

NATIONAL INTEGRITY SYSTEM ASSESSMENT

BOSNIA AND HERZEGOVINA 2013



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ABBREVIATIONS AND ACRONYMS

ABBA/CEELI – American Bar Association/Central-East European Legal Initiative
ADA – Austrian Development Agency
AECID – Agencia Española Cooperación Internacional Para El Desarrollo
AFET – Committee on Foreign Affairs
Agency – Agency for Prevention of Corruption and Coordination of the Fight against Corruption
ALDI – Agency for Local Development Initiatives
BD BiH – Brčko District of Bosnia of Herzegovina
BFP – Budget Framework Paper
BHJ – BiH Journalists
BHRT – Radio and Television of Bosnia and Herzegovina [public service broadcaster of BiH]
BiH – Bosnia and Herzegovina, Bosnian and Herzegovinian
BLSE – Banja Luka Stock Exchange
BP – Border Police
BTI – Berterlsmann Stiftung
CA – citizens' association
CCI – Centres of Civic Initiatives
CIDA – Canadian International Development Agency
CIK BiH – Central Election Commission of BiH
CIN – Centre for Investigative Reporting
CJB – Public Security Centre

CMS – Court Management System (software)
CoE – Council of Europe
CPC – Criminal Procedure Code
CPI – Corruption Perception Index of TI
CPI – Public Interest Advocacy Centre
CRA – Communications Regulatory Agency
CRINIS – Study into the Transparency of Political Financing
DB – Development Bank
DCF – Donor Coordination Forum
DfID – Department for International Development
DNS – Democratic People's Alliance
DPA – Dayton Peace Accords
EBRD – European Bank for Reconstruction and Development
EC – European Commission
ECHR – European Court of Human Rights
EDA – Development Agency
EU – European Union
EUPM – European Union Police Mission
EUSR – European Union Special Representative
FPA – Federal Police Administration of FBiH
FBiH – Federation of Bosnia and Herzegovina
FPI – Foreign Policy Initiative
FTV – Federal Television [public service broadcaster of FBiH]
GAP – Governance and Accountability Program
GCB – Global Corruption Barometer
GDP – Gross Domestic Product
GONGO – governmental non-governmental organisation
GRECO – Group of States against Corruption
HDI – Human Development Index
HJPC – High Judicial and Prosecutorial Council
IATI – International Aid Transparency Initiative
ICITAP – International Criminal Investigative Training Assistance Program
IFAC – International Federation of Accountants
IFRS – International Financial Reporting Standards
IMF – International Monetary Fund

INCOSAI – International Organisation of Supreme Audit Institutions Congress
INTOSAI – International Organisation of Supreme Audit Institutions
IPA – Instrument for Pre-accession Assistance
IRB – Investment-Development Bank (JSC Banja Luka)
ISO – International Standard
ISSAI – International Standards of Supreme Audit Institutions
ITA – Indirect Taxation Authority of BiH
KM – Convertible Mark
NARS – National Assembly of the Republic of Srpska
NATO – Northern Atlantic Treaty Organisation
NGO – Non-governmental organisation
NHDR – National Human Development Report
NIS – National Integrity System
ODIHR – Office for Democratic Institutions and Human Rights of OSCE
OHR – Office of the High Representative
OPDAT – Office of Overseas Prosecutorial Development, Assistance and Training
OSA/OBA – Intelligence-Security Agency
OSCE – Organisation for Security and Co-operation in Europe
OSF – Open Society Fund
PA BIH – Parliamentary Assembly of Bosnia and Herzegovina
PC – Parliamentary Committee
PIC – Peace Implementation Council
PPA – Public Procurement Agency
PPL – Public Procurement Law
PRB – Procurement Review Body
ROSC – Report on the Observance of Standards and Codes
RS – Republic of Srpska
RTRS – Radio-Television of the Republic of Srpska [Public Service Broadcaster of the Republic of Srpska]
RTV – Radio-television
SAIs – Supreme Audit Institutions
SASE – Sarajevo Stock Exchange

SB – Supervisory Board

SDP BiH – Social Democratic Party of BiH

SIDA – Swedish International Development Agency

SIGMA (OECD) – Organisation for Economic Co-operation and Development

SIPA – State Investigation and Protection Agency

SME – Small and Medium-sized Enterprises

SNSD – Alliance of Independent Social Democrats (RS)

TACSO – Technical Assistance to Civil Society Organisations in the IPA Countries

TI – Transparency International

TI BiH – Transparency International Bosnia and Herzegovina

UN – United Nations

UNCAC – United Nations Convention Against Corruption

UNDP – United Nations Development Programme

UNGC – United Nations Global Compact

UNHCR – United Nations High Commissioner for Refugees

UNIPTF – United Nations International Police Task Force

USA – United States of America

USAID – United States Agency for International Development

UZOPI – Union for Sustainable Return and Integration in BiH

WiSPPA – Web Information System for Public Procurement Agency

1. ABOUT THE NIS ASSESSMENT

The National Integrity System comprises the principal governance institutions in a country that are responsible for the fight against corruption. When these governance institutions function properly, they constitute a healthy and robust National Integrity System, one that is effective in combating corruption as part of the larger struggle against abuse of power, malfeasance and misappropriation in all its forms. Strengthening the NIS promotes better governance in the country and contributes to a more just society overall.

The concept of NIS has been developed and promoted by Transparency International (TI) as part of TI's holistic approach to combating corruption.¹ While there is no absolute blueprint for an effective anti-corruption system, there is a growing international consensus as to the salient aspects that work best to prevent corruption and promote integrity. The NIS assessment offers an evaluation of the legal basis and the actual performance of institutions relevant to the overall anticorruption system. These institutions – or “pillars” – comprise

the executive, legislature, judiciary, the main public watchdog institutions (e.g. supreme audit institution, law enforcement agencies), as well as the media, civil society and business as the primary social forces which are active in the governance arena.

WHY CONDUCT THE NIS ASSESSMENT?

The purpose of each NIS assessment is to provide a detailed evidence-based analysis of the National Integrity System, in theory (law and regulatory provisions) and practice (how well it works), serving as a relevant tool for building consensus among anti-corruption advocates around the key corruption challenges in a country. Due to the use of a common framework and the innovation of NIS indicators, the assessment also provides benchmarks for measuring trends over time, and a basis for comparison across countries.

Each of the pillars is assessed along three dimensions – (1) the institution’s overall *capacity* to function, (2) its own internal governance in terms of integrity, transparency and accountability, (3) its role in contributing to the overall integrity of the national governance system – as well as along a common set of indicators under each of these dimensions, namely *resources* and *independence* under capacity; *transparency*, *accountability* and *integrity* under governance; and pillar-specific indicators under role. Most indicators are broken down into two aspects: (a) the situation pertaining to the formal framework governing these institutions (‘law’), and (b) the situation regarding their actual institutional practice and behaviour (‘practice’), which makes the analysis of any *gap* between the formal framework and the actual practice possible.

The NIS assessment offers a detailed evaluation of the country’s anti-corruption system, which comprises the following “pillars”:

- Legislature;
- Executive;
- Judiciary;
- Public Sector;
- Public contracting;
- Law enforcement agencies;
- Anticorruption agency;
- Electoral management body;
- Audit institutions;
- Political parties;
- Ombudsman;
- Media;
- Civil society;
- Business sector;
- International institutions.

The research methodology uses a two-step approach. In a first step, qualitative information from legal documents, key informant interviews and secondary data

sources is collected by researchers in-country and structured along the set of indicators for each pillar. Based on the collected qualitative evidence, the second step consists of scoring these indicators on a five-point scale, in order to provide a quantitative summary assessment of the presented data. The scale applied includes five possible values – 0, 25, 50, 75 and 100. The score for each of the three dimensions (capacity, governance and role) is a simple average of the indicator scores under that dimension. The overall pillar score is attained by calculating a mean average of the three dimension scores.²

VERY STRONG	81-100
STRONG	61-80
MODERATE	41-60
WEAK	21-40
VERY WEAK	0-20

NIS assessment provides a detailed evaluation of the country’s anticorruption system, which can serve as a crucial starting point for signaling areas requiring priority action. It also forms the basis from which stakeholders may assess existing anti-corruption initiatives, as the NIS can show which pillars have been more successful and why, whether they are mutually supportive and what factors support or inhibit their effectiveness. Furthermore, the assessment also provide pointers as to where the emphasis should be placed on improving the system and what factors are required to support the overall development of the integrity system. As the NIS assessment creates a sound empirical basis that adds to our understanding of strong or weak performers in terms of entire countries or individual institutions, the results of the study can create a sense of peer pressure for reform as well as an opportunity for learning from those institutions that are seen as employing best

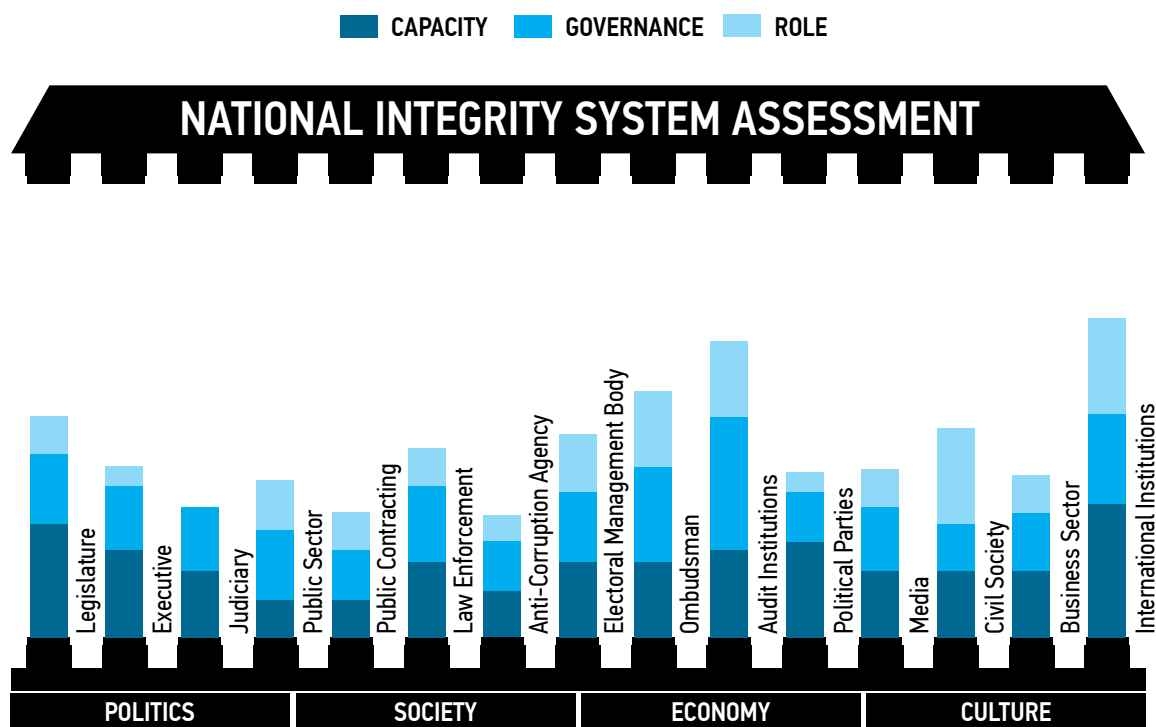
practices with regard to their integrity frameworks and practices.

The NIS assessment is an important tool since it complements the global indices and surveys conducted by TI, such as Corruption Perceptions Index, Bribe Payers Index and Global Corruption Barometer and others as well as national surveys, by exploring the specific practices and constraints within countries and providing qualitative empirical results about the rules and practices that govern integrity systems.

TI believes that it is necessary to understand the provisions for and capacity of each of the integrity pillars, as well as their interaction and practices, to be able

to diagnose corruption risks and develop strategies to counter those risks. As a unique product of Transparency International, NIS assessment reflects the systemic approach TI takes to curbing corruption and the independence of analysis that can be offered by the world's leading anti-corruption NGO.

NIS has been graphically presented in many forms, aspiring to present its holistic approach and inter-relations as well as mutual dependence of the institutions. One such graphic summary of the NIS can be found below.



2. EXECUTIVE SUMMARY

OVERVIEW OF OVERALL SCORES BY PILLARS:

LEGISLATURE: 49
 EXECUTIVE: 38
 JUDICIARY: 29
 PUBLIC SECTOR: 35
 PUBLIC CONTRACTING: 28
 LAW ENFORCEMENT: 42
 ANTI-CORRUPTION AGENCY: 27
 ELECTORAL MANAGEMENT BODY: 45
 OMBUDSMAN: 54
 AUDIT INSTITUTIONS: 65
 POLITICAL PARTIES: 36
 MEDIA: 37
 CIVIL SOCIETY: 46
 BUSINESS SECTOR: 36
 INTERNATIONAL INSTITUTIONS: 70

GENERAL FINDINGS

The 2013 National Integrity System country report analyses three dimensions – the *capacity* of individual institutions to function, their internal *governance* in terms of integrity, transparency and accountability, and their *role* in contributing to the overall integrity of the

state governance system. It seeks to provide a detailed and comprehensive assessment of the national integrity system, and to present relationships between individual pillars that make up the integrity system, while offering the possibility of comparison with the findings of the 2004 and 2007 NIS studies as well as providing appropriate recommendations.

On the whole, the national integrity system in BiH rests on very shaky political, social and economic foundations. This has effectively prevented any significant progress from being made compared to the state identified in the 2004 and 2007 studies.

The complex constitutional setup, deep ethnic divisions and woeful state of the economy resulting from the armed conflict in the early 1990s have not yet been overcome despite the many years of robust engagement of the international community, personified in the Office of the High Representative (OHR).

Comparison with the 2004 and 2007 studies shows that the power vacuum left in the wake of the diminished role of the international community was filled by political elites, which brought one NIS pillar after another under their control. Guided mainly by their particular interests and short-sighted policies, political parties have hindered the implementation of reforms that would lead to the creation of a market economy and respect for

human rights and freedoms. In this regard, most of the pillars are still characterised by the same weaknesses as those identified in the previous two studies.

KEY FINDINGS OF THE NIS STUDY

The key finding, which characterised the two previous studies and which is very much true of the present study and of almost all analysed pillars, is the huge difference between the law and reality, i.e. the yawning gap between what is required by law and what happens in practice when the law is applied.

Since the publication of the last National Integrity System Study in 2007, the most significant change identified is in the character of the international presence in BiH, as reflected in the increasing involvement of the European Union (EU) and the diminishing role of non-European actors. The function of the EU Special Representative (EUSR) was separated from that of the High Representative (HR) on 31 August 2011, when the EUSR officially assumed duty in BiH, while the former “double-hatted” HR/EUSR retained only the position of the High Representative.

Although *de jure* unchanged, the role of the OHR has *de facto* been greatly reduced, with the majority of the High Representative’s activities coming down merely to the implementation of the exit strategy from BiH. Furthermore, active involvement of the OHR has been virtually brought to a halt by the lack of consensus within the Peace Implementation Council (PIC). However, the reduced role of the international community has not led to the expected assumption of responsibilities by national institutions, but resulted in a complete deadlock and obstruction in the functioning of state institutions.

Establishment of the state-level government after the

2010 election took 16 months; however, it did not take more than three months before a government crisis arose again, while the adoption of the budget lasted for as long as several years. Not only does this go to show that the executive and legislative pillars are largely dysfunctional despite adequate resources available to them, but also that the relationship between these two key pillars is based on the interests of the ruling elites, organised through the political party system. Failure to approve the budget was used as the principal means of exerting pressure on the functioning of the institutions, which is why most of them (such as the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption) were prevented from commencing or continuing their work and reforms. Furthermore, the same method was used to influence management appointments in institutions, which has led to the full politicisation of institutions and a glaring discrepancy between the sound legislative basis and its utterly inappropriate implementation.

The situation varies between entities: whereas in FBiH the two key ethnic groups virtually control each other, which limits the scope for concerted action, and there is also some political opposition within the ethnic groups themselves, the situation in RS is consolidated. The dominant party, led by the RS President Milorad Dodik, controls all levels of the executive and legislative branches of government. However, it began to lose that monopoly after the local election in October 2012, which now offers more scope for opposition control. In a situation where a particular political movement or coalition achieves complete domination, the National Integrity System rapidly collapses.

Not having even a rudimentary form of internal party democracy and often funded illegally, political parties (score 36) prove a source of very deleterious effect on other pillars, reflected in a network of clientelistic appointments pervading the majority of the national

integrity system which introduce a parallel structure of influences and often ensure illegal flows of money from budgets to political parties and leaders. Therefore, the low scores of other pillars such as the judiciary (score 29) and public sector (score 35) are mostly the result of undue influence by political parties.

The bloated and unwieldy public sector, which consumes a significant proportion of the gross domestic product (according to the World Bank, as much as 13.1% of GDP is spent on salaries alone), has failed to reach basic standards of efficiency, accountability and transparency.³ Monitoring and control mechanisms are virtually non-existent in practice. Ethnic quotas and party affiliation constitute an effective alibi for lack of accountability.

Judiciary (score 29) and Law Enforcement (score 42) share the problems that arise from complex administrative division of the country and vague and overlapping responsibilities among the various levels of government and organisational units, as well as political pressures that are systematically exerted on them. While rated comparatively better than other pillars, the so-called fourth pillar of government, comprising independent regulatory institutions – Central Election Commission (score 45), Ombudsman (score 54) and SAIs (score 65) – operates in a largely confined setting, in terms of its relationship with the other pillars, while continually facing the executive's attempts to assert its undue influence. The impact of these independent institutions on changing the existing practices and relevant laws is virtually imperceptible and their work is largely affected by the unwillingness of the executive and legislative branches.

Also, the non-governmental pillars, such as Media (score 37), Civil Society (score 46) and Business Sector (score 36), have not seen a marked improvement over the state identified in the 2004 and 2007 NIS studies.

The current state of affairs, resulting from internal contradictions within these pillars as well as the environment in which they operate, significantly limits their potential and role as a corrective factor for the current situation. On the other hand, part of the reason for the comparatively low rating of these pillars lies in the fact that there are a significant number of quasi-private and quasi-civil players that are under the effective control of the ruling oligarchies, and which mainly serve the narrow individual interests of these elites.

Only the international community retains a relatively high score (70), partly due to its diminished role and departure from key political developments, lack of ultimate responsibility for the situation in the country, as well as relatively high standards of transparency it applies.

According to Transparency International's Global Corruption Barometer, public opinion is largely consistent with the findings of the NIS. Thus, citizens perceive political parties as the most corrupt segment of society, while nearly 90% of them believe that there has been no progress in the fight against corruption or that the situation has even deteriorated.⁴

In conclusion, the entire national integrity system is very weak since all pillars have more or less equally poor scores. This indicates the continued strong presence of state capture, that is, a situation in which the ruling oligarchy has complete control over the institutions of the system and manipulates the legal framework and policies to suit their own narrow individual interests. Therefore, the anti-corruption combat and efforts to create a sustainable integrity system must be aimed at improving the entire national integrity system – from the creation of sound political, economic and social foundations, embodied in social values, to the development of all pillars in parallel.

3. COUNTRY PROFILE

POLITICO-INSTITUTIONAL FOUNDATIONS

To what extent are the political institutions in the country supportive to an effective national integrity system?

SCORE 25

The constitutional setup of BiH was established by the General Framework Agreement for Peace concluded in November 1995 in the military base in Wright Patterson, Ohio, USA, and signed in December 1995 in Paris, France. Annex 4 of this Agreement, which constitutes the Constitution of BiH, created a complex structure composed of: two entities – Federation of BiH (consisting of 10 cantons) and Republic of Srpska (RS), a condominium shared by both entities – Brčko District, and the joint state-level government with limited powers. The Peace Agreement established the Office of the High Representative (OHR) as the lead organisation for the implementation of the civilian aspects of the peace agreement. The High Representative also has the task of coordinating the activities of international organi-

sations and agencies operating in the country. After the initial role of being “the final authority in theatre regarding interpretation of the Peace Agreement”, who virtually ran the country with powers unprecedented in modern history, including imposition of legislation and removals from office of elected politicians, the role of the High Representative has gradually weakened, in parallel with the emergence of the increasingly dissenting views among the key PIC member states regarding his purpose, in spite of the fact that the formal powers (called Bonn Powers) remained unchanged.

The constitutional structure of the state was created by an international agreement, and the institutional context, which has subsequently been largely shaped by direct impositions and pressures by the High Representative, has led to the creation of non-viable institutions that cannot function without external stimulus.⁵ Such institutions have been unable to significantly improve the quality of government, the rule of law and protection of fundamental human rights and freedoms.⁶ Moreover, following the reduction of the High Representative’s operational impact, such institutions have become easy prey for political parties, being easily subordinated to individual and party interests through political appointments and financial blackmailing. Effective governance is prevented by veto mechanisms built into the policymaking system, while abuse of constitutional mechanisms designed to ensure fair ethnic representation within state institutions has led to ethnically motivated behaviour by elected rulers. Furthermore, BiH’s inadequate coordination among the different levels of government and between the institutions of individual governments leads to a lack of policy coherence.

As a result of a complicated and cumbersome constitutional structure, characterised by a high level of asymmetry, BiH has an oversized, ethnically divided and inept state apparatus which consumes around 55% of GDP, burdened with administrative shortcomings which

are reflected in the government’s policymaking, public finance management and human resource management functions. The government has a poor management of public expenditures which results in chronic underfunding, and poor targeting of the sectors, especially education and health service provisions. The European Commission’s 2011 Progress Report for BiH also identified BiH’s complex decision-making system as the main obstacle to effective governance and European integration.⁷ During the last few years, several reforms have increased the capability at the central level, and efforts to professionalise the civil service, separate political and technical functions, and improve legislative and policy development have been made.⁸ However, a lack of regulation and procedures make accountability of ministers and members of the executive branch a complicated matter.

