% of the GRECO recommendations, although the original deadlines for the full fulfillment of those recommendations have already expired.

The chapter on integrity mentions the duty to establish, "at the central level of government", rules for vetting for integrity before appointment to office.

In the Action Plan, where the activities that would be implemented during the first year (practically, in 2024) are listed, there are only two that explicitly mention GRECO recommendations. Under item 1.2.7. it is planned to amend the Law on Lobbying, so as to introduce the obligation to report contacts with registered and unregistered lobbyists in order to fulfill GRECO recommendations, the obligors would be the Ministry of Justice in cooperation with the Agency, and the deadline is the 4th quarter of 2024.

Another obligation would be (under item 4.3.8) "updating the Guide for Officials on Conflicts of Interest, which would also apply to the expanded circle of public officials (recommendation number iv), and the deadline for the Agency to do so would be the fourth quarter of 2023 (which is running out).

From this it can be seen that the Ministry of Justice paid a little more attention to the GRECO recommendations than it can be concluded at first glance. Namely, it is very likely that the Ministry planned for the Law on Prevention of Corruption to be adopted before the Strategy and that therefore the position was that these changes should not even be planned in this act.

In mid-February 2024, the Ministry of Justice presented an amended draft of the Strategy to the working group of the National Convention on the European Union for Chapter 23. In this document, which has not yet been published, a review is also given of numerous GRECO Recommendations from the Fifth Circuit that were not mentioned in the original draft of the act. The main shortcoming remains the same - the goal is to fulfill only 35% of the recommendations.

## European priorities

[The European Commission's](#) assessment of Serbia's "limited progress" in the fight against corruption from November 2023 is related to three factors. The first is that something has been done regarding the five unfulfilled recommendations of GRECO from the fourth round of evaluation, which should have been fulfilled in 2016. Furthermore, the report notes an increase in the number of final convictions in cases handled by the Prosecutor's Office for Organized Crime (from 19 in 2021 to 21 in 2022), but also a decrease in the number of convictions when it comes to cases under the jurisdiction of higher public prosecutor's offices (212 compared to 255). The EU notes that a proposal for an anti-corruption strategy has been drawn up, but that its quality is still not satisfactory.

The Prime Minister [announced](#) the adoption of this document in the next "two to three months", whereby it is uncertain whether a new government will be formed during that period.

Among the four priorities for this area, GRECO is mentioned explicitly in two. Thus, Serbia should "respect all the recommendations given by GRECO, especially from the fifth round of evaluation". Also, Serbia should "adopt a new Anti-Corruption Strategy, while respecting in particular all the relevant transitional measures and recommendations given by GRECO, and start implementing them." This strategy must be supported by a credible and realistic action plan, and must establish an effective coordination mechanism."

## Key recommendations

1. The new Anti-Corruption Strategy and the Action Plan for the first year of the Strategy's implementation should contain solutions for all Recommendations from the fifth round of the GRECO evaluation, so that in that period all recommendations are fulfilled or at least preparations are initiated, where a longer period is necessary (amendments to the Constitution).
2. The goals related to the realization of GRECO recommendations should be set in the Strategy so that Serbia can fully fulfill its obligations.
3. The Anti-Corruption Strategy should be adopted by the National Assembly, not the Government, so that it can foresee obligations for the National Assembly proper and other bodies which the Government of Serbia is not authorized to impose obligations to.
4. The Draft Law on Prevention of Corruption should be significantly amended, after which a new public hearing should be organized.
5. The process of amending the Law on Lobbying (Ministry of Justice) and the Law on Free Access to Information of Public Interest (Ministry of State Administration and Local Self-Government) should be initiated without delay.
6. The Agency for the Prevention of Corruption, the President, the Government, the ministries and the National Assembly should change the practice of their work, without waiting for changes in regulations, among other things, in the following:
  - a. Reviewing the reports of the Anti-Corruption Council on regular basis and the appointment of the missing members based on the proposal of the Council itself.
  - b. Disclosure of information on contacts with lobbyists (persons covered by the current Law), as well as other stakeholders.
  - c. Disclosure of information about engaged advisors and other persons providing advisory services.
  - d. Preparation of analysis on corruption risks in regulations, regardless of whether the ministries have requested an opinion on the draft law and publication of information on the actions taken according to those analysis (the Agency).
  - e. Addressing the requests for access to information of public interest on regular basis (Government, President).
  - f. Inclusion in the agenda of only those draft laws for which the procedure of public consultation / public hearing has previously been carried out and whose explanation contains complete information about the impact on the preparation of those regulations (National Assembly).
  - g. Inclusion of members of the Government from 2022, 2020 and 2016, as well as the President and his advisors in the plan for controlling the report on assets and income for 2024. (Agency)