With ethnicity and religion serving as central components of political life, religious communities have turned into “influential informal elite structures”. Religious leaders often exploit public space in order to shape political discussions. Of particular concern has been a sustained campaign by the leader of the Islamic Community in BiH against any media organisation or figure critical of his role, labelling specific media figures as “Islamophobic” and publicly naming journalists who he thought fell into this category. He also claimed that Islamophobia was widespread within state institutions, and prevented Bosniak Muslims from making professional progress.⁹

Relevant national and international research, as indeed has been the case over the last several years, have registered virtually no progress in the fight against corruption. According to the latest Corruption Perception Index (CPI) for 2011, BiH is ranked between 91st to 94th position among 182 countries in the perceived level of corruption, together with Liberia, Trinidad and Tobago and Zambia. As in 2010, BiH again received a

score of 3.2 on a scale of 0 to 10, where 0 represents absolute corruption, and 10 no corruption. This means that compared to the previous year, BiH has not made a move towards fighting corruption, and when compared to the period from 2007 to 2011, it has not made significant progress. Compared to other countries of the former Yugoslavia, BiH is behind Slovenia (35th), Croatia (66th), Macedonia (69th), Serbia (86th), while only Kosovo is ranked lower than BiH, occupying the 112th position.¹⁰

Despite minimal levels of centralisation of law enforcement during the past few years, the multi-levelled governance system complicates the implementation of the rule of law, also highlighted by the EC 2011 Progress Report. Long waiting times, a lack of redress procedures, problems with enforcing judgments, and unsuitable detention procedures undermine the effectiveness of a fair trial and due process.¹¹ When it comes to the prosecution of corruption, data on the investigations initiated by prosecutors in BiH collected by TI BiH during 2011 but referring to 2010, indicate that, compared to 2009 there was a reduction in the total number of investigations, which also applies to investigations of corruption and criminal acts against official duties. Additionally, comparing the number of reports with the number of investigations data shows that less than a third of the reported acts of corruption end with an investigation. A large number of rejected reports points to the poor quality of the collected evidence or to inadequate use of special investigative procedures that would lead to the indictment.¹² In general, freedom of expression is respected by public officials, although threats and isolated instances of violence against journalists and the media have been reported and have increased in recent times.¹³

Political parties are seen as the most corrupt segment in society,¹⁴ and their influence spreads across all economic aspects.¹⁵ After more than 20 years since the first multiparty elections in BiH, the political parties

are still predominantly authoritarian, with very limited intra-party democracy. Over the years the ruling political parties have established effective control over the majority of state resources, institutions and processes, including economy, law enforcement, the media, the judiciary, etc. Such dominance has mainly served to allow the reaping of illegal benefits and to ensure protection of the party elites. High ranking officials suspected of involvement in bribery are usually not removed from the public service, despite efforts at reform and institution-building. Public confidence in the executive, political leaders, and public institutions remains low, mainly due to perceptions of widespread corruption, coupled with lack of public accountability. In 2011, survey respondents identified corruption in the public sector as the major problem of the country.¹⁶ There is a pervasive dissatisfaction with public officials and a very low confidence in government institutions, with 71% of population assessing government's efforts to counter corruption as largely ineffective.¹⁷

There is also a general lack of confidence in the transparency of the public service. Inadequate capacities of public officials and bureaucrats undermines the implementation of anti-corruption provisions. There are three Laws on Freedom of access to information in BiH that have become effective at the state and entity levels. However, their implementation, although improved in comparison to the previous years, has not met international standards of transparency. Chief obstacles in the path of implementation are still insufficient capacity of public institutions for their application, lack of knowledge among the wider public of the rights secured by these Laws, and, the fact that they are still not harmonised with other laws, which is an essential prerequisite for their full implementation.¹⁸

Communication between citizens and elected officials is almost inexistent, mainly due to the insufficient channels established, lack of an appropriate organisation

of the representative authorities, and a weak culture of citizen participation. Civil society, with no foothold in tradition, practically began to develop after the war, with the strong support of international donors. NGOs and civil society organisations have thus had a leading role in fostering such communication. However, despite the sustained and significant support from the international community, civil society organisations remain unable to impose themselves as an important factor influencing the decision-making process.

SOCIO-POLITICAL FOUNDATIONS

To what extent are the relationships among social groups and between social groups and the political system in the country supportive to an effective national integrity system?

SCORE 25

The current socio political situation in BiH lacks a myriad of critical aspects that are conducive to realizing a sustainable national integrity system. Latest recent Gallup report examining the general levels of confidence for the group, class, ethnicity, entity and national) assert that social divisions remain strong across class, religious and ethnic lines. The results indicate that only 14.4 percent of the population believes that “most people can be trusted” while 84 percent believe that “you have to be careful with dealing with the ‘other’ people”.¹⁹ To break down that level of trust another recent UNDP report offers the most comprehensive insight into where social divisions are most prominent. According to the UNDP report, over 82 percent of those polled reported that they could trust their families, 61 percent could trust their close friends, 33.5 percent their neighbors, 21.3 percent their own ethnic group, and 11 percent other ethnic groups.²⁰ Therefore, the

results show the further away one moves from the nucleus (within the context of the country) the lower is the amount of trust. The main results yielded from the report were that BiH is a society characterized by strong ties and social capital with family and to a lesser degree with friends and neighbors.²¹ Moreover, it is a society characterized by very low generalized trust, which applies to people of other ethnicities but also to people of other ways of life and even to people of the same ethnicity who are not part of one’s immediate social circle”.²² The European Bank for Reconstruction and Development (EBRD) yielded somewhat different results regarding the general trust within Bosnia, reporting that over 33% of the respondents claim that people can be trusted.²³ The concept of trust is also heavily dependent upon one’s definition of the concept and methodology applied to ascertain the corresponding results. The EBRD report is the most up-to-date (2011) and may hold positive implications for the future of general public perceptions regarding trust.

The protection of minority rights in BiH remains an issue that lies at the core of the state institutions. Formal citizenship is generally not withheld from minority groups. However, there is a continued constitutional discrimination against individuals not belonging to the three main constituent groups which participate in the country’s power-sharing agreement. The notion of “belonging” and ability to participate within the BiH political, social and economic spheres of influence are only allotted to the identities that fall under one of BiH’s three constituent groups: Bosniaks, Serbs or Croats.²⁴ Moreover the highly publicized and politicized European Court of Human Rights (ECHR) case of Sejdic and Finci v. Bosnia and Herzegovina “held that the racial or ethnic-based exclusion of Jews and Roma from BiH’s highest elected offices constituted unlawful discrimination.”²⁵ Currently, as per Annex IV of the Dayton Peace Accords, only those belonging to one of the three constituent peoples of BiH are permitted to stand for

election to the House of Peoples or for the Presidency, thus excluding members of the country's 14 other national minorities. BiH authorities have repeatedly failed to reach an agreement on implementation of the ECHR ruling, thus constituting a breach of Article 2 of the country's Interim Agreement with the European Union.

Politically speaking, BiH citizens are represented almost exclusively along ethnic lines, i.e. Bosniak voters are represented by a Bosniak affiliated political party, the same goes for the Serbs and the Croats. In this way "the interests of individual ethnic groups continue to prevail, and the rhetoric of nationalist political leaders dominates the political space".²⁶ The polarization of the BiH community remains a huge obstacle hindering the state's progress towards realizing future long-term goals such as EU accession.²⁷

The civil society in BiH also remains weak: this has been reflected in the recent UNDP report, which also examined the level of civil society participation: only 1 out of 5 (17.8%) respondents said that they were a "member of an association, team and/or club" (61), while only 1 out of 20 had said they have volunteered in the last year.²⁸ Thus, the current social milieu in BiH can be characterized as one that lacks both vibrancy and the civic representation necessary to transcend entity and ethnic lines and bring about greater societal integration.²⁹

Lastly the position of the political elites further exacerbates the growing gap between private and public interests. It has been well documented that while the international community has been the leading driver behind the democratic process in BiH, numerous political elites have "often pursued alternative agendas"³⁰ which run counter to "pursuing [an agenda promoting] democratic consolidation".³¹ The conflicting interests between the political elites and the formal institutions and their legal fundamentals continue to hinder the

promotion of democratic norms and practice throughout the entire country.

SOCIO-ECONOMIC FOUNDATIONS

To what extent is the socio-economic situation of the country supportive to an effective national integrity system?

SCORE 25

Following several years of growth yet accompanied by fiscal and external imbalances, economic activity in BiH slowed in late 2008, with the downturn spreading in 2009 as a result of the global economic crisis. Real GDP growth turned negative in 2009 (2.9%), while the fiscal deficit increased, and as a result of the global economic crisis, the economy also grew just 0.6% in 2010.³² In absolute terms the Bosnian economy underperforms more stable regional counterparts, as 2007 statistics show that 16% of BiH citizens were defined as living in poverty against 8% in Serbia. Most major problems in the BiH economy are found in privatization/public procurement processes and in a lack of transparency in the financing of political parties.³³ The business environment is also similarly affected by administrative inefficiencies, while the lack of a single economic space within the country also presents a major challenge towards establishing a viable business sector.³⁴ The World Bank "Doing Business 2012" annual report ranked BiH 125th out of 183 countries by the ease of doing business index.³⁵

According to BiH central bank data, the current account balance improved from a deficit of 15.1% in 2008 to a deficit of 7.5% in 2009, however this was coupled with rising unemployment. Household consumption and investment respectively declined by 4.1% and 30.2%,

while government consumption increased by 3.2%.³⁶ Duplicate institutions at state, entity and municipal levels as well as high levels of government spending, roughly 50% of GDP, are also compounding the problems of inefficient tax collection and structural unemployment. The unemployment rate has increased from 24.1% in 2009 to 27.2% in 2010, with prospects hindered by the size of the informal sector, combined with structural rigidities such as high social contribution rates, distorted wage-setting mechanisms, high and poorly targeted social transfers, and low labor mobility.³⁷

BiH's Human Development Index (HDI) score is 0.710, giving the country a rank of 68 out of 169 countries with comparable data and also placing the country below the regional average.

Social programs and services have numerous weaknesses, as despite significant fiscal outlays (4% of GDP) non-contributory transfer coverage is low, a comparatively high share of benefits goes to richer, while social benefits have an insignificant impact on poverty, and the non-targeted programs have reached their fiscal limits.³⁸ Social and employment legislation and policies, as well as public health legislation, also remain very fragmented while a lack of cooperation between the various levels of government continues to hinder the development of coordinated approaches.³⁹

According to the World Bank, 12.4% of the population reports receiving benefits in the form of non-contributory social assistance transfers, either civilian or veteran-related.⁴⁰ A much larger share of the population reports receiving social insurance benefits (40%), and about half the population reports receiving some type of benefits, either as contribution-based social insurance or through non-contributory social transfers.⁴¹

SOCIO-CULTURAL FOUNDATIONS

To what extent are the prevailing ethics, norms and values in society supportive to an effective national integrity system?

SCORE 25

Trust in BiH is innately a very complex concept to both define and analyse, yet is also paramount to securing a solid foundation from which other various life goals/strategies may be accessed and attained, leading ultimately to more sustainable development. A series of recent reports which poll for levels of trust assert that the BiH public suffers tremendously from a lack of general trust, both amongst various members of society and institutions alike.

In regards to the extent that BiH nationals are public minded/apathetic, research done on issues surrounding public participation and levels of civil society membership, indicates that there are very low levels of civic participation in BiH as only 1 in 5 (17.8%) polled report "that they are members of an association, team and/or club"⁴² There is also a strong discrepancy between rural and urban populations in relation to associational membership, as residents of urban areas are 1/3 more likely to be members of an association than residents in more rural spaces.⁴³ Moreover, the report indicated that less than 1 out of 20 surveyed had volunteered in the last year (2008-2009).⁴⁴

In regards to personal integrity as being espoused as an ethical norm in relation to trust, there has been literature written around the concept of (*štela*) connection.⁴⁵ "Connection" can be defined as a personal or insider "connection" which grants the individual taking advan-

tage of the *connection* exclusive access to a competitive good/position, which effectively abolishes the mechanisms of healthy competition and credibility.⁴⁶ According to a UNDP report, nearly 95% of all respondents polled claim “that having a *connection* is always or sometimes useful for getting jobs, visas, health services etc.”.⁴⁷ Therefore from the aforementioned survey, one may suggest that BiH norms have come to passively accept an environment where “trust” in the system is marred to informal practices of social inclusion/exclusion. The notion of *connection* as an internalised norm does not necessarily indicate that an ethical paradigm is lacking but may energise debates surrounding the pursuit of “successful” life strategies as an adaptive method to ensuring one’s survival within a system.

4. CORRUPTION PROFILE

Despite years of reform, the involvement of the international community and donor support, widespread corruption remains a major problem in BiH undermining any substantive reforms that would lead to the establishment of a functional and viable state.

For years relevant researches have put BiH among the European countries with the highest level of corruption, also noting that the country is affected by the most pernicious forms of corruption, which have enormous consequences for its overall socio-economic development. The citizens of the country are concerned about systemic corruption in key institutions such as the police, customs and different ministries. Despite some signs of progress in the fight against corruption, mostly due to the adoption of anti-corruption strategy, BiH still suffers from two main drawbacks in the fight against corruption: lack of political will and insufficient prosecution of corruption. Both contribute to the growing lack of public confidence in BiH institutions.

The post-conflict period in BiH has been characterised by complex institutional structures, ethnic divisions, and a general lack of transparency and accountability of public institutions. Corruption is widespread throughout the public and private sector and is present at the highest levels of government and politics. The close interconnection between political elites and their associated oligarchies, whose interests prevail over those of the public, ranks BiH among countries characterised by extensive “state capture”.⁴⁸ Solid legislative and institutional frameworks to effectively combat corruption have been set up over the last few years. However, there remain major challenges such as weak enforcement of laws and enforcement mechanisms, unharmonised laws at different levels of government, as well as inadequate institutional capacities and subjection of institutions to informal centres of power. The most disturbing fact, and also the main cause of the dramatic level of corruption in BiH, is the complete lack of political will to address this particular problem and make any significant progress with regard to anti-corruption combat.

The lack of a holistic approach, as the best long-term solution to reduce corruption in BiH, which would include all social integrity pillars, has resulted in anti-corruption activities being undertaken unsystematically and on an *ad hoc* basis, and such an uncoordinated system has not and cannot produce sustainable results.

The existing government structures in BiH are complex and remain divided. Government is fragmented over a number of different administrative units: 143 municipalities, two entities, a separate district and, in the case of FBiH, ten cantons, and the federal state structure. This unique government structure encourages irresponsibility, obstructs transparency and accountability, and provides a fertile breeding ground for corruption and organised crime.

Over the last few years virtually no progress has been observed in the fight against corruption. According to the latest Corruption Perception Index (CPI) for 2011, BiH is ranked between 91st to 94th position among 182 countries in the perceived level of corruption, together with Liberia, Trinidad and Tobago and Zambia. As in 2010, BiH again received a score of 3.2 on a scale of 0 to 10, where 0 represents absolute corruption, and 10 no corruption. This means that compared to the previous year, BiH has not made a move towards fighting corruption, and when compared to the period from 2007 to 2011, it has not made any significant progress. Compared to other countries of the former Yugoslavia, BiH is behind Slovenia (35th), Croatia (66th), Macedonia (69th), Serbia (86th), while only Kosovo is ranked lower than BiH, occupying the 112th position.⁴⁹

The 2011 European Commission Report also pointed out that in BiH there had been no significant progress in the fight against corruption and emphasised the lack of political will to solve the problems facing the country. As the main obstacles to the progress of BiH in the fight against corruption the report identifies insufficient implementation of existing legislation governing this area, as well as asymmetry and lack of harmonisation of anti-corruption laws at various levels of government. What the European Commission finds particularly problematic is inadequate implementation of the 2009-2014 anticorruption strategy and the delay in the establishment of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption.⁵⁰ The report reiterated the inefficiency of the judiciary, which results in huge backlogs, and in particular the fact that there is no prosecution of cases of grand corruption. Concerns have also been expressed because of political pressure on the courts and prosecutors' offices.⁵¹

In 2010 the Global Corruption Barometer, the largest international study, included 86 countries in which it collected public opinions and experiences of corruption.

With regard to BiH, political were once again rated as the most corrupt pillar of the social integrity system, with a score of 4.1 on a scale of up to 5, followed by the parliament (legislature), civil servants and the judiciary. The majority of BiH citizens (59%) think that the level of corruption in the country increased between 2007 and 2010, while 71% find government efforts to fight corruption in the country to be ineffective.⁵²

Most citizens believe that corruption has a huge impact on the political life of the country. The existing forms of corruption have a particularly adverse impact on the business environment, which in turn has different consequences for BiH when it comes to the inflow of domestic and foreign investment.

The 2011-2012 Global Competitiveness Report identifies corruption as the fourth “most problematic factor” for doing business in BiH, along with complicated bureaucracy and inefficient regulatory system.⁵³

Moreover, BiH is faced with the problem of inefficient implementation of legislation and challenges in coordination between the entities, which is a major cause for concern. According to the 2011 Global Integrity Report, in BiH, similarly as in previous years, there is a huge noticeable gap between existing legislation “on paper” and its actual implementation in practice.⁵⁴ Given that the advancement in the field of anti-corruption is key to progress on the path towards European integration, it is essential that all segments of society be effectively and systematically engaged in the fight against corruption.

Due to generally piecemeal approach to the fight against corruption and permanent lack of detailed and varied assessment, both qualitative and quantitative, of the anti-corruption system at the state level, BiH faces unique problems in the fight against corruption. State-level anti-corruption efforts to improve management standards are primarily the result of pressure

from the international community, and this approach has been largely technical in nature. The main problem with these standards is the fact that their implementation has been left to local institutions with insufficient capacities. While progress has been made in professionalising judiciary, police and other institutions of the legal system, the lack of communication and co-operation between the parallel pillars has inhibited substantive systemic reforms. As a result, the majority of anti-corruption activities remain largely uncoordinated and without real political will and systematic approach. Chronic lack of political will to fight corruption and organised crime was visible in the post-war period and has continued to this day. The main reason for such a dramatic level of corruption in BiH is the continuing involvement of the political elites in illegal activities, and the consequent lack of will on the part of political elites to join the fight against endemic corruption.

Corruption is most pervasive at the local (cantonal and municipal) level, which is confirmed by the research and findings of TI BiH. This is due to the fact that the majority of contacts between citizens and public administration occur at the local level, while corruption certainly has a higher price at the higher levels of government. In most cases, the trace of criminal activities leads to the highest levels of government, in the form of embezzlement of public funds, mismanagement of state-owned enterprises and irregularities in the privatisation process. This suggests that most of the criminal activity could not take place without the direct involvement of or cover provided by high-ranking civil servants.

A disturbing fact that no one has addressed yet is that all the key positions in agencies/ departments for privatisation, management boards and other responsible positions in public companies are held by people whose main qualification is the fact that they are members of certain political parties.

The judiciary in BiH still faces the problem of its complex structure, which is a consequence of the constitutional setup of the country. The existence of four nearly independent and separate judicial systems – at the state level, at the level of RS, FBiH and Brčko District – contributes to the general inefficiency. This means that each level of the legislature enacts legislation regulating its own judicial system, which results in a lack of coordination, different legal practices and unequal treatment of similar factual situations. This causes very serious problems when it comes to the funding of the courts and prosecutors' offices, given that they are financed from fourteen different budgets, whose capacities and financial resources are unreliable and unevenly distributed.

According to the 2012 Freedom House report, “the judiciary remains influenced by nationalist political parties and faces pressure from the executive branch”.⁵⁵

The political pressure on the judiciary continues, culminating in January 2012 in a formal proposal by the political parties from RS that the Parliament should abolish the Court of BiH and the Prosecutor's Office of BiH.

In addition, there remains the problem of a huge backlog of cases, which is a result of delayed and long-drawn-out trials and processes. According to the Annual Report of the High Judicial and Prosecutorial Council of BiH, in 2011 courts in BiH received 905,000 cases, of which 478,000 remained unresolved, while the total number of backlogged cases in courts at all levels in BiH is still around 2 million.⁵⁶

When it comes to prosecuting corruption, data on investigations in BiH collected by TI BiH in 2011, which relate to 2010, indicate that in comparison to 2009 there was a decrease in the total number of investigations, which is also true of the investigations of corruption and

criminal offences against official duty. Also, comparison of the number of reports with the number of investigation indicates that nearly a third of the reported cases of corruption end up in investigation. Furthermore, the percentage of investigations related to corruption offences is extremely low compared to the total number of investigations and is only 2%. On the other hand, although the number of indictments for corruption and abuse of official duty has increased, its share of 1.5% in the total number of indictments remains unsatisfactory. What remains extremely problematic is the fact that there have been no convictions for corruption in cases involving high-ranking officials, as well as that guilty verdicts are delivered mostly in cases of minor corruption.

The primary purpose of judicial reform was to establish the independence of the judiciary as an essential prerequisite for the rule of law. Prosecution of corruption is a key test of independence of the judiciary, as the people involved in corruption are mostly politicians and senior civil servants who have significant financial resources, power and influence. Another problem is the inefficiency of the BiH judiciary, but this problem is primarily technical and relates to the financial and organisational strengthening of the judiciary's institutional capacity. The only way to strengthen public confidence in the rule of law is that the judicial system successfully prosecutes numerous cases of criminalised privatisation, misuse of budgetary funds and criminal activities in state-owned companies, which is often pointed out by the public sector audit institutions.

One of the problems that continues to foster corruption is the lack of transparency and integrity in the work of public institutions. The Law on Freedom of Access to Information exists at the state as well as entity levels, but its implementation is still unsatisfactory. Also, public procurement lacks transparency and accountability, and there is a common illegal practice of rigging

tenders or cancelling them in order to give preferential treatment to certain bidders. An additional obstacle is the cumbersome administration and high public spending, which currently consumes nearly 50% of the total GDP. Public administration reform and reduction of administrative costs remain top strategic priorities.

5. ANTI-CORRUPTION ACTIVITIES

The issue of corruption came to the forefront of the public agenda only after the year 2000, initially driven by strong international pressure, mainly through the Office of the High Representative. BiH's anticorruption measures were strongly influenced by international initiatives lacking indigenous insight and often ignoring the local political and economic environment. Foreign in nature and left to often inadequate domestic institutions to implement, these measures met with major enforcement challenges. Even at present, they seem isolated, rather than part of a comprehensive national policy or strategy. Moreover, decisions on reforms and measures against corruption did not commonly involve all relevant stakeholders and, the communication and co-operation between different state actors were often missing. Consequently, the fight against corruption in BiH consists of largely uncoordinated activities backed by no explicit local political will.

In recent years, anti-corruption legislation in BiH has been improved through adoption and promotion of certain key pieces of legislation as part of anti-corruption reform;⁵⁷ however, the fact that the laws were still adopted under external pressure as a result of conditioning by various international actors, has made their existence completely pointless in the implementation phase. That is why the main challenge in BiH is inefficiency and a lack of institutional capacity to enforce the law. Also, some important laws in the anti-corruption reforms have not yet been adopted, such as the legal framework to protect individuals in institutions who report corruption on a *bona fide* basis – so called “whistleblowers”, or a new law on public procurement in accordance with European directives. At the same time, there has been a delay in the implementation of anti-corruption reforms, as well as attempts in some cases to bring the existing anti-corruption legal framework to a collapse or to limit the role of certain institutions that play an important role in combating corruption.

The most recent Anti-Corruption Strategy and Action Plan for the Fight against Corruption were adopted by the Council of Ministers in September 2009. The Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption was adopted in December of the same year. Adoption of the strategy and establishment of the Agency were part of BiH obligations under the Roadmap for EU visa liberalisation with BiH, as well as the obligation under the UN Convention against Corruption.

The Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption establishes the Agency as an independent body that reports to the Parliament and which has primarily preventive, educational and coordination role, as well as the role of policy maker for corruption prevention and monitoring its implementation, but also active role in the manage-

ment of databases and statistical monitoring of the status and trends of corruption. The Law provides that the entities and Brčko District are to develop and adopt an anti-corruption strategy and action plan in accordance with the general principles set forth in the State Anti-Corruption Strategy.⁵⁸ The Strategy pays special attention to corruption prevention. Some of the particularly important preventive measures include, *inter alia*, the obligation of each ministry and other public institution at any level of government in BiH to prepare their own anti-corruption action plans or integrity plans; to establish open channels of communication in all public institutions at all levels of government in BiH, in order to allow their clients or public servants to report corruption; to establish a legislative framework for the protection of persons reporting irregularities in the performance of public duties; to introduce e-government and e-governance; and to investigate corruption in the private sector and develop the strategy to combat corruption in the private sector.⁵⁹

However, the findings of the fourth Monitoring of the Strategy and its Action Plan, compiled by TI BiH, show that almost three years after their adoption, of the total number of measures (81), only two have been implemented in full, 32 have been implemented in part, while 47 (nearly 60%) have not yet been implemented at all. The dynamics of the Strategy implementation, as well as the fact that it was only after a two-year delay that the funds for the work of the anti-corruption agency were secured, show that ever since the adoption of the Strategy there has been no genuine political will for its implementation. However, although the approved budget of the institutions of BiH for 2012 finally allocated funds for the Agency, the planned number of employees in this body has been reduced from 45 to 29, and the training of its staff has not yet started. Impeding the work of the Agency stopped the implementation of other activities envisaged under the Strategy. Also, other institutions responsible for the implementation of

the Strategy, including the Council of Ministers, showed no initiative in the implementation of measures such as the streamlining of public administration, protection of whistleblowers, staff training, improving procedures for confiscation of illegally acquired assets, improving investigations with the aim of more efficient processing of corruption, etc.⁶⁰

What is certainly an aggravating factor in the implementation of the Strategy and Action Plan is the fact that, because of the complex constitutional setup of the country, coordination and subordination in the implementation of the activities envisaged by the Strategy and Action Plan is extremely difficult to achieve, as was the case with previous strategies. An additional challenge is the lack of financial resources, as well as the inability to monitor implementation of the strategy in responsible institutions at all levels of government. The role of civil society in anti-corruption activities is still limited in scope and is most visible through watchdog activities. The absence of civil society participation in decision-making remains the rule, with very few exceptions.

The NGO scene yielded various results when it comes to accountability and transparency of the governments, particularly at the local level, but in terms of the national anti-corruption activities, only TI BiH has profiled itself and worked consistently with the authorities, or where this was not possible blew the whistle. Media have been unveiling corruption relatively successfully, but the number of articles and reports very quickly outgrew the number of cases processed by prosecution and judiciary and the effects were minimised with time, as public lost confidence such reports can change the corrupt climate in the country.

The role of international donors in anti-corruption activities is still very significant, both in terms of support to public institutions, and through support to CSOs. This

support is manifested through various forms of technical assistance to strengthen the institutional capacity of the public sector, expert advice, training and education, and CSOs are still largely dependent on financial support from international donors, most notably the European Commission, the U.S. Agency for International Development (USAID) and other bilateral donors.

Noteworthy is the lack of a multi-stakeholder approach. Most efforts have concentrated on strengthening individual pillars/institutions and very rarely taken a holistic countrywide approach that would begin by bringing the key parties to discuss the agenda and priorities together. This approach to the system, based on combined effectiveness in the manner of a NIS suggests that e.g. a strengthening of judiciary without implementing simultaneous measures in the police, prosecution, public attorney's office, lawyers etc., will not bring about any sustainable improvements. While progress has been made in professionalising judiciary, police and other institutions of the legal system, the lack of communication and co-operation between the parallel pillars has inhibited substantive systemic reforms. More than a decade since the end of hostilities there has been little or no serious sanctioning of economic crime committed either during the war or thereafter. This confirms the hypothesis that an uncoordinated system is unsustainable in the long-term, i.e. that the only effective anti-corruption approach is that based on a sound National Integrity System.

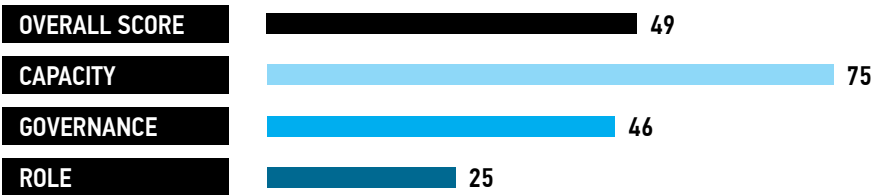
6. NIS PILLARS

- 6.1. LEGISLATURE
- 6.2. EXECUTIVE
- 6.3. JUDICIARY
- 6.4. PUBLIC SECTOR
- 6.5. PUBLIC CONTRACTING
- 6.6. LAW ENFORCEMENT AGENCIES
- 6.7. ANTI-CORRUPTION AGENCY
- 6.8. ELECTORAL MANAGEMENT BODY
- 6.9. OMBUDSMAN
- 6.10. AUDIT INSTITUTIONS
- 6.11. POLITICAL PARTIES
- 6.12. MEDIA
- 6.13. CIVIL SOCIETY
- 6.14. BUSINESS SECTOR
- 6.15. INTERNATIONAL INSTITUTIONS

6.1. LEGISLATURE

OVERALL PILLAR SCORE: 49/100

STATUS: MODERATE



SUMMARY

In practice parliaments/assemblies have sufficient financial and human resources to carry out their duties as defined by the Constitution, laws and Rules of Procedure. The legislature is completely independent of both the executive and the judiciary.

In terms of transparency, there is a clear legislative framework allowing the public to have access to the work of parliaments and obtain all relevant information in a timely manner and through easily accessible media (newspapers, television, the Internet, Official Gazette...). What remains legally vague, however, are the provisions governing the collection and verification of data in assets declaration forms. All decisions made by the parliaments in BiH are published in the official gazettes (of BiH, entities, cantons, cities and municipalities) and all legal acts are, on that basis too, available to the

public. However, political parties are trying to stifle any political life taking place outside themselves and generally do not allow expression of views different from the official ones, or the ones held by the party leader.

The constitutional and legal frameworks in BiH stipulate that the parliaments report to the public, but these frameworks have not been fully worked out – primarily in terms of the obligation to establish closer contact between the citizen/voter and MP/councillor, because there is presently no mechanism for the citizen/voter to directly contact the MP/councillor he/she has voted for. In practice, MPs/councillors answer solely to their parties, while contacts with citizens are intensified only prior to elections.

In practice, there are no known examples of any member of the House of Representatives having been suspended from Parliament. With the exception of occasional penalties in the form of reprimands or being barred from speaking, no fines are imposed in the parliaments of BiH, nor are there cases in practice of MPs being punished for violating the code of ethics.

Parliament has mechanisms to control the executive (government), but given the fact that the government is generally made up of members of the political parties that have a parliamentary majority, this kind of parliamentary “pressure” on the government is moderated to a significant extent.

As regards anti-corruption combat and governance as important state issues, the legislature does not pay enough attention to the promotion of the principles of public accountability and the fight against corruption, although there are occasional parliamentary debates on corruption.

TABLE WITH SCORES
LEGISLATURE
OVERALL PILLAR SCORE: 49/100

DIMENSION	INDICATOR	LAW	PRACTICE
CAPACITY 75/100	RESOURCES INDEPENDENCE	100	50
		100	50
GOVERNANCE 46/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY MECHANISMS	75	50
		50	25
		50	25
ROLE 25/100	EXECUTIVE OVERSIGHT LEGAL REFORMS	25	
		25	

STRUCTURE AND ORGANISATION

The constitutional position of the Parliamentary Assembly of BiH, as well as of entity parliaments (the National Assembly of RS and the Parliament of FBiH), is regulated by the Constitution of BiH and entity constitutions, respectively. The main functions of the legislature in BiH are: adopting and amending the constitution and laws, and adoption of the budget. According to the Rules of Procedure of the House of Representatives⁶¹ of the Parliamentary Assembly of BiH, this chamber has eight permanent committees: Constitutional and Legal Committee, Committee on Human Rights, Immigration, Refugees and Asylum, Committee on Foreign Affairs, Committee on Budget and Finance, Committee of Foreign Trade and Customs, Committee on Gender Equality, Committee on Transport and Communications, and Administrative Committee. The House of Peoples of the Parliamentary Assembly of BiH, on the other hand, has three committees.⁶² Constitutional and Legal Committee, Committee on Foreign Trade Policy, and Committee on Financial and Administrative Affairs. In addition, both chambers can establish various ad hoc committees, and there are currently two joint committees: Joint Committee on European Integration and Joint Committee on Supervision of the Work of the Intelligence and Security Agency of BiH. Each of these committees has its secretary and other persons who are professionally employed in the parliament. In addition, each parliament has Expert Services which provide administrative support. At the state level, both chambers have their secretaries (who are not Members of Parliament), who head the Secretariats of the House and employ administrative personnel.

RESOURCES (LAW)

To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructural resources to effectively carry out its duties?

SCORE 100

The legal provisions on adoption of the budget are clearly defined in advance. One of the main functions of the legislature in BiH is adoption of the budget. The budget is adopted in the form of a law and along with it is adopted the law on budget execution. The legislature also adopts budget revisions. The budget provides for the financing of the Parliament (Assembly) and its chambers, financing of Expert Services in the Parliament, and financing of parliamentary commissions and committees.⁶³ According to the Rules of Procedure of the House of Representatives⁶⁴ of the Parliamentary Assembly of BiH, this chamber has eight permanent committees, while the House of Peoples of the Parliamentary Assembly of BiH, on the other hand, has three committees. In addition, both chambers can establish various ad hoc and joint committees. Each of these committees has its secretary and other persons who are professionally employed in the parliament. In addition, each parliament has Expert Services which provide administrative support. At the state level, both chambers have their secretaries (who are not Members of Parliament), who head the Secretariats of the House and employ administrative personnel.

The budget proposal is prepared by the Council of Ministers of BiH at the state level and by entity governments at the entity level. The budget proposal is then submitted to the Parliament, i.e. parliamentary commissions/committees in charge of financial and budgetary matters. The commissions/committees discuss the proposal and give suggestions to the

government. This means that parliaments participate to a significant extent in the procedure for approving the budget, including the part of the budget related to the work of parliaments. Once the budget is passed in the legislative procedure, it is known exactly how much in resources is available to the parliament in a particular budget year. Also, if there is a need for budget revision, the revised budget is approved by parliament in the form of a law, so that the parliament, on that basis too, has control over budget revision and allocation of funds from the revised budget. The budget is adopted in the form of a law and, as such, must be published in the official gazette. Each budget user can only spend the funds made available to it and within the relevant budget line. Further to the proposal of the government, resources may be redistributed between current and capital expenditures, and the redistribution of funds within a budget user is based on the decision of the competent ministry.

RESOURCES (PRACTICE)

To what extent does the legislature have adequate resources to carry out its duties in practice?

SCORE 50

In practice parliaments/assemblies have sufficient financial and human resources to carry out their duties as defined by the Constitution, laws and Rules of Procedure. Official gazettes publish parliamentary decisions on a regular basis both in hard copy and electronically. Comparison of the budgets of the Parliamentary Assembly for 2009 and 2010 shows that the amounts allocated for the work of the Parliamentary Assembly totalled KM 17,228,000 (of which KM 8,649,000 for the salaries of all employees in the Parliamentary Assembly)⁶⁵ in 2009 and KM 16,674,000 (of which KM 9,190,000 for the salaries of all employees, which is a six percent increase compared to 2009) in 2010.⁶⁶ A

persistent problem is also the fact that over the last few years the Parliament has not managed to pass the budget in a timely manner, so the decisions on temporary financing of the budget were in force throughout 2011.⁶⁷

INDEPENDENCE (LAW)

To what extent is the legislature independent and free from subordination to external actors by law?

SCORE 100

Constitutional and legal provisions guarantee the legislature's independence of the executive and judiciary.

The system of government in BiH is a tripartite one, based on the principle of separation of powers between the legislature, the executive and the judiciary. In this regard, the legislature is completely independent of both the executive and the judiciary. The judiciary, embodied in the constitutional courts, has jurisdiction to determine whether laws conform to the Constitution. If the Constitutional Court finds that a law is not in conformity with the Constitution, it annuls the law or particular provisions thereof, and the Parliament has an obligation to enact a new law (or a new provision of the law) in accordance with the legal opinion of the Constitutional Court, but the Court alone has no jurisdiction to impose or enact laws in lieu of the Parliament, even if the Parliament fails to act in accordance with the constitutional court's instructions.

The Constitution of BiH does not have a provision allowing the Presidency of BiH (the collective Head of State) to dissolve the Parliamentary Assembly of Bosnia and Herzegovina. The Constitution of RS provides in Article 72, paragraph 6 that the President of the Republic may, upon consulting with the Prime Minister and the Speaker of the National Assembly, decide to dissolve the National Assembly.⁶⁸ The Constitution of FBiH provides

in Article 16 that “when the President of the Federation of BiH decides that the parliamentary chambers are unable to enact necessary legislation, he/she may with the concurrence of the Vice President of the Federation of BiH dissolve either or each House of the Legislature, provided that a House may not be dissolved within one year of being first convened. The President of the Federation of BiH shall dissolve both parliamentary chambers when they fail to adopt the budget of the Federation of BiH before the start of the budgetary period.”⁶⁹ The Rules of Procedure of the parliaments in BiH stipulate that only parliaments may appoint the Speaker and his/her deputies, as well as members of the parliamentary committees and commissions and other (technical) personnel employed in the parliament. Also, the agendas for parliamentary sessions are set solely by the parliament itself and no other branch of government can impose an agenda on the parliament. The Government may ask the parliament to call a session to discuss a specific issue on which the Government wants to state its opinion with a view to having the Parliament take its position on the issue.⁷⁰ The police have no authority to enter the parliamentary buildings or perform certain investigative actions, unless they get special permission from the Speaker of the Parliament.⁷¹

In the system of parliamentary democracy such as exists in BiH, parliaments are the supreme authority. According to the constitutions of the entities, after adoption of a law in the parliament, the President of the entity may, when he/she considers that the law is inconsistent with the fundamental principles of the functioning of the state, request the Parliament to vote again on the law. If the Parliament adopts the law with exactly the same text, the President of the entity has the constitutional obligation to promulgate the law and to issue a decree proclaiming the law.

INDEPENDENCE (PRACTICE)

To what extent is the legislature free from subordination to external actors in practice?

SCORE 50

The legislature is one of the three branches of state government and the other two branches cannot influence its work or decide how it should act.

In practice, the political party which has a majority in parliament also has a majority in the government. As a rule, the speaker of the parliament also comes from the majority party. The rules of procedure provide that opposition MPs/councillors may chair certain committees/commissions in the Parliament.

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?

SCORE 75

There is a clear legislative framework allowing the public to have access to the work of parliaments and obtain all relevant information in a timely manner and through easily accessible media (newspapers, television, the Internet, Official Gazette...). What remains legally vague, however, are the provisions governing the collection and verification of data in assets declaration forms.

Regulations and practices make it possible for the public to have full and timely access to information about the activities of the legislative bodies and the decision-making processes.

Parliamentary sessions (at the state and entity levels) are either broadcast live on public television or the public can get information about the work of parliaments in plenary sessions through news broadcasts and special programmes on public television. Parliamentary sessions may be closed to the public only in exceptional cases. Public television broadcasters do not pay any compensation to the parliaments for live coverage of parliamentary sessions. The press may attend sessions of the parliaments and parliamentary commissions/committee. The presence of other members of public depends on the spatial features of the Parliament's assembly hall. Members of NGOs, foundations, trade unions and other associations may attend parliamentary sessions provided that they obtain accreditation.⁷² Parliamentary agenda is published in advance on the parliament's website. After the session, the Speaker addresses the public with a press statement, and if necessary, a press conference is called.

All draft laws are published on the parliament's website. In some cases, when the parliament or the government as a proposer believe that the adoption of a law is of major importance to the public, they may forward the draft law to a public discussion procedure, where the professional and general public have the opportunity to present their views on certain legal solutions. When the House of Representatives of FBiH accepts a draft law, it may decide – if it is about matters of particular interest to FBiH and when it deems necessary to carry out the broadest discussion among interested authorities, scientific and professional institutions and citizens – to put forward the draft law or a specific issue of the draft law for public discussion.⁷³ The rules of procedure of parliaments do not contain provisions requiring MPs to receive citizens and answer their questions.

Parliaments in BiH are only politically accountable to their constituents, and there is no other, constitutional way to replace one composition of the parliament with

another, except through parliamentary elections. The Election Law of BiH stipulates that every candidate standing for elected office at the level of BiH or the entity level shall be obliged, no later than 15 days from the day of accepting his/her candidacy for the elections by the CEC BiH, to submit to the CEC BiH a signed statement on his/her total assets. After elections, all candidates elected at lower levels of government (cantonal, city, municipal) shall be obliged to submit to the CEC BiH, within 30 days from the verification of mandates, as well as within 30 days from the date of expiry of term in office, a signed statement on their assets. The Election Commission does not have the right to verify the information contained in the statements on assets, but only the obligation to make these data available to the public.

TRANSPARENCY (PRACTICE)

To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?

SCORE 50

In principle, the public has the right to access relevant information related to the work of parliaments, but this access has to be made more transparent, for example, by providing live coverage of the sittings of parliament (at the state level) and increasing opportunities for the public to attend parliamentary sessions.

In practice, the public has access to the work of parliaments. Public service broadcasters broadcast parliamentary sessions without paying any compensation to parliaments. The agenda of each session of Parliament is publicly available. Thus, for example, the website of the Parliamentary Assembly of BiH⁷⁴ contains the agenda of the Continuation of the 25th Session of the House of Representatives of 9 March 2012 as well as

the transcript of this session. Plenary sessions of the Houses of the Parliamentary Assembly of BiH have been digitally recorded since 22 May 2007, and they can be accessed online since 20 February 2008. In addition, parliaments in BiH publicly announce their work programme for the current year. "Transparency of the PA BiH during the 2006-2010 mandate period is one of the positive aspects of work of the supreme legislative body of the country, resulting in good cooperation with the media, NGOs, and interested citizens, as well as continuous updates to the PA BiH's website, which is one of the best websites, containing a lot more useful information than it did at the beginning of this Parliament's mandate. Also, the Parliament of BiH is open to the interested institutions and citizens [...] who want to actively follow PA BiH's plenary sessions. During this mandate, a press room has been opened for journalists reporting from the PA BiH, with 20 places and six computers with Internet connection".⁷⁵ All decisions made by the parliaments in BiH are published in the official gazettes (of BiH, entities, cantons, cities and municipalities) and all acts are, on that basis too, available to the public.

Depending on available space, citizens can be granted free access to sessions and meetings of the National Assembly of RS (NARS) and its working bodies, but they may attend the sessions only in the section of the assembly hall that is provided for listeners.⁷⁶ The public also has access to the work of parliamentary committees and boards. Thus, for example, with regard to the Constitutional and Legal Committee of the House of Representatives of the Parliamentary Assembly, the official web site of the PA BiH⁷⁷ provides information on the Committee's authorities, contact person, annual reports for 2010 and 2011 Committee's leaflet, and information about the Committee's activities.

However, political parties are trying to stifle any political life taking place outside themselves and generally suf-

fer do not allow expression of views different from the official ones, or the ones held by the party leader. Such circumstances have created a general apathy among the public, and the NGO sector still has no capacity or resources to participate in the legislative process more actively.

However, that there are problems in the work of the parliaments in terms of the relationship between the ruling parties and the opposition is witnessed by the following example: following the request of 1/3 of MPs in the NARS to include in the agenda of the 20th special session of the NARS a discussion of the 2008 Audit Report for the Investment and Development Bank Banja Luka (which is entirely state-owned, and whose Shareholders' Assembly is made up of the Government of RS), which contained an adverse opinion regarding the bank's lending, the MPs of the ruling parties in the NARS did not allow a vote on the agenda (thus precluding the inclusion of this point in the agenda) "and by doing so prevented the exposure of truth about the work of the IDB and public disclosure of information that has not been brought in tune with the policy of SNSD [*Alliance of Independent Social Democrats*] and its coalition partners DNS [*Democratic People's Alliance*] and SP [*Socialist Party*]"⁷⁸.

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?

SCORE 50

The constitutional and legal frameworks in BiH stipulate that parliaments report to the public, but these frameworks have not been fully worked out – primarily in terms of the obligation to establish closer contact between the citizen/voter and MP/councillor, because

there is presently no mechanism for the citizen/voter to directly contact the MP/councillor he/she has voted for.

Parliaments are only politically accountable to their constituents.

Since parliaments pass laws as general acts, there is no appeal mechanism in place for citizens to challenge a legal provision during a legal deliberation on their cases. Even when parliaments decide on individual issues relating to a particular person, no legal remedy is available against parliaments' decisions. Thus, Article 10 of the Law on Administrative Disputes of BiH⁷⁹ provides that administrative disputes (judicial reviews of administrative decisions) cannot be conducted in matters in which the Parliamentary Assembly of BiH directly makes decisions based on its constitutional powers.

The Constitution of BiH, as well as the entity constitutions and Rules of Procedure of parliaments, provide that MPs/councillors enjoy both civil-law immunity (an MP cannot be criminally prosecuted or held civilly liable for any act carried out during the performance of his/her function) and criminal-law immunity. Generally speaking, the immunity of MPs/councillors applies to both the conduct of MPs/councillors in relation to their work in parliament and the conduct of MPs/councillors outside parliament. Additionally, MPs/councillors cannot be detained without the prior approval of the Parliament to which they belong,⁸⁰ unless they were arrested at the scene for a criminal offence carrying a prison sentence of five years or more (or where detention is mandatory under the provisions of the Criminal Procedure Code). Also, if an MP/councillor invokes immunity, no criminal proceedings can be instituted against him/her as long as he/she is not stripped of that immunity by a legislative body.

Reports on Parliament's performance are made publicly

available. In addition to that, NGOs (such as CCI) publish their own reports in which they compare parliaments' work plans and passed laws, provide an assessment of parliaments' efficiency, and publish the activities of MPs/councillors.⁸¹

ACCOUNTABILITY (PRACTICE)

To what extent do the legislature and its members report on and answer for their actions in practice?

SCORE 25

Although there are constitutional and legal mechanisms in place requiring that the legislative bodies answer for their work and decisions to their constituents, in actual practice MPs/councillors answer solely to their parties, while contacts with citizens are intensified only prior to elections when MPs/councillors need the electorate's votes.

In practice, legislative bodies report to the public and other segments of government, and these reports are publicly available. As the legislative bodies are considered the most important segment of government, they have no obligation to submit special reports to any other authority.

Reports on the work of parliaments are available on their websites.

When complying with the decisions of the Constitutional Courts of BiH and the entities, parliaments in practice pass laws after the Constitutional Court's decision declaring a law or a particular provision of the law unconstitutional, respecting the legal viewpoints expressed by the Constitutional Court. However, the European Court of Human Rights passed the judgement in the "Sejdić and Finci" case almost a year ago, finding that the Constitution of BiH limits the passive voting

rights of members of national minorities to stand for election to the Presidency and the House of Peoples of the Parliamentary Assembly of BiH.

The European Court of Human Rights in Strasbourg⁸² therefore ruled that particular provisions of the Constitution of BiH are in violation of the European Convention on Human Rights. Although the decision of the European Court of Human Rights in Strasbourg was delivered on 22 December 2009, and although all members of the Council of Europe are bound to align their legislation or specific decisions with the positions of the Court in Strasbourg, the Constitution of BiH was not changed to allow national minorities to stand for election to the Presidency of BiH and the House of Peoples of the Parliamentary Assembly in the general election held in October 2010, nor any agreement to that effect has been achieved by the end of 2012.

INTEGRITY MECHANISMS (LAW)

To what extent are there mechanisms in place to ensure the integrity of members of the legislature?

SCORE 50

There is a relatively good legal framework that ensures adherence to the principles of integrity in the parliaments in BiH, primarily through the obligation of MPs/councillors to adhere to a certain code of conduct and to report all their income, as well as the provision prohibiting MPs/councillors from serving on certain boards in public enterprises within a certain period of time after they leave office.

In addition to the mandatory reporting of assets, there are certain legal restrictions prohibiting MPs or councillors in all parliaments in BiH from getting employed in

state organisations or public enterprises after the expiry of their term of office. Thus, the Law on the Prevention of Conflict of Interest in Governmental Institutions of BiH stipulates that elected officials (MPs or councillors) shall not serve, within a year after the expiry of their term of office in a legislative body, on the management board or steering board, or act in the capacity of an authorised person for a public enterprise nor shall they serve on the management structures or as directors of a privatisation agency.⁸³ However, the same provision in the Law on Conflict of Interest in Governmental Institutions of FBiH applies for six months after elected officials leave office (Article 5), whereas in the Law on the Prevention of Conflict of Interest in Governmental Institutions of RS⁸⁴ this provision applies only three months after the expiry of term of office and applies only to the same level of government. Thus, for example, it is possible for a councillor in a municipal assembly in RS, immediately upon the expiry of his/her term of office, to become a member of the supervisory board in a public company founded by RS, but he/she cannot serve on the supervisory board of a public company established by the municipality.

Lobbying is not regulated by law in BiH, which means that there are no registered lobbyists, so that MPs do not have any obligation to report on whether they have had contacts with persons who, in spite of the fact that they are not registered as lobbyists, lobby for the adoption of specific legislation in the course of the legislative process. Lobbying, i.e. professional advocacy of interests of others, is expected to become public and legally regulated in BiH soon. One of the commitments under the Anti-corruption Strategy is the passage of the lobbying law. The formal deadline for the adoption of this law by the Parliamentary Assembly of BiH is the end of 2012 year, which has not happened by the time of publication of this study.⁸⁵

The Rules of Procedure of parliaments contain provi-

sions stipulating that MPs must respect the dignity of the Parliament, that they are bound to speak to each other with respect, and that they are not allowed to use offensive terms or statements relating to the private lives of third persons. In addition, during the speeches of MPs in the parliament it is not allowed to heckle or in any other way hamper the MP or engage in any other behaviour that interferes with freedom of speech. Should an MP/councillor fail to comply with these rules, the Speaker may warn him/her, bar him/her from speaking, or remove him/her from the parliamentary session.

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of legislators ensured in practice?

SCORE 25

The question of the existence and prevention of conflict of interest in BiH is seen as a matter of marginal importance, and the relevant legal provisions are generally poor leaving room for MPs and councillors to easily find themselves in a situation that corresponds to a conflict of interest, while the law does not provide for such a situation. The Central Election Commission of BiH (CEC) has claimed a monopoly over determining conflicts of interest by altering the Rules of Conducting the Procedure for Establishing a Conflict of Interest and stipulating that only the CEC is competent to conduct the procedure, while all other interested parties (NGOs, citizens, journalists...) can only lodge an initiative. However, if the CEC deems that no conflict of interest exists, no remedy is available to the interested party to challenge its decision. In over two years since the implementation of the Law started in RS, only one person has been found by the Commission for Establishing

Conflicts of Interest in the Institutions of RS to be in a conflict of interest. In one case, which was initiated by TI BiH, one person held four simultaneous positions (one of which was the position of a councillor in the local assembly) but the Commission found that the person was not in a conflict of interest. The said councillor in the Zvornik Municipal Assembly was the head of the Health Insurance Fund of RS – Branch Office in Zvornik, president of the Board of Directors of the General Hospital in Zvornik, and member of the Supervisory Board of the RS Lottery. Although the Supreme Court of RS, acting on the complaint by Transparency International BiH, found that the elected councillor in the Zvornik municipal assembly had put his private interests above the common interest by holding an elected office in addition to performing three more parallel functions, and ordered the Commission to establish conflict of interest in the repeated procedure and impose the appropriate sanctions, this has not happened yet.

A report on the work of the Central Election Commission in 2011 states that a total of 35 sanctions were imposed in that year,⁸⁶ while the Commission for Establishing Conflicts of Interest in the Institutions of RS in 2011 issued 13 decisions, of which a conflict of interest was found to exist in only one case.⁸⁷

In practice, there are no known examples of any member of the House of Representatives having been suspended from the Parliament. In practice, in the work of the parliament there are lobbying or interest groups, who make contact with the elected MPs, but the parliamentarians do not have any legal obligation to disclose contacts with these groups, and for two reasons: there are no rules on the registration of lobbying or interest groups, and there is no obligation on the part of MPs to declare their informal contacts with what could be considered lobbying or interest individuals or groups. With the exception of occasional penalties in the form of reprimands or being barred from speaking, no fines are

imposed in the parliaments of BiH, nor are there cases in practice of MPs being punished for violating the code of ethics.

EXECUTIVE OVERSIGHT (LAW AND PRACTICE)

To what extent does the legislature provide effective oversight of the executive?

SCORE 25

Parliament has mechanisms to control the executive (government), but given the fact that the government is generally made up of members of the political parties that have a parliamentary majority, this kind of parliamentary “pressure” on the government is moderated to a significant extent.

There are provisions allowing the creation of the so-called inquiry committees,⁸⁸ which are formed in order to review the situation in a particular area or to establish facts about certain issues or events, especially in terms of the performance of individual government agencies, organisations, or holders of public office. However, these committees have no investigative or judicial authority. The government has the obligation to report regularly to the parliament, and MPs can use the institution of parliamentary questions or “question time” to ask questions to government ministries, while the government has the obligation to submit the required information to the parliament in a timely manner.

As a rule, the government proposes laws and the budget, and the parliament adopts them. The parliament fully participates in the adoption of the budget, especially in the amendment procedure, through parliamentary committees and in plenary sessions, and the government has the obligation to inform the

parliament on budget execution. The Parliament of BiH elects the State Ombudsperson and Auditor-General as well as members of the Central Election Commission of BiH, further to the proposal of the commissions that implement the public competition procedure and give recommendation to the BiH parliament for the election of the State Ombudsrson and Auditor-General.

The parliament has no power to directly check how the executive branch applies the rules concerning public procurement, but the parliaments can obtain reports on the work of the executive in relation to public procurement through reports of the public sector auditing offices.

LEGAL REFORMS (LAW AND PRACTICE)

To what extent does the legislature prioritise anticorruption and governance as a concern in the country?

SCORE 25

The legislature is not paying enough attention to the promotion of the principles of public accountability and anti-corruption combat, despite the fact that there are occasional parliamentary debates on corruption.

Although the Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption was adopted in the PA BiH in 2009, serving as a basis for the establishment of the said Agency, almost nothing has been done in practice. A commission for monitoring and supervision of the Agency’s work has been established within the Parliamentary Assembly. Also, the Anti-corruption Strategy (2009-2014) and Action Plan for the Fight against Corruption were prepared by the Ministry of Security and subsequently adopted,⁸⁹ but no progress has been made in this area

either. While BiH has ratified the UN Convention against Corruption, its legal framework for the fight against corruption has not improved as a result. The implementation of anti-corruption combat remains negligible at all levels, so it can be argued that parliaments do not play an instrumental role in the fight against corruption.

RECOMMENDATIONS

- It is necessary to develop a better relationship between the citizen/voter and the MP/councillor. In this regard, MPs/councillors would have to have an obligation to report to the people who elected them (the voters) and not to those who nominated them (political parties). To this end, an obligation should be introduced for MPs/councillors to be open to their constituents and receive them for interviews at a specified time, where voters would be able to voice their own concerns and concerns of their community;
- Regardless of the possible legal restrictions regarding confidentiality of data on assets of MPs/councillors, the issue of access to information about the assets of the elected representatives, both at the beginning and during their term of office, and especially at the end of it, remains an essential prerequisite for honest management of public affairs in the interest of citizens rather than one's own private interest. Given the level of corruption in BiH, such measure (enabling access to assets declaration forms of MPs/councillors) would constitute one of the mechanisms for reducing corruption of political elites and elected representatives in the legislature. Additionally, if MPs/councillors are found to have inaccurately reported their assets/incomes or failed to report changes to their assets/incomes, stricter penalties should be imposed against them, consisting not only of fines, but also of the loss of MP/councillor's status and illegibility to stand in future elections;
- In terms of establishing the existence of conflicts of interest, it is necessary to change the existing CEC's legal framework and practice stipulating that no one

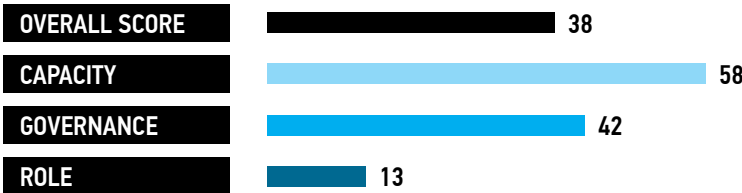
other than the CEC has the authority to conduct the procedure for determining conflicts of interest. This right should be given to all interested parties with the right to be a party to the procedure. It is necessary to amend the Law on Prevention of Conflict of Interest in Governmental Institutions of RS by defining precise criteria for determining the existence of a conflict of interest because past practice has shown that it is impossible to determine conflicts of interest, even if one performs four paid functions at the same time;

- Parliaments should be much more actively involved in the fight against corruption and through parliamentary procedures (committees and inquiry commissions) take actions aimed at curbing corruption systemically (legislative framework) and in individual cases (parliamentary inquiries);
- It is necessary to strengthen parliament's supervision and oversight over the executive and budget spending.

6.2. EXECUTIVE

OVERALL PILLAR SCORE: 38/100

STATUS: WEAK



SUMMARY

Although large in scale, adequately resourced, and based on sound legal provisions, the executive branch in BiH is fraught with numerous difficulties hindering a consistent and efficient performance of the functions stemming from the constitution and laws. Inefficiency, lack of accountability, lack of transparency, and lack of coordination between different levels of government remain the key characteristics of the executive in BiH.

STRUCTURE AND ORGANISATION

Executive power is concentrated at the state level (Council of Ministers, made up of nine ministries, and a tripartite Presidency), entity level (RS Government and FBiH Government, each having 16 ministries, a president and two vice-presidents), cantonal level (ten cantonal governments with a total of 95 ministries), and the level of the Brčko District. The state constitution and the constitutions of the entities accept the principle of separation of powers, making the executive independent of the other two branches of government. In addition to the state and entity constitutions, the work of the executive is regulated by special laws.⁹⁰ The executive is answerable to the legislature, which decides on its appointment and dismissal, and to which it is required to submit reports on its activities. As part of its responsibilities, the executive enacts decrees, decisions, instructions, conclusions and other subordinate legal regulations, which are subject to judicial review

through appropriate procedures for the resolution of administrative disputes.⁹¹

RESOURCES (PRACTICE)

To what extent does the executive have adequate resources to effectively carry out its duties?

SCORE 50

Following a highly complex constitutional setup of the country, the executive power is concentrated at the state level (Council of Ministers, made up of nine ministries, and a tripartite Presidency), entity level (RS Government and FBiH Government, each having 16 ministries, a president and two vice-presidents), cantonal level (ten cantonal governments with a total of 95 ministries), and the level of the Brčko District. Because of such constitutional structure, BiH is ranked among the countries with a very large public sector, with as much as 13.1% of GDP spent on the public

TABLE WITH SCORES

EXECUTIVE

OVERALL PILLAR SCORE: 38/100

DIMENSION	INDICATOR	LAW	PRACTICE
CAPACITY 58/100	RESOURCES INDEPENDENCE	100	50 25
GOVERNANCE 42/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY	50 75 75	25 25 0
ROLE 13/100	PUBLIC SECTOR MANAGEMENT LEGAL SYSTEM	25 0	

sector wage bill in 2011 and the percentage growing continuously from 11.1% of GDP in 2006,⁹² while other current expenditures of governments reached about 15% of GDP in 2010. Wages in the public sector, which employs a total of 3.5% of the population, with public employees (excluding state-owned companies and health workers) making up relatively large shares of the labour force (around 11%) and total employment (19%), are significantly higher than average levels in the private sector.⁹³

What remains a key problem in the operation of the executive branch is the lack of vertical and horizontal coordination between the many levels and institutions of government, with nepotistic and clientelistic appointments exacting a heavy toll on the competence of the executive.⁹⁴

INDEPENDENCE (LAW)

To what extent is the executive independent by law?

SCORE 100

The state constitution and the constitutions of the entities accept the principle of separation of powers, making the executive independent of the other two branches of government. In addition to the state and entity constitutions, the work of the executive is regulated by special laws.⁹⁵ The executive is answerable to the legislature, which decides on its appointment and dismissal, and to which it is required to submit reports on its activities. As part of its responsibilities, the executive enacts decrees, decisions, instructions, conclusions and other subordinate legal regulations, which are subject to judicial review through appropriate procedures for the resolution of administrative disputes.⁹⁶

INDEPENDENCE (PRACTICE)

To what extent is the executive independent in practice?

SCORE 25

The independence of the executive is significantly weakened by the way in which political parties operate. The political parties with predominantly autocratic leadership style and with no internal party democracy enable enormous concentration of real power in the hands of their leaders. Thus, it is in meetings between the leaders of the ruling political parties where actual executive and legislative decisions are made, and these decisions are subsequently merely sent for formal adoption, as was the case with the budget.⁹⁷ On the other hand, there are situations where the executive obviously usurps the authority of the legislative branch. For example, the Government of RS adopted a decision stipulating that the construction of Andrićgrad, a project financed by the Government of RS, was not subject to the Law on Public Procurement of BiH.⁹⁸ Similarly, usurpation of the legislature's authority by the executive takes form of authorisations, without parliament's decision, of the use of funds from the special purpose account for the purposes of government spending, a situation repeatedly pointed out by the Supreme Office for Public Sector Auditing.⁹⁹

TRANSPARENCY (LAW)

To what extent are there regulations in place to ensure transparency in relevant activities of the executive?

SCORE 50

BiH has freedom of access to information laws, which

provide that “all information in the control of public authorities is a public resource” and thus available to the public. The laws define a small number of exemptions from disclosure pertaining to “the interests of defence, security, crime prevention and detection of crime, the protection of the deliberative process of a public authority”, or “protection of confidential commercial information” and “protection of privacy of third persons”, with a proviso that the decision not to disclose information must be made on a case-by-case basis by conducting a public interest test, which must take into account both any harm and benefit that may result from such disclosure.¹⁰⁰

Non-harmonised legal frameworks between the state level and entity levels poses a serious obstacle to the consistent application of this right at all levels of government. While the state-level law meets all the requirements for proper implementation, including sanctions for violations of the law against both the competent authority and the responsible person within the institution, the entity-level laws do not provide for any sanctions in case of violations.

In another instance of overstepping its authority, the Government of RS adopted a conclusion determining that the provisions of the Freedom of Access to Information Law shall not apply to the minutes of meetings of the Government of RS, thus exempting these minutes from disclosure.¹⁰¹

The budget is adopted in the form of a law and as such is publicly available and published in the official gazettes at the state and entity levels.

Pursuant to Article 15.7, paragraph 1, of the Election Law of BiH,¹⁰² every candidate standing for elected office at the level of BiH or the entity level shall be obliged, no later than 15 days from the day of accepting candidacy for the elections, to submit to the CEC BiH a

signed statement on his/her total property situation. All candidates elected at all levels of authority except the level of BiH and the entity level shall be obliged to submit to the CEC BiH, within 30 days from the publication of the verification of mandates in the Official Gazette, a signed statement of their property situation. The obligation to submit assets declaration form also exists after the expiration or termination of the term of office.

The CEC published the assets declaration forms for years on its official website in accordance with this Law. However, following the decision of the Agency for the Protection of Personal Data, the Court of BiH, deciding on the appeal lodged by the CEC, ruled that the assets declaration forms could no longer be publicly available, on the grounds that that constituted a violation of the Law on the Protection of Personal Data.¹⁰³ This decision of the Court sparked off numerous reactions by NGOs and experts.¹⁰⁴

TRANSPARENCY (PRACTICE)

To what extent is there transparency in relevant activities of the executive in practice?

SCORE 25

Legal solutions that provide for transparency in the functioning of the executive are not applied in practice in a consistent and systematic manner. While the Global Integrity Report: Bosnia and Herzegovina – 2011 gave the legal framework a score of 92 (on a scale of 0 to 100), its actual implementation received a score of only 35 on the same scale.¹⁰⁵ According to a TI BiH's survey, access to information related to public procurement, privatisation, budget execution and operation of public enterprises remains an issue of particular concern.¹⁰⁶

A vivid example of deliberate concealment of information which is required by law to be made public was the

attempt of the Ministry of Finance, i.e. the Government of RS, to cover up the actual deficit (the amount shown was decreased by about 50 million Euros) in 2010, which was subsequently found in the report of the Supreme Office for Public Sector Auditing of RS.¹⁰⁷

A recent TI BiH's survey into the observance of the right of access to information shows that only 53% of institutions fulfilled their obligation to provide access to information in due time, so the procedure to access information takes on average over a month. An issue of particular concern is the fact that only 15% of institutions delivered the requested information in the form of a decision (administrative act), which is required by law, and without which citizens cannot seek further judicial protection of this right.¹⁰⁸

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that members of the executive have to report and be answerable for their actions?

SCORE 75

The powers and position of the executive are defined in the state and entity constitutions and special laws on the Council of Ministers and entity governments, based on the principle of separation of powers, which provide that the executive is primarily answerable to the legislature. Thus, the Council of Ministers is bound to submit, at least annually, annual reports to the Parliamentary Assembly regarding its work, and the Parliamentary Assembly may also request that the Council of Ministers submit special reports on other issues of interest.¹⁰⁹ The Constitution of BiH stipulates that the Council of Ministers shall resign if at any time there is a vote of no-confidence by the Parliamentary Assembly (Article 5, paragraph 4). Also, Article 15 of the Law on the Council of Ministers provides that the Parliamentary

Assembly must confirm the decision of the Chair of the Council of Ministers on individual dismissals in the Council of Ministers.

In addition to the aforementioned methods, the parliament exercises its control function over the executive through the institution of parliamentary questions or interpellations. These institutions are defined by the Rules of Procedure of the House of Representatives and House of Peoples of the Parliamentary Assembly of BiH, and allow lawmakers to ask specific questions to the Council as a whole or individual ministers for issues that fall within their remit, while in the case of interpellations MPs raise questions on general topics which are then debated in parliament.¹¹⁰

ACCOUNTABILITY (PRACTICE)

To what extent is there effective oversight of executive activities in practice?

SCORE 25

There are numerous examples in practice which bespeak the complete lack of accountability on the part of the executive. The executive received a score of 58 index points (on a scale of 0 to 100) in the 2011 Global Integrity Report, which, according to the methodology, indicates an extremely low level of accountability.¹¹¹

According to the reports of the state-level public audit office for the year 2011, institutions that consume 55% of the budget received an adverse opinion or qualified opinion. So far there have been no procedures for establishing the responsibility of persons heading the institutions that received adverse audit opinion. According to the 2011 report, only about 50% of audit recommendations were carried through.¹¹² Pressure of the executive on the audit offices is a frequent and common occurrence, and its manifestations range from public

accusations against auditors to various attempts to bring the auditors under the control of the executive.¹¹³

There is evidence that the executive officeholders used direct budget transfers as incentive payments to their own private firms or firms owned by their relatives. During Minister Vahid Hećo's term of office (2006–2010), the Ministry of Energy of FBiH distributed nearly KM 15 million worth of incentives to private businesses in FBiH and Brčko District. Journalists of the Centre for Investigative Journalism (CIN) found that of that amount at least KM 4 million had been allocated to companies whose owners or directors were members of or donors to the ruling parties in FBiH.¹¹⁴ Similarly, in RS the Investment and Development Bank, which is run by the Government of RS, recapitalised firms or gave soft loans to companies owned by high-ranking officials or their relatives.¹¹⁵

In these and similar cases investigations have never been launched and judicial institutions are mainly engaged in prosecution of corruption cases at lower levels of government.¹¹⁶

INTEGRITY (LAW)

To what extent are there mechanisms in place to ensure the integrity of members of the executive?

SCORE 75

Provisions of the conflict of interest laws apply, among others, to executive officeholders.¹¹⁷ These laws stipulate that ministers and deputy ministers cannot serve on the steering board, supervisory board, management board, executive board, or serve as directors of a public company or privatisation agency. Also, they cannot perform these functions in private enterprises in which government institutions invested capital, or which contract or otherwise do business with government au-

thorities, if the value of the business exceeds KM 5,000.

The laws on conflicts of interest exist at the levels of the state, entities and Brčko District. Implementation of the laws at the state level, in FBiH and Brčko District is within the remit of the CEC, while the implementation of the law in RS comes within the purview of the RS Commission for Establishing Conflicts of Interest. Non-harmonised legal solutions, as well as the differing practices between the CEC and the RS Commission for Establishing Conflicts of Interest in the application of the laws, leave room for making personal gains through conflict of interest.

INTEGRITY (PRACTICE)

To what extent is the integrity of members of the executive ensured in practice?

SCORE 0

Implementation of legal provisions on conflict of interest remains the exception, rather than the rule, as evidenced by the CEC Annual Report for 2011. The Report shows that in 2011 only two sanctions were imposed for violation of the conflict of interest law at the state level.¹¹⁸ The CEC largely ignores cases of conflict of interest at higher levels of government, while by sanctioning exclusively local officials it tries to create the illusion that it exercises its authority in accordance with the law.¹¹⁹

A striking example of how conflict of interest cases are ignored by the CEC is a case of the Prime Minister of FBiH Nermin Nikšić, who on 27 July 2011 appointed his brother Mirsad Nikšić as the acting executive director in charge of management and maintenance in the public company "Motorways of FBiH". Also, in the same company, as acting executive director for economic and financial matters was appointed Ivan Šakota,

son-in-law of Jerko Lijanović, Deputy Prime Minister and Minister of Agriculture of FBiH, who the CEC had previously declared ineligible to stand for election or be appointed to a position of an elected official, executive officeholder or advisor (a ban which is still in force), and fined in the amount of KM 1,500. After collecting relevant documentation, in August 2011¹²⁰ the TI BiH's Advocacy and Legal Advice Centre filed a report against the aforementioned persons, but this case has not yet been reviewed by the CEC, because, among other things, of the refusal of the FBiH government to provide the requested documentation to the CEC.¹²¹

PUBLIC SECTOR MANAGEMENT (LAW AND PRACTICE)

To what extent is the executive committed to and engaged in developing a well-governed public sector?

SCORE 25

The Governance Indicators of the World Bank Institute show that BiH has made very little progress in terms of overall improvement in the quality of governance, while in certain categories, such as the government effectiveness, it fared significantly worse in 2010 compared to 2005.¹²²

Following the general election in October 2010, the outgoing Council of Ministers continued working in a caretaker capacity throughout 2011 without the approved work programme and state budget, due to the failure of political parties to reach an agreement on the formation of a new Council of Ministers. The Council of Ministers was finally formed in February 2012, 480 days after the election. In 2011 the Council of Ministers drafted a total of 25 laws. By way of comparison, in the same year the Government of Montenegro drafted six times as many laws (151), the Government of Serbia

8.5 times as many (211 laws), and the Government of Croatia over ten times as many laws (257).¹²³

There is ample evidence that executive officeholders put their private and party interests before those of the general public. During their term of office most executive officeholders increase their wealth much beyond the regular income that they receive as members of the executive, an interesting phenomenon that is often looked into by some media outlets, but not by the official investigative agencies.¹²⁴

LEGAL SYSTEM (LAW AND PRACTICE)

To what extent does the executive prioritise public accountability and the fight against corruption as a concern in the country?

SCORE 0

In September 2009 the Council of Ministers adopted the Anti-corruption Strategy and Action Plan for 2009–2014. However, according to the monitoring report by TI BiH, carried out in September 2012, after almost three years from the adoption of the Anticorruption Strategy, out of 81 planned measures, only 2 have been completed, 32 partially completed, while 47 measures (almost 60%) was not implemented at all.¹²⁵

Although the Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption was adopted in December 2009, it was not until July 2012 that the Council of Ministers adopted the rules on the Agency's internal organisation, thus delaying the start of the Agency's work for almost three years.

Recommendations by the offices for public sector audit-

ing are very often completely ignored by the executive, so the same recommendations keep appearing in audit reports year after year. The executive lacks the will to take measures to establish responsibility for the numerous violations of the law as well as act on the recommendations that would lead to increased accountability with regards to public funds.¹²⁶ Instead of seeing consistent implementation of their recommendations, the audit offices are often faced with attempts by the executive to bring them under direct control. One such example was the request of the Government of RS to conduct an audit of the Office for the RS Public Sector Auditing, after the Office issued a report revealing that the Government of RS had deliberately concealed the actual data about the budget deficit.¹²⁷

According to the Global Corruption Barometer for 2011, 71% of citizens believe that the government is unsuccessful in fighting corruption.¹²⁸

RECOMMENDATIONS

- Ensure proper coordination between different levels of government in creating and implementing policies, while taking into account the unique constitutional setup of the country;
- Introduce a more systematic oversight of the executive by the legislature;
- Harmonise the laws governing access to information at different levels of government;
- Ensure the harmonisation of laws governing conflict of interest;
- Ensure public participation in the development of policies, budgets and draft laws.
- Provide adequate mechanisms for determining internal disciplinary liability within the executive branch for omission and violation of rules and procedures.

6.3. JUDICIARY

OVERALL PILLAR SCORE: 29/100

STATUS: WEAK



SUMMARY

Although significant progress has been made in providing the courts with necessary equipment and resources, courts continue to work in poor conditions. Looking strictly from the perspective of legal framework, courts are completely independent from the legislative and executive branches of government, both in terms of appointment and dismissal of judges, and in terms of the financing of courts. As part of the constitutional changes in 2002, the competence for

appointment of judges and prosecutors was shifted from legislative bodies to the High Judicial and Prosecutorial Council (HJPC), which represents the most significant step towards achieving the principle of independence of the judiciary from the legislature and the executive.

In practice, the public can generally obtain all relevant information on the organisation and functioning of the judiciary, as well as court rulings and decisions. Of course, this practice is subject to certain legal restrictions, such as in the cases of criminal proceedings against minors as well as marital and family disputes.

While there is a solid legal framework in force regulating the integrity of judges and the judiciary, practice reveals a different reality. Despite the significant steps taken by the HJPC to strengthen the integrity of the judiciary, it is still widely perceived as corrupt, on account of very few cases of criminal proceedings taken against a judge or prosecutor, or any judicial staff, for corruption offences.

Although there exists within the country a relevant legal framework, the judiciary is ineffective in achieving its statutory purpose – judicial review of administrative acts. In addition to being ineffective, the existing legal mechanisms, cannot, in principle, force the executive to comply with judicial decisions made in an administrative dispute. The judiciary has oversight over the executive only through the mechanism of the so-called administrative dispute before the competent court (district/cantonal).

The judiciary is completely inert and ineffective in the fight against corruption and unsuccessful in proceedings taken with the aim of sanctioning those who committed corruption offences.

TABLE WITH SCORES
JUDICIARY
OVERALL PILLAR SCORE: 29/100

DIMENSION	INDICATOR	LAW	PRACTICE
CAPACITY 44/100	RESOURCES INDEPENDENCE	50	25
		75	25
GOVERNANCE 42/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY MECHANISMS	50	25
		100	25
		50	0
ROLE 0/100	EXECUTIVE OVERSIGHT CORRUPTION PROSECUTION	0	
		0	

STRUCTURE AND ORGANISATION

BiH has four judicial systems that are completely separate in terms of organisation and responsibilities. According to the constitutional structure of BiH, the judiciary in the country is divided into several levels; however, these levels are not interconnected. At the entity level, there are supreme courts, district/cantonal courts and basic/municipal courts. In addition, in RS there are commercial courts (district commercial courts as courts of first instance and the Higher Commercial Court in Banja Luka as the court of second instance). In the Brčko District of BiH there is the Basic Court and the Court of Appeals. It is important to note that there is no formal link between the courts of the entities and those of the Brčko District, i.e. the Court of BiH does not have the jurisdiction to review in an appellate procedure or extraordinary remedy procedure the decisions of entity courts. Rather, each of these court systems operates autonomously and jurisdiction, as a rule, cannot be transferred from one system to another.

In addition to the system of ordinary courts, in BiH there are constitutional courts. These courts fall within the notion of the judiciary in a broader theoretical sense. The Constitutional Court of BiH has a dual responsibility: to determine whether laws and general acts are in conformity with the Constitution of BiH (abstract jurisdiction), and whether the decisions of the courts in BiH violate the rights of citizens and legal entities guaranteed by the Constitution of BiH and the European Convention on Human Rights (appellate jurisdiction). The Constitutional Court of FBiH and the Constitutional Court of RS have only abstract jurisdiction.

The judiciary is financed from 14 different budgets, depending on which administrative unit established a particular court on the basis of its laws.

RESOURCES (LAW)

To what extent are there laws seeking to ensure appropriate salaries and working conditions of the judiciary?

SCORE 50

According to the constitutional structure of BiH, the judiciary in the country is divided into several levels; however, these levels are not interconnected.

The Court of BiH has criminal, administrative and appellate divisions. The Criminal Division consists of three sections: war crimes, organised crime and corruption, and other criminal offences. Accordingly, the Appellate Division of the Court of BiH has three appellate sections: war crimes, organised crime and corruption, and other criminal offences.

At the level of the entities, there are supreme courts, district/cantonal courts and basic/municipal courts. In addition, in RS there are commercial courts (district commercial courts as courts of first instance and the Higher Commercial Court in Banja Luka as the court of second instance). In the Brčko District of BiH there are the Basic Court and the Court of Appeals. It is important to note that there is no formal link between the courts of the entities and those of the Brčko District, i.e. the Court of BiH does not have the jurisdiction to review in an appellate procedure or extraordinary remedy procedure the decisions of entity courts.

The Constitutional Court of BiH has a dual responsibility: to determine whether laws and general acts are in conformity with the Constitution of BiH (abstract jurisdiction), and whether the decisions of the courts in BiH violate the rights of citizens and legal entities guaranteed by the Constitution of BiH and the European Convention on Human Rights (appellate jurisdiction).

The Constitutional Court of FBiH and the Constitutional Court of RS have only abstract jurisdiction.

The judiciary is financed from budgets, depending on which administrative unit established a particular court on the basis of its laws. The justice system in the country is currently financed from 14 different budgets. The Court of BiH is financed from the budget of the joint institutions of BiH, all courts in RS from the RS budget, and the courts in the Brčko District from the District budget. In FBiH, the Supreme Court of FBiH is financed from the FBiH budget, while the cantonal/municipal courts are financed from the ten cantonal budgets.

Budget proposals for courts are developed by court presidents for “the following year based on the expenses of the current year and projections for the following year”.¹²⁹ The proposals are submitted to the High Judicial and Prosecutorial Council (HJPC) for comment. The Law on the HJPC defines that the HJPC “participates at its own discretion, in the drafting process of annual budgets for the courts and prosecutor’s offices”.¹³⁰ After that, the budget proposal is submitted to the Ministry of Justice (there are 14 ministries of justice at different levels), which then forwards it to the Ministry of Finance, i.e. the government (14 ministries of finance and 14 governments). Budgets are adopted by parliaments in the form of a law. During the budget year, it is possible, using a special procedure, to reallocate funds between different line items of the budget in the amount not exceeding 10% of that particular budget line item. Therefore, there are no independent “judiciary budgets”, but rather they are integral parts of the general budgets adopted in the form of a law. Although courts earn substantial revenue from court fees, they cannot freely use it. Instead, fees are fed into the general budget as revenue and afterwards awarded to the courts again. There is no legal restriction on either the amount of the budget in absolute terms, or the percentage thereof which is used to finance the judiciary relative to other

users of the budget.

Judges’ salaries are regulated by a special law (Law on Salaries and other Compensations for Judges and Prosecutors),¹³¹ but this law only applies to the salaries of judges (and prosecutors) but not to the salaries of other administrative staff.

RESOURCES (PRACTICE)

To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

SCORE 25

The salaries of judges are satisfactory. On the other hand, the judicial staff is relatively poorly paid. Although significant progress has been made in providing the courts with necessary equipment (computers, Internet, Court Management System (CMS) – system for integrated monitoring of court cases), courts continue to work in poor conditions; in small and inadequate offices, and lacking courtrooms. In addition to the lack of space, there is a problem with the financing of the courts. The Basic Court in Banja Luka has recently stopped sending writs (summons, etc.) to parties because of the debt to the Postal Service of RS.

In 2009 there was a significant reduction in the amount of funds allocated for courts and prosecutor’s offices in BiH compared to 2008. This downward trend was stopped in 2010. Thus, for example, the restructured budget of the courts and prosecutor’s offices for 2010 totalled KM 186,806,842.00, an increase of 3.5% compared to 2009.¹³² The salaries of judges are several times the average wage in BiH (which was KM 813 in 2011).¹³³ Thus, the judges of the first-instance courts receive a basic monthly salary of KM 2,400, judges of the second-instance courts KM 3,000, judges of the

supreme courts KM 3,800,¹³⁴ and the judges of the constitutional courts as much as 4,500 KM. This means that the positions of judges are highly sought-after. It is important to note that the above amounts are only basic monthly salaries, in addition to which judges receive salary increase based on years of service. According to the Bosnia and Herzegovina 2011 Progress Report by EC, total appropriations for the judiciary in BiH amount to approximately 0.79% of GDP.

The entities also have the Judicial and Prosecutorial Training Centres.¹³⁵ Mandatory training for judges is four days a year, while courts' administrative staff is under no legal obligation to undergo regular training.

INDEPENDENCE (LAW)

To what extent is the judiciary independent by law?

SCORE 75

Looking strictly from the perspective of legal framework, courts are completely independent from the legislature and the executive, both in terms of appointment and dismissal of judges, and in terms of the financing of courts. There was a long-standing initiative to establish a separate judicial budget, because it was believed that, if the judiciary had its own budget, it would be completely financially independent of the executive (which proposes the budget) and the legislature (which adopts the budget), but this idea was abandoned as impractical.

The Law on the HJPC of BiH governs the appointment/dismissal of judges and prosecutors. The HJPC has exclusive competence over the appointment of judges/prosecutors, with the exception of judges of the Constitutional Court of BiH and entity Constitutional Courts (who are appointed by parliaments).

As part of the constitutional changes in 2002, the competence for appointment of judges and prosecutors was shifted from legislative bodies to the High Judicial and Prosecutorial Council (HJPC), which represents the most significant step towards achieving the principle of independence of the judiciary from the legislature and the executive. Furthermore, the majority of HJPC members are judges/prosecutors, which opens the way for the selection of high-quality and professional candidates to judicial and prosecutorial offices.

Law on the HJPC lays down the requirements for the appointment of judges and prosecutors. In addition to basic requirements (BiH citizenship, physical and intellectual aptitude, completed law school and passed bar examination),¹³⁶ the candidates for judges/prosecutors are required to meet professional requirements. Thus, judges/prosecutors are required to be "individuals possessing integrity, high moral standing, and demonstrated professional ability",¹³⁷ and to have the relevant practical experience after having passed the bar examination. Judges of the Court of BiH, judges of the supreme courts of the entities, and judges of the Appellate Court of the Brčko District are required to have a minimum of eight years of practical experience after having passed the bar examination. The same goes for the prosecutors of the Prosecutor's Office of BiH and entity prosecutor's offices. Judges of the district/cantonal courts (as well as prosecutors of the district/cantonal prosecutor's offices) are required to have a minimum of five years of practical experience, and judges of basic/municipal courts are required to have a minimum of three years of practical experience.

The judges/prosecutors are appointed for life, subject to mandatory retirement age. Court presidents and chief prosecutors have a mandate lasting a specific number of years, and if not reappointed, they continue to work in the court/prosecutor's office as judges/prosecutors. Judges/prosecutors may resign or may be removed

from office. The process of removal from office is possible only through disciplinary proceedings initiated by the Disciplinary Counsel within the HJPC, and on the basis of grievances received from interested third parties. Disciplinary measures are imposed by the First Instance Disciplinary Panel within the HJPC. Appeals against the decision of the First Instance Disciplinary Panel can be lodged with the Second Instance Disciplinary Panel within the HJPC, and appeals against the decision of the Second Instance Disciplinary Panel may, in turn, be lodged with the HJPC as a whole. An administrative dispute may be initiated before the Court of BiH against the HJPC's final decision on disciplinary measure.

INDEPENDENCE (PRACTICE)

To what extent does the judiciary operate without interference from the government or other actors?

SCORE 25

The other two branches of government, as well as political parties and even the NGOs, have a particular way of exerting pressure on the judiciary. The executive and the legislature usually exert pressure through budget cuts. Political parties and NGOs often criticise the work of the Court of BiH and the Prosecutor's Office of BiH in prosecuting war crimes, claiming that the Court of BiH fails to prosecute war crimes committed against the ethnic group that these political parties or NGOs belong to. By 2010, the Court of BiH sentenced, with both appealable and non-appealable judgements, all convicted persons to a total of 1,328 years and six months imprisonment. Of that number, persons of Serbian ethnicity were sentenced to 1,067 years, persons of Croatian ethnicity to 137 years and six months, and those of Bosniak ethnicity to 124 years of imprisonment.¹³⁸

All candidates for judges and prosecutors must meet the minimum requirements in terms of formal educa-

tion, having passed bar examination and years of professional experience. In addition, given the constitutional provisions mandating that the number of judges and prosecutors in any given jurisdiction must correspond to the ethnic structure according to the most recent census in BiH conducted in 1991, in some courts there are often unfilled vacancies for judges simply because there are not enough candidates from certain ethnic group. The courts are therefore forced to work with fewer judges than envisaged, or to hire judges of proper ethnic background, but compromised quality.

The appointment of judges starts by public announcement of vacant positions. Public announcements are published in the official gazettes, in print media and on the HJPC's website. After applying for the position, candidates are required to take a competitive examination and, in the end, are interviewed. The decision on the appointment is made by the HJPC. The main objection to the HJPC during the re-appointment of judges/prosecutors was that the selection criteria were not clearly defined and the process itself lacked transparency, because the losing candidates were not given enough information as to why they had not been appointed. Of a total of 1,508 envisaged positions of judges, prosecutors and judicial associates in BiH, 1,383 (91.7%) positions were filled as at 31 December 2010.¹³⁹ During 2010 the HJPC appointed 251 judges, prosecutors, court presidents, chief prosecutors and deputy prosecutors as well as 53 judicial associates.

During 2010 a total of 1,085 complaints were lodged by citizens, parties to legal proceedings and third parties. Of these, in 2010 the Office of the Disciplinary Counsel (ODC) within the HJPC filed 17 disciplinary complaints (up from 15 in 2009). During 2010, there were 12 disciplinary measures pronounced – four written warnings, four public reprimands and four salary reductions.¹⁴⁰ However, during the same year, there was not a single resignation (as compared to two resignations in 2009).

In the period from 2006 to 2011 only three disciplinary measures were imposed where judges/prosecutors were removed from office. Disciplinary measures against judges were imposed mainly for neglect or careless exercise of official duties, unjustified delays in issuing decisions, issuing decisions in patent violation of the law or persistent and unjustified violation of procedural rules, and behaviour that represents a serious breach of official duties or that compromises the public confidence in the impartiality or credibility of the judiciary (one case).¹⁴¹ There have been no instances of direct influence on the work of the judiciary, known to the public. However, repeated calls for abolition of the state-level judiciary which are coming from RS can be viewed as interference in the independence of the judiciary. To this end, a proposed bill to repeal the Law on the Court of BiH and the Prosecutor's Office of BiH was brought before Parliament in early 2012, but it failed to receive endorsement.¹⁴²

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?

SCORE 50

There is a comprehensive legal framework that allows both the general and professional public to obtain information about the functioning of the judiciary and the decisions issued by the courts.

Procedural laws (regulating criminal and civil procedures) introduce the principle of transparency into the judiciary. Public access to all court actions is established as a general rule. It can be considered that the rules on public trials and envisaged exemptions are fully respected in practice. Courts submit reports on

their work to the HJPC. The courts' websites contain archives of court decisions which are primarily used by professionals for the purpose of keeping up to date with the current case law.

Candidates for judges, when they apply for vacant positions, are required to enclose the filled-in form showing the candidate's assets (a form with personal confidential information). Data from these forms are not publicly available. The HJPC does not have the authority to check the authenticity of the data from the applications. Another major threat to transparency and application of the Law on Freedom of Access to Information is posed by the Court of BiH's new Regulation on Access to Information, which introduced additional restrictions on accessing information in the possession of the Court, including the names of persons accused of crime.¹⁴³

TRANSPARENCY (PRACTICE)

To what extent does the public have access to judicial information and activities in practice?

SCORE 25

In practice, the public can generally obtain all relevant information on the organisation and functioning of the judiciary, as well as court rulings and decisions. Of course, this practice is subject to certain legal restrictions, such as in the cases of criminal proceedings against minors as well as marital and family disputes.

Each year the HJPC publishes on its website the annual report for the previous year.¹⁴⁴ In addition, the courts have their own websites. The website of the Municipal Court in Sarajevo,¹⁴⁵ for example, contains the report on the work of court departments for the first six months of 2011 and the Bulletin of the Municipal Court in Sarajevo of July 2011 with relevant information about

the work of the court. On the other hand, the official website of the District Court in Banja Luka¹⁴⁶ contains the current case law in the field of administrative law, civil law, and criminal and misdemeanour law. TI BiH's Advocacy and Legal Advice Centre received complaints about certain courts and prosecutor's offices drastically violating the principle of transparency by denying access to information which should be made public by law.¹⁴⁷

Citizens can get access to information about the work of the HJPC's ODC,¹⁴⁸ specifically about the work relating to disciplinary proceedings and sanctions imposed, but they cannot see the names of judges against whom disciplinary proceedings were conducted or the types of disciplinary measures that were imposed.

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?

SCORE 100

There are provisions in place to ensure that judges do their job according to the law, report on their work and are held answerable for their actions.

There are two basic methods of control over the judiciary. The first method includes the appellate procedure and the procedure of extraordinary judicial remedies in proceedings conducted before the courts. As a general rule, parties in criminal and civil proceedings are allowed, without exception, to appeal against decisions that they are dissatisfied with. Also, in certain circumstances, the parties can seek extraordinary judicial remedies and, when all ordinary and extraordinary judicial remedies are exhausted, it is possible to lodge an appeal with the Constitutional Court. The second

method of "control" over the work of the judiciary is exercised by the HJPC and justice ministries. While justice ministries have the authority to exercise administrative supervision over the work of the courts, the HJPC has the authority, through ODC, to conduct disciplinary proceedings and impose disciplinary measures against judges who it finds responsible for disciplinary offences.

Procedural laws (regulating criminal and civil proceedings) prescribe the mandatory content of judicial decisions. Every judicial decision should include a statement of reasons.

ACCOUNTABILITY (PRACTICE)

To what extent do members of the judiciary have to report and be answerable for their actions in practice?

SCORE 25

Although there exists a satisfactory legal framework regarding the duties and responsibility of judges, the courts are faced with a huge backlog of cases and slow resolution of pending cases. This leads to judges lacking a sense of responsibility to act according to the law and the internal rules regulating the order of solving court cases. Judges often fail to deliver their decisions in due time or it takes years for hearings just to be scheduled, and when the case finally comes before a judge, it has already been settled out of court. For example, if a motion for a temporary measure to sell certain real property in dispute is filed with a court, and the court never acts on the motion so the party to the proceedings sells property to a third party, this complicates the proceedings simply because the court failed to act on the grounds that the case is still waiting to appear before the judge, regardless of the urgency of the situation.

When issuing judicial decisions, judges have an obligation to provide an explanation of the facts established in the proceedings and of the application of both substantive and procedural law. Standard of right to a fair trial and the right of access to court under Article 6 of the European Convention on Human Rights requires judges to give in their decisions an adequate explanation for these decisions. The explanation must provide sufficient reasons why the court has made the given decision, and serves as a basis for lodging a judicial remedy, either ordinary or extraordinary, against the court's decision.

INTEGRITY MECHANISMS (LAW)

To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?

SCORE 50

Although there is a legal framework that provides for integrity mechanisms in the judiciary, it does not fully cover all aspects of the integrity of judges and the judiciary. The HJPC does not have the authority to verify the statement of a judge about his/her financial status, which prevents the HJPC from determining whether the judge gave false or incomplete information on his/her financial status. Furthermore, there are no rules on the so-called *ex-parte* communication between the judge and the parties to the proceedings, or between public prosecutors in criminal proceedings and lawyers as defence attorneys in criminal proceedings or attorneys in other proceedings.

When applying for a position of a judge, candidates are required to enclose a statement of their assets. The applicants are asked to list their own property and that of their family (spouse and members of the family

household), including real property, bank accounts and stocks. In addition, the applicants are required to state their financial obligations (receivables and liabilities) and provide an estimation of their total assets. The appointed judges are required, during their term of office, to automatically notify the HJPC of any changes in their personal income, personal property, family property, financial obligations and value of total assets as well as changes related to their spouse and members of the family household regarding their activities in public and private companies (see above). Finally, the appointed judges are required, not later than 31 March each year, to file an annual financial statement with the HJPC reporting, among other things, "the extra-judicial or extra-prosecutorial activities performed, including the amounts of remuneration"¹⁴⁹ This obligation exists during the entire term of office of judges.

The HJPC adopted a Code of Ethics for Judges.¹⁵⁰ Under this Code, judges must act independently of the executive and legislative branches of government, perform their duties in an impartial manner and always act in a manner that is fair to all parties to any proceeding; the judge has an obligation to act ethically, with dignity and in conformity with the dignity of the function he/she performs (integrity and propriety), as well as maintain the highest standards of professionalism and execute his/her duties in a professional, conscientious, diligent and efficient manner (competence and diligence). Under the Code, judges are not allowed to receive any gifts nor can any third party sponsor their private trips and similar private activities. If a judge discovers during the proceedings that he/she has a conflict of interest (e.g. that one of the parties or counsel or a third party in the proceedings is a close relative or friend) or if there are other circumstances indicating the judge's impartiality, the judge must immediately suspend all activities in the proceedings and ask the court president to be excluded from the particular case. If a party to the proceedings believes that the judge acts with prejudice, he/she has

the right to seek from the court president that the acting judge be challenged. When such a request is made, the judge must suspend the proceedings and not take any action in the proceedings pending the decision of the court president.

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of members of the judiciary ensured in practice?

SCORE 0

While there is a solid legal framework in force regulating the integrity of judges and the judiciary, practice reveals a different reality. In practice, it is always the same lawyers who are appointed as public defenders, earning huge income on that basis. This suggests that judges work in collusion with certain privileged lawyers, which casts doubt on the impartiality of courts when adjudicating in criminal cases where defence lawyer is mandatory. Despite the significant steps taken by the HJPC to strengthen the integrity of judges, they are still widely perceived as corrupt. The Bosnia and Herzegovina 2011 Progress Report by the European Commission¹⁵¹ emphasises “ineffectiveness of the judiciary, resulting in a large backlog of cases, and in particular failure to prosecute major cases of corruption in the courts and prosecutor’s offices. The prosecution of corruption focused too often on minor cases, while a number of high level corruption cases have ended in acquittals or suspended sentences. On the other hand, the increasing political pressures on the courts and prosecutor’s offices remain causes for serious concern”.¹⁵²

The Global Corruption Barometer¹⁵³ rated the judiciary in BiH with a score of 4.2 on a scale of 1 to 5, where 1

means the absence of corruption, and 5 extremely high presence of corruption.

There is a general perception in the public that the judiciary is corrupt, on account of very few cases of criminal proceedings taken against a judge or prosecutor, or other judicial staff, for corruption offences. This perception is the result of considerable sluggishness in the judiciary, due to the huge backlog of cases. Of course, corruption in the judiciary is part of a general problem in society. Corruption in the judiciary does not have necessarily the same characteristics as corruption in other areas of life (bribery, preferential treatment in public procurement and the like), but it is a sophisticated form of achieving certain benefits in proceedings before the courts.

Also, in criminal proceedings with *ex officio* [court-appointed] defence, it is always the same lawyers who get appointed as public defenders, while most other lawyers have never had the opportunity to defend the accused. The point is that the *ex officio* defence is very well paid by the court. “According to data collected by CIN, between 2005 and 2010 at least KM 32 million was spent from the budgets of 41 courts in BiH for *ex officio* defences. The total amount of money spent is unknown, because 32 courts failed to submit the required data, while 13 courts delivered incomplete data. The best paid public defender over the said six-year period was Omar Mehmedbašić, with a total income to the tune of KM 864,000. He is followed by Izet Baždarević with KM 548,000 and Selman Zijadić with KM 530.000.”¹⁵⁴

There is no legal restriction preventing judges from getting employed in the private sector after the termination of their judicial function. In practice, after the termination of their function, judges most often work as lawyers, notaries or in companies.

EXECUTIVE OVERSIGHT (LAW AND PRACTICE)

To what extent does the judiciary provide effective oversight of the executive?

SCORE 0

Although there exists within the country a relevant legal framework, the judiciary is ineffective in achieving its statutory purpose – judicial review of administrative acts. In addition to being ineffective, the existing legal mechanisms cannot, in principle, force the executive to comply with judicial decisions made in an administrative dispute. Even if a court determines that a specific administrative act is contrary to the law, it does not have the appropriate legal mechanism to force the administration authority to comply with the binding judicial decision. In a lawsuit brought by TI BiH against the Ministry of Finance of RS on the basis of the Law on Freedom of Access to Information, the District Court in Banja Luka issued the ruling¹⁵⁵ ordering the Ministry of Finance to submit the requested information to the plaintiff, but the Ministry failed to comply with the ruling.¹⁵⁶

The judiciary has oversight over the executive only through the mechanism of the so-called administrative dispute before the competent court (district/cantonal). An administrative dispute may be initiated solely against the final administrative act and can be brought only by an interested party who believes that the final administrative act has violated his/her rights or legitimate interests. This means that the judiciary can control the executive only through individual cases and only on condition that a party initiates an administrative dispute. Administrative proceedings are quite complicated and protracted, so the courts basically do not provide an effective form of protection for citizens.

Although the court decisions annulling final administrative acts are binding on the administrative authorities, in reality the authorities often go to great lengths in their efforts not to act on the court orders and continue issuing the same decisions. Or, the courts do not issue the rulings at all, and the party has to re-initiate an administrative dispute – this time a dispute of full jurisdiction, meaning that the party has to wait several years for the court's decision, and even if he/she wins the dispute, he/she will not be able to realise his/her right as the legal and factual situation will have changed by then. This is particularly evident in the procedure for the issuance of a building permit. For example, while the aggrieved party spends time pursuing a lawsuit against an administrative authority, the same administrative authority may issue the building permit to somebody else. Thus, by the time the aggrieved party wins the case, another investor may already have built the building, which means a new lawsuit and new costs for the aggrieved party. Therefore, it is not possible to initiate an administrative dispute in line of official duty, but only at the request of the parties. It is not possible to initiate an administrative dispute against general decisions of the executive, but it is possible to initiate the procedure for determining the legality of general acts of the executive before the competent constitutional court. However, this is also a long procedure with an uncertain outcome for the aggrieved party.

Furthermore, there is no effective legal mechanism for courts to ensure that the administrative authorities comply with their rulings. More precisely, this mechanism is very convoluted and it involves the so-called administrative proceedings of full jurisdiction, in which the courts may issue a decision that entirely supersedes the decision of the administrative authority; however, courts tend to avoid this practice, because the process of administrative enforcement is conducted by the same administrative authorities that failed to comply with the court ruling in the earlier proceedings.

CORRUPTION PROSECUTION (PRACTICE)

To what extent is the judiciary committed to fighting corruption through prosecution and other activities?

SCORE 0

The judiciary is completely inert and ineffective in the fight against corruption and unsuccessful in proceedings taken with the aim of sanctioning those who committed corruption offences. The issue is that the judiciary does not have the courage or independence to institute proceedings against high-ranking political and executive figures.

According to the Bosnia and Herzegovina 2011 EC Progress Report, prosecution of corruption cases remains low and there is a noticeable avoidance on the part of the judiciary to prosecute higher level corruption cases.¹⁵⁷

In early 2010 the Special Prosecutor's Office of RS filed an indictment in the "Medicinska Elektronika" [*Medical Electronics*] case against several people in Banja Luka for most serious forms of economic and organised crime. The persons accused were very close to the political Establishment in RS. The District Court in Banja Luka handed down the first-instance verdict acquitting the defendants¹⁵⁸ on the grounds that the Special Prosecutor's Office of RS had failed to prove the guilt of the persons who were alleged to have manipulated the stock market with the aim of minimising the value of the shares of "Medicinska Elektronika a.d. Banja Luka", in cooperation with suspects from the Investment and Development Bank of RS, and bought the state-owned capital of "Medicinska Elektronika a.d. Banja Luka" at a minimal price. By doing so, one of the defendants

who was already a minority shareholder in "Medicinska Elektronika" wanted to become the majority shareholder by buying the shares below the market price. This case only goes to highlight the fact that the judiciary (prosecutor's offices and courts) are not yet ready to handle corruption offences, especially if the persons accused are very close to the ruling structures.

According to TI BiH's survey "Prosecution of Corruption in the Courts and Prosecutor's Offices in BiH (2009–2010)"¹⁵⁹ of June 2011, all courts in BiH delivered 142 and 147 guilty verdicts in 2009 and 2010 respectively for the criminal offences of corruption (bribery, illegal interceding, abuse of office or official authority, embezzlement in office, fraud in office, forging of official document, etc.). However, of the 142 verdicts in 2009, prison sentence was handed down in only 26 cases (in other cases, fines or probation), whereas in 2010 sentence of imprisonment was passed in only 39 cases.

In the context of combating corruption in BiH, the key issue of concern is the fact that in the judicial practice so far there have been no cases of prosecution of the so-called systemic or structural corruption, i.e. higher level corruption, which generally affects the overall perception of how efficient the judiciary is in this area. Although this analysis did not include the qualitative dimension of the delivered verdicts, it can be concluded, in layman's terms, that the formal control institutions focus on the so-called situational corruption, or low level corruption, which certainly bears upon the structure and severity of sanctions imposed for corruption offences.¹⁶⁰

To illustrate this with a concrete example: the director of ASA Holding Nihad Imamović said in his statement given to the Prosecutor's Office of BiH on 9 June 2010, published by the "Glas Srpske" daily,¹⁶¹ that the president of SDP [*Social Democratic Party*] Zlatko Lagumdžija intimated that the company should pay

an extortion racket to the tune of KM 3.5 million (one percent of the total investment) for the adoption of the urban regulatory plan “Alipašino polje 7” in the municipality of Sarajevo – Novi Grad, where the company ASA Holding bought land and started construction. Sarajevo’s famous businessman then reported the president of SDP BiH and the mayor of the said municipality, claiming that they requested certain amount of money from him to arrange the adoption of an urban regulatory plan that would allow the company to continue the construction.

In the absence of sufficient evidence, the investigation against Lagumdžija and Hadžić in the “SDP Racket” case was suspended.¹⁶² In late 2011 the Prosecutor’s Office issued a decision suspending the investigation against the SDP president Zlatko Lagumdžija and vice-president of the party and mayor of the municipality of Sarajevo – Novi Grad Damir Hadžić in the “SDP Racket” case.

RECOMMENDATIONS:

- The judiciary in BiH should strive to secure a special judicial budget that is separate from the cantonal, entity or state budgets. The judiciary, as one of the government branches, has the right to a separate budget in order to increase the institutional and financial independence of the courts from the executive. Although it is not realistic to expect constitutional reconfiguration of BiH, reduction of the existing 14 sources of funding of the judiciary in BiH, and financing of all courts in BiH from a single budget, it would be advisable, at least in FBiH, to consider the option of having all courts financed from the budget of FBiH;
- Regardless of the institutional independence of the judiciary from the executive and the legislature in the selection of judges, the judiciary should take further steps to escape the influence of political power, which tends to control the judiciary. By showing that there is

no protection of those in the political Establishment and proving that all citizens are equal before the law, the judiciary will improve its rating and dispel the existing perception of courts as highly corrupt. To do this, courts must “get to grips” with major cases of both war crimes and serious economic crime, and build their integrity on the basis of such cases;

- The judiciary, along with the High Judicial and Prosecutorial Council of BiH, should continue efforts to reduce the backlog of cases and speed up access to justice, because the current backlog and long-drawn judicial procedures render the work of the judiciary pointless, especially in cases relating to business entities (commercial disputes, bankruptcy);
- Although a relatively satisfactory legal framework regarding public access to the courts has been put in place, the courts should have a more proactive approach to the public instead of just publishing statistical reports. It is therefore advisable that the Court of BiH change the existing Rules on Access to Information, which has recently introduced further restrictions on access to information in the possession of the Court, including the names of persons accused of crime;
- In the course of their work, the courts must fully address the issue of collusion between judges and a few privileged lawyers who are always appointed as public defenders and who, on that basis, receive huge amounts of funds from the budget;
- Courts must ask that the legislature change the concept of administrative dispute proceedings (judicial review of administrative decisions) because practice shows that administrative authorities ignore or fail to comply with the court decisions quashing administrative acts in appellate proceedings or refuse to accept legally binding positions of the courts. The concept would have to be changed in such a way to ensure that the court decisions entirely supersede the administrative acts and that the citizen can realise his/her right based on the court decision without re-instituting administrative proceedings.

6.4. PUBLIC SECTOR

OVERALL PILLAR SCORE: 35/100

STATUS: WEAK



SUMMARY

The public sector has a sufficient amount of resources at its disposal; however, they are not used adequately. The existing wage and employment policy, with particularly pronounced politicisation, is one of the main reasons for the current state of affairs in the public sector – be it public administration, public companies or local governments.

The legal framework regarding the independence, transparency and accountability of the public sector is relatively good; however, in practice there are numerous omissions in the application of defined legal provisions. The current legal provisions do not oblige public sector employees, with the exception of individuals standing for office in the executive and legislature,

to make the information regarding their personal assets and income public. The Law on Freedom of Access to Information allows citizens to gain access to information about the activities of organisations in the public sector, but there are many shortcomings in its implementation.

The Criminal Code of BiH and the corresponding entity laws do not contain discriminatory provisions exempting public sector employees from liability in cases of abuse. Despite this, very few individuals have actually been prosecuted for abuse of authority, which also indicates very poor application of the legal mechanism to ensure integrity. Experience of the NGO sector shows that public sector representatives are willing to engage in anti-corruption initiatives. However, the conspicu-

ous absence of high ranking civil servants and political figures in anti-corruption efforts remains a matter of considerable concern.

A common feature shared by all public sector institutions is their obligation to follow the Law on Public Procurement.¹⁶³ This law defines the public procurement system in BiH, with the Public Procurement Agency of BiH and Procurement Review Body (PRB) being responsible for its implementation. So far, the performance of these institutions has been described as poor, and the proposed amendments to the existing legislation aimed at enhancing transparency and accountability have been ignored.

TABLE WITH SCORES
PUBLIC SECTOR
OVERALL PILLAR SCORE: 35/100

DIMENSION	INDICATOR	LAW	PRACTICE
CAPACITY 25/100	RESOURCES INDEPENDENCE	25	500
GOVERNANCE 46/100	TRANSPARENCY	50	25
	ACCOUNTABILITY	75	25
	INTEGRITY MECHANISMS	75	25
ROLE 33/100	PUBLIC EDUCATION	50	
	COOPERATION WITH PUBLIC INSTITUTIONS, CSOS AND PRIVATE AGENCIES IN PREVENTING/ADDRESSING CORRUPTION	25	
	REDUCTION OF CORRUPTION RISKS BY SAFEGUARDING INTEGRITY IN PUBLIC PROCUREMENT	25	

STRUCTURE AND ORGANISATION

The public sector in BiH comprises all public institutions, organisations and companies at all levels providing certain public services to citizens and other entities. Therefore, it also encompasses ministries and other state administration bodies at all levels, local governments, public organisations and institutions such as agencies, public companies, health and educational institutions, etc. Overall, this complex system of organisations and institutions at all levels falls within the public administration segment of the public sector. A more detailed overview of the organisation of public administration is presented in Table 1. There is no single register of all public sector institutions due to the fragmentation of the administrative apparatus and complex division of powers. The number of these institutions is estimated at over 3000, with 1739 entities registered in the public procurement system.¹⁶⁴

A large number of public sector employees, including those that provide administrative services in social and

economic institutions (in health care, education, public companies, etc.), are not covered by specific public administration/civil service laws. Their work is regulated in laws and implementing regulations as well as internal regulations of the given institutions. The work of local government employees is regulated by the entity laws on local government¹⁶⁶ as well as civil service laws with respect to the local government employees' obligation to have passed the state licence exam. Public administration is within the remit of the relevant line ministries as well as public administration agencies at the state and entity levels.

A common feature shared by all public sector institutions is their obligation to follow the Law on Public Procurement. This law defines the rights, obligations and responsibilities of participants in the procurement procedures and the procedure for the control of public procurement. Application of the Law is binding for all administrative levels, namely BiH, entities, Brčko District, cantons, and cities or municipalities. It is also mandatory for all state-owned public entities and companies or local governments as well as public service providers such as water, electricity, natural gas, public

TABLE 1
STRUCTURE OF PUBLIC ADMINISTRATION IN BIH

ADMINISTRATIVE LEVEL	COMPETENCES/POWERS				
	BIH	FBIH	RS	BRČKO	TOTAL
STATE	1				1
ENTITY		1	1		2
CANTONAL		10			10
MUNICIPAL		79	62	1	142
DISTRICT				1	1
TOTAL ¹⁶⁵	1	90	63	2	156

transport and telecommunication.

RESOURCES (PRACTICE)

To what extent does the public sector have adequate resources to effectively carry out its duties?

SCORE 50

The current budget funds are adequate for the operation and current needs of the public sector.¹⁶⁷ However, these funds are insufficient for further development and capital expenditures. Along with employees in financial intermediation and insurance, this sector has salaries that are significantly higher than those in industry and service sector. Salaries in the public sector account for nearly 50% of total public spending, with the percentage being even higher at certain administrative levels. That there is a problem of high salaries and their sustainability is witnessed by the fact that in 2010 there was a downward adjustment of salaries in the public sector (by 10% to 25%) aimed at balancing the budget and complying with the requirements of the International Monetary Fund. However, despite these cuts, the salaries in the private sector are still notably higher than the average salary in BiH. Also, the salaries are not contingent on satisfactory performance, but on the administratively defined pay grades that lead to lack of initiative and commitment in the complex system of hierarchical relationships.

Thus, the public sector has become an attractive employer precisely because of the high salaries as well as other benefits that accrue from working in this sector (salary predictability, continuity of employment, better conditions for obtaining loans from banks, the use of mobile phone and, often, official car, etc.). At the same time, there is an evident disproportion between the amount of salaries and the quality of services delivered. According to the "Doing Business" periodic

studies conducted by the World Bank, BiH is among the worst-ranked countries in terms of the ease of doing business precisely because of the long permit issuing procedures, inefficiency of the administration, etc.¹⁶⁸

INDEPENDENCE (LAW)

To what extent is the independence of the public sector safeguarded by law?

SCORE 25

The Law on Civil Service in the Institutions of BiH¹⁶⁹ regulates the legal status of civil servants in the ministries, independent administrative organisations and administrative organisations within ministries, as well as other institutions in BiH. This law provides that the recruitment and the professional career advancement of a civil servant shall be based upon open competition and professional merit. At the same time, the law does not apply to a number of managerial positions, thus leaving room for undue political influence in the appointment procedures. The organisation and operation of civil service bodies in RS are defined by the Law on Ministries and the Law on the Civil Service in the Republic of Srpska Administration.¹⁷⁰ The latter regulates the activities of the civil service bodies, organisation and positions in the civil service bodies, selection and appointment to the civil service, duration and conditions of work in civil service, rights and duties of civil servants, financing of the civil service bodies, and relations of the civil service bodies to other administrative bodies. In FBiH, similarly, recruitment in public administration is regulated by the Law on Civil Service in FBiH,¹⁷¹ whereas in the Brčko District it is regulated by the Law on Civil Service in Administrative Bodies of the Brčko District.¹⁷²

Internal acts of public companies and local governments echo the principles contained in the state and entity laws on administration.

At the same time, the law imposes the obligation of impartiality on the public sector and places the responsibility for implementation of these principles on the public sector audit institutions, agencies working on prevention of conflict of interest, Central Election Commission of BiH and BiH judiciary.

INDEPENDENCE (PRACTICE)

To what extent is the public sector free from external interference in its activities?

SCORE 0

Any change of government at any level of the executive brings with it a change of management structures in the executive, public institutions and public companies, although these activities are inconsistent with employees' employment contracts. At the same time, this is a consequence of regulations in which the procedures for recruitment and work in the public sector do not directly apply to a number of consulting and management positions. Thus, the aftermath of the 2010 election in FBiH and the constitution of the new Government of FBiH saw a replacement of more than 200 persons holding senior positions in public institutions and companies with new managers,¹⁷³ who brought with them new employees and associates.

In open competition recruitments it is difficult to circumvent political impartiality because the selection committee is composed, in addition to persons from the Civil Service Agency, of the people who are by virtue of their function representatives of the institution concerned as well as representatives of certain political parties. Although legal regulations do not allow politicisation in the public sector and partisan activities of employees working in it, what is observed in reality is a strong informal influence of political parties on recruitment in the public sector.¹⁷⁴ This is particularly

true of the local government, where in recent years a huge number of people have been recruited "along the party line".¹⁷⁵

While the entity and state civil service agencies formally comply with the requirement for separation of the public sector from political interference¹⁷⁶ through the open competition mechanism, training and preparation of candidates for participation in public tenders, etc., the actual personnel policy is in the hands of the ruling parties during their term in office or their managers in the institutions of the public sector.¹⁷⁷

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?

SCORE 50

The current legal provisions do not oblige public sector employees to make the information regarding their personal assets and income public. However, individuals standing for office in the executive and legislature are obliged to provide the CEC BiH with the data on their income and assets at the beginning and end of their term in office. This applies to potential councillors, MPs as well as mayors and ministers in the governments at all levels, as stipulated by the provisions of the Election Law of BiH. The Anti-corruption Strategy (2009-2014)¹⁷⁸ provides for the streamlining of administration through introduction of e-governance, as part of which an "e-property and interests" database would be created of cases of conflict of interests and assets of elected persons and public officials. However, so far there has been no progress in the implementation of this measure under the Strategy.¹⁷⁹ In mid-2011 an initiative was launched to abolish public disclosure of assets declaration forms due to collisions of this practice with

certain provisions of the Law on Personal Data Protection, after which the Appellate Division of the Court of BiH barred the CEC BiH from publishing on its website scanned assets declaration forms of political candidates and elected officials. In this way, the public is denied information on the financial status of politicians and officials.

There are no publicly accessible registers of implemented public procurements, and in some cases these procedures are considered “confidential”. Statistics are kept of the amount and number of awarded contracts implemented by the Public Procurement Agency of BiH, but without going into detail about the tenders for public procurement. It was not until late 2010 that the Procurement Review Body started publishing its decisions on finished cases on its website, although it had been required to do so by law. Since it became operational six years ago, the Procurement Review Body published its decision only for a short five-month period (December 2010 – April 2011), and then, apparently due to lack of funds, the publication ceased.

Appointments in the public sector are made by the relevant body further to the proposal of the authorised proposer, regardless of the level of government to which the appointment refers, which is regulated by legal provisions on civil service and internal acts of the ministries and public agencies and companies. In most cases, fair and open competition is ensured through public disclosure of recruitments in the public sector, which is insufficient in itself to prevent conflict of interest in institutions.

TRANSPARENCY (PRACTICE)

To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?

SCORE 25

The Law on Freedom of Access to Information allows citizens to gain insight into the activities of the public sector. Previous practice and experience show that the application of the laws on freedom of access to information is at a very low level, mainly because there are no adequate sanctions for their violation. Surveys into the implementation of the laws on freedom of access to information¹⁸⁰ show that state-level institutions comply with the law more closely than those at the entity level. Most public institutions are required to prepare and release annual reports which are then published and made available to the public and relevant authorities.

Disclosure of assets, income and financial interests of public sector employees is not a required practice in BiH, except for the officials appointed in accordance with the Election Law of BiH. What happens as a result is that managers in public companies have substantial income and assets, which are not accessible and visible to the public and the citizens, nor are they subject to examination by the competent authorities. Another problem is the fact that there are no public registries of members of management and supervisory boards (and, since recently, audit committees), and consequently no way of detecting any interrelated financial interests within the public sector and influence of political parties on them.

Due to the lack of a unified approach, there are huge variations in how public procurements are implemented by the contracting authorities, a practice that is seen as non-transparent by the NGO sector. In many cases,

public procurements are implemented in contravention of the prescribed rules and without informing the Public Procurement Agency of BiH, as indicated by data on the number of contracts carried out relative to the public sector audit reports. What is particularly objectionable in this area is the cost of public tender documents, where some contracting authorities define prices that are inconsistent with the statutory rule stipulating that the cost of documentation cannot exceed the cost of its production. A number of appeals have been lodged with the Court of BiH, as the second-instance authority, arising from the dissatisfaction with the decisions of the Procurement Review Body.

Job vacancies are often published in local and regional newspapers that are not read in places where the vacancy is to be filled, which is clear evidence of unfair and inner-circle recruitment competition procedures. There is no list of officially recognised media outlets in which to advertise job vacancies. In practice, there are cases of appointments of persons who do not have the required qualifications or who have been or are being prosecuted for abuse.

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?

SCORE 75

Although the public sector institutions (public companies, agencies, etc.) are required to report on the results of their work to the parliaments (usually in the form of annual reports), this is usually done only to formally comply with the reporting obligation, without making serious analysis or establishing liability for results. Results of local governments are summarised in periodic reports on the work of Mayor and administra-

tive services, which are regularly submitted to the local assemblies/councils on the basis of rules defined in the statutes of local governments and rules of procedure.

The accountability of public sector employees is generally manifested as vertical answerability to their superiors, while the accountability for the performance and activities is seen as less important. The institution of “whistleblowers” is not yet legally defined except in cases where the prosecutor grants “immunity” to a “penitent witness”. Namely, the Criminal Procedure Code provides that the “witness collaborator” who has been granted immunity shall not be prosecuted except in case of false testimony. Corruption is a punishable offence for both bribe giver and bribe recipient, which makes bribery difficult to detect.

Few public sector organisations have elaborate mechanisms in place for dealing with complaints, while in most cases this mechanism boils down to a “complaint letter-box” or “book of complaints and objections”, with no feedback from the public sector to citizens/service users. Some sectoral laws, such as the Law on Public Procurement, do not recognise the institution of “whistleblowers” in the implementation of public procurement procedures, making the detection of irregularities and corruption very difficult. Several instances of establishing a “watchdog” function in public procurement by the NGO sector have contributed to increasing the accountability of contracting authorities for these activities. However, this positive practice remains largely underutilised by the Public Procurement Agency.¹⁸¹

ACCOUNTABILITY (PRACTICE)

To what extent do public sector employees have to report and be answerable for their actions in practice?

SCORE 25

The existing mechanisms of control of public sector employees are effected through regular reporting to the senior managers that every institution has within their structure. Additionally, there is a formal system of performance appraisal of employees on an annual basis, but in practice this mechanism is used superficially, having no appreciable effect. There is no evidence of internal mechanisms to curb corruption being put in place in public sector institutions.

There is no independent body in charge of conducting investigations into charges of corruption. Under the Criminal Procedure Code of BiH and the corresponding entity laws, criminal proceedings may only be initiated and conducted upon the request of the competent prosecutor, while the parties that may participate in the investigation include the police authorities, courts, SIPA (State Investigation and Protection Agency) and other legally-defined control institutions. Past practice shows that this mechanism was ineffective in prosecuting corruption cases.

The existing mechanisms for dealing with complaints regarding implementation of public procurement procedures are very poor. The work of the Procurement Review Body (PRB) of the Public Procurement Agency has been documented on numerous occasions in terms of a large backlog of cases and non-transparent operation of this institution. Although it was obliged to publish its decisions on the Agency's website, the PRB has just recently started doing this, but without releasing details about the cases. Following unsatisfactory

decisions of the PRB, a number of criminal complaints have been lodged with the Court of BiH for abuse in public procurement procedures.

So far, few persons have been prosecuted for abuse of authority.¹⁸² Of those, the majority are employed in the police, and almost none in the inspectorate, education and health, although these areas have for years been perceived as "the most corrupt".¹⁸³ The most common penalties are disciplinary measures such as reduction of salaries and suspension, while dismissals are rare. So far, there have been only a few cases of imprisonment.

The mechanisms for citizens to lodge complaints are mostly put in place to satisfy the form and only rarely are citizens given any feedback. As many public institutions are introducing quality standards (e.g. ISO 9001:2000), they have the obligation to regularly assess customer satisfaction, but this generally amounts to periodic surveys rather than a real feedback mechanism where citizens could give their comments, opinions and suggestions.

INTEGRITY MECHANISMS (LAW)

To what extent are there provisions in place to ensure the integrity of public sector employees?

SCORE 75

The laws on conflict of interest at the state and entity levels and in the Brčko District¹⁸⁴ regulate the prevention of conflicts of interest, accepting gifts, use of services, etc. for elected officials, executive officeholders and advisors in government institutions who exercise public duties. The law also specifies that these persons must act legally, effectively, impartially, honestly and

they must apply the principles of responsibility, integrity, due-diligence, transparency and credibility.

The behaviour of civil servants is regulated by the ethical codes of the entity Civil Service Agencies. A State-level code of conduct for civil servants, regulating both prevention and detection of corruption, has not yet been adopted.¹⁸⁵ In the performance of his/her duties, a civil servant is required to respect the law and act only in the public interest. During his/her working hours, he/she must perform official duties responsibly and effectively. In the exercise of his/her duty he/she will use the funds entrusted to him/her with due diligence (*bonus pater familias*), and will not use the information available to him/her for private purposes.

The codes also prohibit seeking and receiving gifts as well as participation in political parties' management boards and bodies, participation in election campaigns, receiving additional income other than regular, etc.

Similar behaviour is expected of employees in local governments, although there are no specific regulations governing this area. In public companies the area of integrity has not yet been defined in a clear and systematic way.

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of civil servants ensured in practice?

SCORE 25

Here as well there exists a huge discrepancy between the defined rules and existing practices. Although trainings are organised on topics such as enhancing integrity and combating corruption, there are no adequate

control mechanisms and institutions to regularly collect data and uncover irregularities. In actual practice civil servants become members of management boards, participate in election campaigns, receive income other than that defined by law arising from some other engagements and the like. Furthermore, civil servants often charge "extra fees" for delivery of public services, thus acting in contravention of the law.

Public sector employees are generally not familiar with the provisions and principles of the ethical code and its supporting documents. What remains a matter of concern is the lack of independent control mechanisms to regulate and cover this area. There also remains a special problem with regard to integrity in public procurement as there are no mechanisms in place to prevent related persons from participating in them, so tenders are sometimes awarded to people who are related to the representatives of the contracting authority through family or other ties.

PUBLIC EDUCATION (PRACTICE)

To what extent does the public sector inform and educate the public on its role in fighting corruption?

SCORE 50

Although mechanisms such as the "office for dealing with complaints" in the police, "phone lines" in health facilities, etc. have been put in place, citizens do not use them. The tradition of distrust due to lack of response and feedback on the complaints discourages citizens from reporting corruption. There are no public promotion campaigns to encourage corruption-reporting, although this is envisaged in the national Anti-corruption Strategy.

The most successful examples of informative and educational corruption-curbing activities in the public sector are those of NGOs such as Transparency International BiH, Centres for Civic Initiatives, and Tender. However, the support of political figures is lacking even in these cases, leaving citizens disillusioned by the state of corruption in the public sector. An average citizen does not have sufficient knowledge of their rights in reporting corruption.

COOPERATION WITH PUBLIC INSTITUTIONS, CSOS AND PRIVATE AGENCIES IN PREVENTING/ADDRESSING CORRUPTION (PRACTICE)

To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?

SCORE 25

The experience of the NGO sector shows that in certain cases representatives of the public sector do get involved in anti-corruption initiatives. However, these activities are usually initiated through some NGO projects, where, once the project is over, there are no institutional links established. At the same time, the Anti-corruption Strategy of BiH (2009–2014) envisages a very important role for the newly established Agency for the Prevention of Corruption and Coordination of the Fight against Corruption. In addition to cooperating on programmes in the public sector, the Agency should take over the coordination of anti-corruption efforts with NGOs.¹⁸⁶

Given the recognised need for establishing institution-

alised cooperation with government institutions, as well as effective mechanisms for monitoring and evaluation of activities planned under the Anti-corruption Strategy, Transparency International BiH initiated the signing of Memorandums of Understanding with the Ministry of Security of BiH and the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption. This aims to promote the participation of civil society and NGOs in preventing and combating corruption as well as increase transparency and ensure effective access to information, with the aim of consistent implementation of the Anti-corruption Strategy. What remains a matter of great concern, however, is the conspicuous absence of high ranking civil servants and political figures in anti-corruption initiatives and efforts. In some cases, representatives of the opposition do take part in these initiatives, but often not as true champions of anti-corruption efforts, but because they see it as an opportunity to win “political points”.

REDUCTION OF CORRUPTION RISKS BY SAFEGUARDING INTEGRITY IN PUBLIC PROCUREMENT

To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?

SCORE 25

The Law on Public Procurement Law regulates public procurement for all institutions and organisations in the public sector, defining the rules for public procurement procedures and awards. Its application in the last five years has brought order, but also contributed to the

development of new forms of abuse in the expenditure of public funds. For public procurements whose value is lower than KM 50,000 the Law does not require open public invitation to interested parties; instead, the contract is awarded to one of three qualified bidders on the basis of “competitive request for quotations”, which is analysed in more detail in the relevant chapter of this study.

Implementation of public procurement is controlled by the Public Procurement Agency of BiH and the Procurement Review Body. However, the Agency does not have a registry of all the institutions that are required to conduct public procurement procedures and data on the number and value of all contracts awarded in this way.

RECOMMENDATIONS

- Introduce formal feedback mechanisms and obligation for public sector organisations to conduct customer satisfaction surveys,
- Create a new remuneration policy for public sector employees, based on performance and work results,
- Amend laws and implementing regulations with the aim of introducing recruitment which would depend on the performance and contribution within the existing scope of work,
- Create a public registry of all persons holding public office, that is, the registry of all those who are part of the public sector but are not employed under the laws civil service/public administration (including advisors, deputy managers, members of management and supervisory boards, etc.),
- Revise the laws on conflict of interest and establish new mechanisms (independent bodies) for their implementation, such as parliamentary commissions or the newly established Agency for the Prevention of Corruption and Coordination of the Fight against Corruption,
- Enact laws to regulate lobbying activities towards government institutions,
- Change the method of appointing the selection committee within the implementation of public vacancy advertisements and recruitment of staff,
- Strengthen the role of the Ombudsperson and his/her influence in disputes relating to complaints about the recruitment process,
- Define a rigorous policy of sanctions by the Central Election Commission of BiH for proven interference by political figures in the selection and professional advancement in the public sector,
- Enact legislation and subordinate legislation to oblige public sector employees (especially managers) to regularly submit data on personal assets and income to the authorities in charge of preventing conflicts of interests,
- Create a public registry of all those who are required to submit assets declaration forms, to be located within the body in charge of preventing conflicts of interest,
- Introduce integrity checks for persons who are appointed in the public sector as part of regular activities of agencies/departments responsible for civil service and bodies in charge of preventing conflicts of interest,
- Improve the existing Law on Freedom of Access to Information, and introduce penalties for non-compliance into the entity Laws,
- Enhance transparency of the Public Procurement Agency of BiH and the Procurement Review Body by improving the reporting policy and ensuring strict adherence to the defined rules on disclosure,
- Introduce the institution of “whistleblowers” into the domestic law through adoption of laws in entire BiH,
- Establish closer cooperation between the departments for public sector auditing and competent prosecutorial authorities by defining mutual rules regarding liability for failures identified in audit reports, and through better mechanism to facilitate coordination between representatives of these institutions,
- Ensure better oversight by the legislature of the performance of the executive and the public sector through active utilisation of available mechanisms such as parliamentary questions, interpellations, formation

of specific parliamentary commissions and the like,

- Improve the existing rules of civil service agencies/ departments regarding the performance appraisal of public sector employees, particularly in terms of accountability and integrity, by involving all relevant stakeholders in this process (citizens, businesses, nongovernmental organisations and the public),
- Systemically regulate the legislation governing local governments and public companies, with the aim of improving the integrity of employees in these areas,
- Redefine the mechanisms to control the implementation of the code of ethics at all levels through publication of regular public reports and initiation of discussions in the relevant parliamentary committees.

6.5. PUBLIC CONTRACTING

OVERALL PILLAR SCORE: 28/100

STATUS: WEAK



SUMMARY

The public procurement system in BiH was formally established upon adoption of the single Public Procurement Law (PPL).¹⁸⁷ However, compared with other European countries, including those in the region, BiH lags behind in this area. The public procurement system in BiH has not been brought into line with the European Directives on public procurement, leaves much to be desired in terms of the quality of its work, and suffers from problems resulting from the complex constitutional setup of BiH, unstable political situation, as well as the challenges faced by BiH as a country in transition.

The highest scoring aspect of the public procurement system is the legal framework regulating it. This framework, however, also requires radical improvements, in synchrony with reforms of other NIS pillars. In this, the important role should be played by civil society and the media, while minimising the influence of political parties and related business oligarchies.

STRUCTURE AND ORGANISATION

The public procurement system in BiH is based on two central authorities: the Public Procurement Agency (PPA) and the Procurement Review Body (PRB). The PPA, based in Sarajevo, has two branches without legal personality status (in Banja Luka and Mostar). The Agency is an independent administrative organisation that reports to the Council of Ministers of BiH. Albeit

the central body for the territory of BiH, the Agency does not perform procurement per se. The PPA has a Director and the Board. The board has seven members, who are: Minister of Finance and Treasury of BiH and Finance Ministers of the entities, while other members are elected from among experts, on the basis of open competition. Brčko District appoints an observer to the Board. The Director of the PPA as well is an observer to the Board.

The basic functions of the PPA are:

- a) proposing amendments to this Law and its Implementing Regulations ensuring the effectiveness and suitability of that legislation;
- b) reinforcing the awareness among the contracting authorities and the suppliers of the public procurement legislation and its objectives, procedures and methods;
- c) collecting, analysing and publishing information about public procurement procedures and awarded

TABLE WITH SCORES
PUBLIC CONTRACTING
OVERALL PILLAR SCORE: 28/100

DIMENSION	INDICATOR	LAW	PRACTICE
CAPACITY 25/100	RESOURCES INDEPENDENCE	50	250
GOVERNANCE 33/100	TRANSPARENCY	75	25
	ACCOUNTABILITY	50	25
	INTEGRITY	25	0
ROLE 25/100	MAINTAINING OPEN BIDDING AS GENERAL RULE (LAW/PRACTICE)		25
	REDUCE CORRUPTION RISKS BY SAFEGUARDING INTEGRITY IN PUBLIC PROCUREMENT (PRACTICE)		25

public contracts;
 d) providing technical assistance and advice to both contracting authorities and suppliers;
 e) establishing systems for monitoring the compliance of the contracting authorities with this Law;
 f) initiating and supporting development of electronic procurement;
 g) submit annual report to Council of Ministers of BiH, etc.¹⁸⁸

The PRB is also an independent administrative organisation with legal personality, headquartered in Sarajevo. The PRB is responsible for second-instance administrative review of all decisions of contracting authorities. The PRB reports on its work to the Parliamentary Assembly of BiH, which also appoints its members. The decisions of the PRB may be appealed to the Court of BiH.

Public procurement in BiH is decentralised and all responsibility rests with the contracting authorities, of which there are about 2,000 in the country, according to the PPA's estimates. However, by the end of 2011, only 919 contracting authorities registered in the specialised central Wisppa application (Web information system for Public Procurement Agency) and submitted reports on awarded contracts in 2011.¹⁸⁹

RESOURCES (PRACTICE)

To what extent do public contracting entities have adequate resources to effectively carry out their duties?

SCORE 25

Public procurement in BiH is completely decentralised, which is consistent with the country's decentralised administrative design.

The following public authorities are required to apply

the Law:

1. administrative authorities at all levels,
2. public entities that are financed predominantly from public funds,
3. public enterprises carrying out certain activities defined by the Law over which a contracting authority may exercise a dominant influence.

All responsibility for procurement rests with the contracting authorities.

The capacities of contracting authorities to implement the Law vary widely, especially in terms of staff qualifications. There are authorities that have separate organisational units dealing solely with public procurement (departments, sections, units, etc.), but there are also ones where public procurement is handled by only one individual who is at the same time in charge of other responsibilities. Despite these differences, generally speaking, the capacity of contracting authorities for conducting public procurement is low, the quality of staff's training is inadequate, and the training organised by the PPA and other independent organisations is not systematic, sustained, or sufficient.¹⁹⁰ The Law does not define the personnel carrying out public procurement, or their qualifications/expertise. It provides that the contracting authority is obliged to appoint a Procurement Commission (in case of procurements below primary threshold values, establishment of the Commission is optional). Commission members must be familiar with public procurement legislation and at least one member should have special expertise in the area related to the subject of the procurement.¹⁹¹

In practice, the PPA has been most involved in advisory matters, preparation of draft laws and implementing regulations, collection and analysis of problems encountered in the implementation of the regulations, and defining attitudes.¹⁹²

The PPA is funded from the budget. The PPA has adequate working conditions in terms of office space and equipment, but not in respect to the skilled staff, because not all positions envisaged by the existing internal regulation on job classification have been filled.¹⁹³ There are also problems in financing, which is neither adequate nor timely. Although the Directives 2004/17/EU and 2004/18/EU envisage the introduction of e-procurement, it has still not been introduced in BiH and nor has the dynamic purchasing system.¹⁹⁴

Privatisation in BiH was carried out according to the procedures which were governed by separate regulations. Public procurement procedures and procurements carried out as part of the privatisation process are legally and institutionally completely separate and independent from each other. The issue of concessions is also completely excluded from the public procurement system, and the regulations are fragmented across all administrative levels, as is also the case with the legislation in the area of public-private partnerships.

INDEPENDENCE (LAW)

To what extent is the independence of public contracting safeguarded by law?

SCORE 50

Formally, the foundation has been laid for the public procurement system to be independent (PPA and the PRB). However, there are no regulations which seek to ensure the independence of action of participants in public procurement, or prevent undue political interference in public procurement procedures and contracting. There are, in part, provisions that regulate the operation of the Public Procurement Commission,¹⁹⁵ according to which each member of the Commission must sign a declaration of confidentiality and impartiality in relation

to the bidders. There is no institution that is dedicated to protecting public contracting employees against arbitrary dismissals or political interference.

The main reason for lack of formal independence of the public procurement system is the lack of interest among political parties and governmental actors to regulate this area, primarily because of the opportunity to reap gains in an unregulated system. The issue of lobbying is not regulated in a single piece of legislation. In 2011 the Draft Law on Lobbying was prepared in RS, but its implementation has been postponed.

INDEPENDENCE (PRACTICE)

To what extent is the public contracting free from external interference in its activities?

SCORE 0

There is undoubted political influence on public procurement, from failure to adopt the new Public Procurement Law,¹⁹⁶ to the appointment of officials in the institutions of the public procurement system (PPA and PRB), to direct implementation of procurement – political influence on the outcome of the tender, selection of suppliers and the like. The Agency itself is not sufficiently influential to maintain the independence of the system. It often comes under criticism¹⁹⁷ and political pressure. Additional reasons for this situation include: inadequacy or lack of implementation of sanctions, non-functioning of government institutions, lack of strategic development goals, etc.

TRANSPARENCY (LAW)

To what extent does the Law require that information relevant to the public procurement process is accessible to the public?

SCORE 75

One of the basic principles underpinning the public procurement system in BiH is that of transparency. It is contained in a number of provisions of the Law and implementing regulations, as well as standard bidding documents.¹⁹⁸

The priority public procurement procedure defined by the PPL is the open procedure, in which an invitation to tender is disseminated, without restriction, to any interested bidder meeting the eligibility requirements. All other procedures under the PPL are restrictive in one way or another, but they are exceptions and are carried out under strictly defined, specified circumstances. The PPL also envisages procedures that are not transparent, i.e. those whose publication is not required (negotiated procedure without prior publication of a procurement notice, competitive request for quotations in which the publication is optional, and direct agreement). Contracting authorities are required to send contract award notices to all bidders. Notices are published in the Official Gazette of BiH and on the public procurement website.¹⁹⁹ The PPL also contains provisions on the data in the public procurement procedures that are not available to the public. These include confidential information contained in any tender concerning the commercial, financial or technical information or trade secrets or know-how of the bidders.²⁰⁰ There is no legal provision requiring public procurement officials to make assets declarations, or the obligation to monitor the lifestyle and income of these officials.

Analyses indicate that the 2009 amendments²⁰¹ to

the PPL have significantly reduced transparency. The amendments raised the threshold values for procurement of goods and services from KM 30,000 to KM 50,000 and for procurement of works from KM 60,000 to KM 80,000 in procedures carried out by means of competitive requests for quotations without publication of a procurement notice. Also, the threshold for direct agreements was raised from KM 3,000 to KM 6,000. This has led to a substantial increase in the number of competitive requests for quotations and direct agreements, and decrease in the number of open procedures.²⁰²

The PPL does not provide for the monitoring of contract implementation, nor does it regulate changes and adjustments of contracts in execution, or the results and effects of the completed public procurement procedures (value for money), so the public does not have access to this information, except when particular procurements are covered by audit reports. The competence of the Agency terminates once a contract has been awarded.

The public is entitled to access information in the field of public contracting on the basis of the Law on Freedom of Access to Information, unless this information falls under the exemptions specified in this Law or other relevant legislation.

TRANSPARENCY (PRACTICE)

To what extent is information relevant to the public procurement process accessible to the public in practice?

SCORE 25

A great deal of information relating to public procurement is formally accessible to the public in practice. Laws and implementing regulations, standard bidding documents, invitations to tender, and contract award

notices are all available to the general public. Notices of tender procedures are also published in a timely fashion; however, they often contain vague or incomplete information, and mostly lack data on the total value of contracts.²⁰³ These shortcomings have been remedied following the introduction of the electronic publication of notices.²⁰⁴

In practice, contracting authorities often fail to publish procurement notices, abuse the legal option of competitive procedures (collection of three bids) to “rig” the tender procedure when the selection of contractors/suppliers has been arranged in advance, avoid an open procedure by splitting the procurement into several smaller procurements,²⁰⁵ apply exemptions from the Law arbitrarily, etc.

Although the work of the PPA is relatively transparent, the Agency is not sufficiently proactive in disseminating information on the public procurement system and in providing contracting authorities and economic operators with technical assistance.²⁰⁶ Records kept by the PPA in accordance with the Law are available to the public (annual reports, reports on concluded contracts, public procurement monitoring reports, etc.). The PPA produces annual reports on concluded contracts on the basis of information submitted to it by the contracting authorities (since 1 January 2010 through the WiSPPA application). However, the reliability of these reports is often questioned given that of about 2,000 contracting authorities that are subject to the PPL, in 2011 only 919 were registered in the WiSPPA system and delivering reports on awarded contracts, while in 2010 this number was 742.²⁰⁷ Also, the publication of these reports is known to have lingered for as much as ten months, with no explanation offered to account for the delays.

The transparency of the PRB is very low. For six years since it became operational, the decisions of the PRB were published only for a short five-month period (De-

cember 2010 – April 2011), after which the publication ceased, supposedly due to lack of funds. This has had serious consequences both in terms of the creation and standardisation of practice in appeal procedure as well as in terms of preventive action with regard to contracting authorities. Also, reportedly due to lack of office space, the PRB has not been able to keep the archives of completed cases in accordance with the relevant regulations.²⁰⁸

Apart from that required by law, the information held by contracting authorities is not publicly available (records of the course of the procedure, reports of the Procurement Commission, etc.). A smaller number of the contracting authorities summarise their analyses of awarded contracts in the form of reports submitted to the relevant institutions (activity reports or budget execution reports) and they are made available to the public only after they have been reviewed and published by the internal or external audit departments.

Training sessions for public procurement officials almost never include issues such as contracts, their types, protection of the rights of contracting authorities, monitoring contract implementation, etc. Standard Bidding Documents prepared by the PPA do not include contract models to serve as a template for contracting authorities. In practice, the quality of contracts is often questionable, which leads to adverse consequences for contracting authorities.²⁰⁹ In practice, no record is kept of the assets, incomes and lifestyles of public procurement officers before, during and after being in office.

ACCOUNTABILITY (LAW)

To what extent is the public procurement process accountable to the public by law?

SCORE 50

The PPL does not provide for the establishment of control and supervisory authorities in public procurement procedures. The PPA was originally established by the PPL as an advisory rather than supervisory authority. However, in 2008 the Council of Ministers of BiH authorised the agency to monitor the legality of application of individual procurement procedures in contracting authorities, the results of which are published periodically.²¹⁰ The actions of the PPA in case of violation of the PPL and other implementing regulations boil down to contacting the contracting authority to point out the identified irregularities and make recommendations for their elimination.

Public procurement audits are performed by the Supreme Audit Institutions,²¹¹ as professional and independent auditing bodies. They put their focus on the financial aspects of procurement, and the majority of audit reports give generalised findings that boil down to the statement that “the provisions of the Law have not been complied with”. A number of audit reports, especially those on performance audits,²¹² however, do analyse executed procurements, point to errors, irregularities or abuses, and make recommendations to contracting authorities. There are no regulations governing civil or social control mechanisms to monitor procurement procedures and public contracting.

The NGO sector has been increasingly active in disclosing irregularities, abuses and corruption in public procurement. The most relevant “whistle-blowing” organisation is TENDER, which is solely dedicated to disclosing abuses in the implementation of the Law on

Public Procurement.²¹³

ACCOUNTABILITY (PRACTICE)

To what extent is the public procurement process accountable to the public in practice?

SCORE 25

The Public Procurement Law provides for appeal procedure²¹⁴ and precisely defines the responsibilities of individual bodies at different stages of the procedure (objection – contracting authority, appeal – Procurement Review Body, second-instance appeal – Court of BiH). However, contracting authorities and economic operators find that the PRB does not do its job well because the procedures are overly bureaucratic and time-consuming, and its decisions are inconsistent and superficial.²¹⁵ What remains a matter of particular concern is the difference in attitudes and opinions between the PPA and the PRB, which generates confusion among public contracting authorities and gives the impression of lack of cooperation and coordination.²¹⁶

Other laws in BiH, adopted at the state, entity and cantonal levels, impose an obligation to establish internal audit, but it does not refer specifically to the field of public procurement. In practice, internal audits have not yet been established everywhere,²¹⁷ and where they have, they generally do not play a significant role in controlling public procurement procedures.²¹⁸

Control methods that have been established in the area of public procurement (Agency Monitoring and external audits) are neither sufficient nor effective.²¹⁹ Civic and social control mechanisms are virtually non-existent, except for the beginnings of emergence of “whistle-blowing” NGOs. Public disclosure of mistakes committed by responsible officers in the course of procurement procedures is not a common practice in BiH, as is not

the bringing of those responsible for omissions to account.

The liability of economic operators for failure to execute contracts as well as inadequate or untimely fulfilment of obligations is not subject to official records. There are no “black lists” of economic operators to warn contracting authorities and possibly spare them from the adverse consequences of signing a contract with such operators.

Proactive disclosure of information by contracting authorities, apart from that required by law, is largely absent. Among other things, the publication of procurement plans and their implementation could significantly contribute to the social control of budget spending. However, the poor or non-existent public procurement planning remains one of the more common irregularities detected by external audits. Other commonly detected irregularities include: imprecise tender documents, dividing the contract award procedures, submission of competitive requests without the additional notice to only three addresses, selection of suppliers who do not meet eligibility requirements or do not provide complete documentation, selection of suppliers based on fewer than three bids, failure to implement procurement procedures, using negotiated procedure without adequate arguments and the fulfilment of all the relevant conditions, etc.

INTEGRITY MECHANISMS (LAW)

To what extent are there mechanisms in place to ensure the integrity of the staff involved in the public procurement process?

SCORE 25

The Public Procurement Law contains very few anti-corruption provisions. One of the few examples is Article 27 of the PPL, which provides that contracting authorities are bound to disqualify bidders in cases of bribery and conflict of interest.²²⁰

There are no other specific provisions of the public procurement regulations to ensure the integrity of the officials involved in various stages of procurement, their required qualifications, or rotation. Also, the provisions relating to the conditions for the election of members of the Procurement Commission²²¹ provide that no person can be appointed to it who has in the last five years been convicted of a criminal offence that has elements of corruption, money laundering or bribery, including offences related to the financial interest of BiH or any other state.

The Law forbids contracting authorities from using the advice of any person who may have any direct or indirect interest in the result of the award procedure if that is likely to affect the genuine competition on the contract concerned. The Law also provides that any contract signed with the economic operator (supplier) must contain a contract condition that the supplier to whom a public procurement contract is awarded has no right to hire, for the purpose of performing the public procurement contract, individuals or legal entities that have participated in preparation of the tender documents or were member or invited expert of the

Procurement Commission functioning at the respective contract award procedure, for at least six months after the conclusion of the contract.

Not a single article of the PPL contains formal restrictions or criteria for public procurement officers in connection with the acceptance of gifts. The conflict of interest laws at different levels do not include provisions for all persons who have a responsibility in public procurement procedures under the PPL. Also, the PPL does not recognise the existence of a code of ethics for public procurement officials, and, in practice, very few institutions prescribe their behaviour.²²²

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of the staff involved in the public procurement process ensured in practice?

SCORE 0

Public procurement operations are carried out mainly as part of a position that is not directly related to public procurement, and therefore no special qualifications are required for performing this work. Also, there is no strict division of authority and responsibility. Only in recent years, public procurement has begun to stand out as a separate profession.

Due to lack of adequate staff or lack of resources for their recruitment, public procurement officers often simultaneously perform jobs that are irreconcilable for reasons of conflict of interest. As there are no regulations dedicated to acceptance of gifts by public procurement staff, the frequency and effects of this phenomenon cannot be monitored in practice. So far there have been no investigations against individuals, nor have any misdemeanour or criminal charges been

brought in relation to public procurement.

MAINTAINING OPEN BIDDING AS GENERAL RULE (LAW/PRACTICE)

To what extent does the procurement set-up establish open bidding as a general rule and ensure that it occurs in practice?

SCORE 25

The PPL lays down two criteria for evaluation of tenders: the lowest price of a technically compliant tender and the most economically advantageous tender, and gives examples of sub-criteria.²²³ There are no regulations or practical guidelines on how to conduct the evaluation of tenders by using a specific method, determining the relationship between individual sub-criteria, and evaluating tenders within one sub-criterion (weighting). Trainings that are conducted for public procurement officers devote very little attention to this matter. For that reason, and due to abuses of the existing provisions, the following irregularities have been observed in practice: eligibility criteria are established as sub-criteria for evaluation of tenders (mostly bidders' references); sub-criteria are not appropriate for the size and subject of procurement; methods for evaluation of tenders within sub-criteria are not specified, assignment of credits is highly subjective (there is no weighting); laying down the sub-criteria that favour one bidder, and are discriminatory against others.

The Law provides for cases when a competition can be closed without awarding a contract.²²⁴ The competences of the PPL cease with the provisions of the contract award. The Law does not regulate the issues of contract implementation, monitoring contract implementation, the final receipt of the subject of the contract or pay-

ment. These issues are regulated by other legislation (laws on contractual relations).

According to the records kept by the PPA, the proportion of the total public procurement that is performed through open procedure has been on the decline since 2010.²²⁵ At the same time, the proportion of negotiated procedure has dramatically risen,²²⁶ primarily as a result of increasing threshold values. The PPA thinks that the main causes for this are to be found in the commencement of reporting on concluded contracts by related companies, and the fact that natural and legal monopolies register their procurements in the WisPPA system as negotiated procedures without publication of a procurement notice. However, statistics show a significant increase in the use of competitive requests and direct agreement, which is indicative of a decline of accountability and transparency of contracting authorities.²²⁷ The actual scope of use of open procedure is further relativised by the fact that many high-value capital construction works are declared exemptions from the application of the PPL, sometimes with no legal grounds and in contravention of the Law,²²⁸ which means that they are also excluded from the statistics maintained by the PPA.

In RS, the most notorious examples are those of the construction of the Government's Administrative Centre and restoration of the Presidential Palace, both declared a state secret and exempted from the PPL, as well as the construction of the so-called Andrićgrad in 2012, which was declared a project of significance for RS by the Government of RS and also exempted from the application of the Law. In FBiH, the public company "Ceste Federacije BiH Mostar d.o.o." [Roads Directorate of FBiH] is a leader in conducting public procurement in breach of the Law. Namely, the auditors found that in 2011 the company used direct agreement to enter into contracts for the purchases of goods or services with 356 companies and individuals in the total amount of nearly KM 6.5 million "on the basis of previous

cooperation", although the PPL does not recognise this term at all.

There are other form of abuse as well, such as dividing the subject of procurement into smaller items to avoid the application of transparent procedures, as well as provision of numerous annexes to the already existing contracts, major modifications to the initial conditions, in particular by increasing the initial price severalfold.

REDUCE CORRUPTION RISKS BY SAFEGUARDING INTEGRITY IN PUBLIC PROCUREMENT

To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?

SCORE 25

The Public Procurement Law does not explicitly specify violations and sanctions for violations of the Law. However, under the Law, the PRB has the power, if satisfied that an officer of the contracting authority has committed a deliberate and intentional breach of this Law, to file misdemeanour or criminal charges with the relevant court or impose a fine amounting up to KM 4,000. The PRB also has the legal right to award damages to the bidder who has suffered loss or damage as a result of a breach of this Law.²²⁹

The application of these provisions is poor. From its inception (19 September 2006) to the end of 2011, the PRB received a total of 8,020 appeals. Of these, over 60% were resolved in favour of the bidder. However, the number of sanctions imposed, as well as misdemeanour and criminal proceedings instituted is small,

and the PRB has never awarded damages to any aggrieved bidders.²³⁰ The epilogue of these cases is often unjustified annulment of the procedures by contracting authorities or long-drawn court proceedings lasting for several years.

Certainly, this situation is also affected by the complicated relations within the PRB – continuous conflict over non-application of the rules of procedures, frequent decision making by majority vote, inconsistency in decision-making.²³¹ and in 2011, following the initiation of an investigation into alleged conflict of interest, one of its members used physical violence against the President of the PRB.²³² In addition, the cooperation between the PPA and the PRB is considered inefficient.²³³

Public procurement in the country is perceived by the business community as non-professional and venal.²³⁴ “The agency does not take any radical measures to step up the fight against corruption in public procurement and successfully protect the assets of taxpayers and citizens”.²³⁵

RECOMMENDATIONS

- The PPA should improve the existing Public Procurement Strategy: greater emphasis should be placed on control and repressive mechanisms, instead of primarily on prevention mechanisms, as has been the case so far; it is necessary to define objectives and action plans, as well as accelerate the implementation of the Strategy.
- The Council of Ministers of BiH should develop a Strategy to Fight Corruption in Public Procurement, as part of the overall Anti-corruption Strategy.
- Adopt a new public procurement law and its implementing regulations, which would be more aligned with the European directives on public procurement, and which should include, among other things:
 - open bidding as a general rule,

- introduction of modern solutions (dynamic purchasing, e-procurement, etc.),
- clear procedures defined by law,
- clear system of prequalification and qualification defined by law,
- all tender documents should be defined by law and easily available (free of charge),
- clear evaluation criteria and sub-criteria defined by law,
- clear and accessible evaluation methods,
- clear and transparent selection of candidates or bidders,
- it is necessary to define actors and behaviours in procurement that can be characterised as a fraud, secret agreements among the participants in the procedure, and other behaviours with elements of corruption, as well as define appropriate sanctions for these offences.
- tightening the existing sanctions multifold,
- clearly defined exemptions from the Law, with restrictive criteria for their application, as well as with provisions requiring that the opinion of the PPA on the justification of the exemption must be obtained beforehand.
- The obligation to ensure accuracy and availability of all the necessary registers, databases, reports, plans and other information on public procurement,
- The obligation to monitor the implementation of contracts and report on the performance of contracts,
- The obligation of contracting authorities to publish information on contracts, follow-up activities after the conclusion of the contract, as well as the effects of completed public procurement procedures (value for money),
- The obligation of the PRB to publish all decisions, reports and other information about the work of the PRB,
- Standardisation of the profession of public procurement officers: define the type and scope of their responsibilities, requirements that they must meet in terms of qualifications, expertise, special skills, as well as give the Public Procurement Agency the power to establish

a certification system for the performance of public procurement; establish a continuous training system; develop and adopt codes of ethics; define questions of conflict of interest and acceptance of gifts; establish assets declaration forms; and ensure the monitoring of lifestyles, etc.,

- Improve the appeal procedure (in line with the European directives),
- Harmonise other laws in both entities which are related to this area and which have a bearing on the establishment of a single public procurement market (licences, social security),
- Establish and publish on the website of the PPA or chambers of commerce the “blacklists” of ineligible bidders, i.e. those who failed to comply with concluded contracts, who executed them inadequately or untimely, or who caused adverse consequences to contracting authorities.
- Improve the system of electronic communication between actors in public procurement,
- Increase the capacity of central authorities, in terms of the number and expertise of staff, continuous funding, enhancing their stature and increasing influence), as well as the administrative capacity of contracting authorities and economic operators,
- Legally regulate and put in place mechanisms / improve the existing control mechanisms in public procurement (appeal procedure, monitoring of public procurement procedures, internal and external controls/audits, civil and social control, citizen participation in public debates),
- Legally regulate and put in place mechanisms for the protection of persons reporting irregularities, mistakes, abuses and corruption in public procurement,
- Raising awareness of the importance of an independent, transparent and accountable public procurement system by the PPA, authorities at all levels, as well as professional associations through the media, awareness-raising campaigns, etc.

6.6. LAW ENFORCEMENT AGENCIES

OVERALL PILLAR SCORE: 42/100

STATUS: MODERATE



SUMMARY

The current legislative framework governing the independence, transparency, accountability and integrity of law enforcement agencies has addressed these issues relatively successfully in the last few years. However, the problem lies in lack of its consistent and effective implementation, caused by the complicated state structure which reflects on the structure and responsibilities of law enforcement agencies, as well as the ever present indirect political interference in the selection of managers of agencies. These problems do not com-

promise the integrity of law enforcement agencies in terms of their functioning, but often interfere with their professional work.

STRUCTURE AND ORGANISATION

Law enforcement agencies is an English term that is used in many countries and international bodies to refer to police agencies and prosecutors' offices. The literally translated term "agencije za provođenje zakona" came into use in BiH with the presence of international organisations and bodies. Neither the legal and police theories nor the laws and regulations in BiH provide a definition of law enforcement agencies. The only legal basis that this issue can be related to is the term "authorised official", which implies that this person is working in the law enforcement agencies. Article 20 of the Criminal Procedure Code of BiH²³⁶ provides that the authorised official is "a person who has appropriate authority within the Police bodies in BiH, including the State Investigation and Protection Agency (SIPA), Border Police, judicial and financial police, as well as

within customs bodies, tax bodies and military police bodies in BiH. The term also refers to the associates or prosecution investigators of the Prosecutor's Office in BiH working under the authority of the Prosecutor". Law enforcement agencies can therefore be considered those agencies that are authorised to initiate and conduct investigations, i.e. those whose responsibilities include the filing of criminal charges on the basis of official actions taken. This chapter will mainly focus on the Prosecutor's Office of BiH, police structures at the state level which have direct competence in investigating and prosecuting corruption offences (Prosecutor's Office and Border police),²³⁷ as well as those at lower levels, which, in accordance with their legal obligations and responsibilities, participate in investigations and submit reports to the Prosecutor's Office of BiH.

At the state level these are:

- Prosecutor's Office of BiH
- State Investigation and Protection Agency (SIPA)
- Border Police of BiH (BP BiH)
- Directorate for Coordination of Police Bodies of BiH
- Ministry of Security of BiH

TABLE WITH SCORES
LAW ENFORCEMENT AGENCIES
OVERALL PILLAR SCORE: 42/100

DIMENSION	INDICATOR	LAW	PRACTICE
CAPACITY 50/100	RESOURCES INDEPENDENCE	75	50 25
GOVERNANCE 50/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY MECHANISMS	75 75 75	25 25 25
ROLE 25/100	CORRUPTION PROSECUTION		25

- Intelligence and Security Agency (OSA)
- Indirect Taxation Authority (ITA)

At the entity levels:

In FBiH:

- Prosecutor's Office of FBiH
- Police Administration of FBiH
- Financial Police of FBiH

At the cantonal level:

- 10 cantonal prosecutor's offices;
- 10 cantonal ministries of the interior (MIs).

In RS:

- Republic Prosecutor's Office of RS
- 5 district prosecutor's offices in RS
- Ministry of the Interior of RS
- 5 public security centres (PSCs)
- Tax Administration of RS

At the level of the Brčko District (BD):

- Prosecutor's Office of BD
- BD Police.

RESOURCES (PRACTICE)

To what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

SCORE 50

The budget of law enforcement agencies generally meets the operational needs of all agencies, but their current staffing and infrastructure have not been properly addressed. The Prosecutor's Office of BiH has a generally satisfactory budget within which it operates and performs its statutory activities. According to the existing legislative framework governing the financing

of BiH institutions, law enforcement agencies at the state level cannot perform internal reallocation between different sub-items within the allocated budget.²³⁸ According to interviews with members of the Prosecutor's Office of BiH and SIPA, staffing is unsatisfactory, and infrastructural capacities are partially satisfactory, but still insufficient for successful operation.²³⁹

The current number of staff in the Prosecutor's Office of BiH cannot monitor the work of even one of the many existing police agencies due to the large amount of reports on criminal offences received by the Prosecutor's Office. The problem is further compounded by the complicated structure of the police, i.e. the competences of police agencies in the state, where multiple police agencies at all levels can submit reports to the Prosecutor's Office. The inability to timely analyse received reports was also confirmed by members of law enforcement agencies. Business Anti-Corruption Portal notes that the Prosecutor's Office of BiH has limited resources and an overburdened workload which results in important organised crime cases being dropped because prosecutors could not afford investigative costs.²⁴⁰ SIPA is still understaffed, lacking 25% of the envisaged staff, largely key investigative staff – inspectors.²⁴¹ Also, the operation of police agencies is greatly hampered by the lack of legal provision that would allow external experts to be hired for periodical and temporary jobs. This includes special professions that there is a shortage of, such as professionals and experts in the rare professions relevant to criminal investigation (e.g. forensic expert, special high-profile financial investigator, cutting-edge software developer, etc.).²⁴²

The basic monthly salary for Prosecutorial Associates/Assistants is in the range from KM 1,200 to KM 1,800.²⁴³ This cannot be considered stimulating, and the Prosecutor's Office is therefore constantly facing the problem of attrition.

Salaries and remunerations of police officials at the state level are defined by the Law on Police Officials of BiH.²⁴⁴ Compared to most police agencies at lower levels, as well as other state agencies, these salaries and remunerations can be considered satisfactory. Infrastructural capacities available to SIPA and the Prosecutor's Office of BiH are inadequate, nor is the manner of their utilisation properly resolved. Shortage and inadequacy of the existing office space, as well as the problem of the understaffed Department for Organised Crime, Economic Crime and Corruption, were emphasised in the Communication on the Work of the Prosecutor's Office for 2010.²⁴⁵

In BiH, there is no special police unit that is charged solely with corruption investigations. All law enforcement agencies have organisational units that are responsible for corruption investigation as part of their overall competences. There are several police bodies in BiH that deal with detection and investigation of corruption-related crimes, and whose competences and practices are intertwined. Thus, this type of criminal offences can be investigated and reported to the competent Prosecutor by: SIPA, Border Police, Indirect Tax Authority (ITA), Police Administration of FBiH, Police Administration of RS, entity financial police, as well as Cantonal Ministries of the Interior in FBiH and Public Security Centres in RS. This is, in part, due to the uncoordinated regulatory framework, but also because of the decentralised police system in BiH. Therefore, SIPA is often prevented from acting in cases which, under the law on that Agency, are subject to its direct jurisdiction. The police system in BiH is based on the principle of coordination rather than subordination. This means that the Ministry of Security and state agencies have no formal power over entity MIs and agencies, and the MI FBiH and Police Administration of FBiH have no formal power over the cantonal MIs. At the state level there is the Directorate for Coordination of Police Bodies, which formally coordinates the work of all agencies

and MIs.²⁴⁶

INDEPENDENCE (LAW)

To what extent are law enforcement agencies independent by law?

SCORE 75

The legislative framework governing the operation of law enforcement agencies, their duties and work of their employees, provides a relatively sound basis for their independence.

The Law on Prosecutor's Office of BiH²⁴⁷ and the Law on the High Judicial and Prosecutorial Council of BiH²⁴⁸ contain numerous provisions on the independence of the Prosecutor's Office, and the Law on Police Officials contains provisions on impartiality and professionalism in the work of police officers.

All prosecutors in BiH are appointed by the HJPC and rules governing the manner of their appointment are based on the clear and professional criteria defined in the Law on the HJPC (Article 29, 39-47). Heads of police agencies are appointed by the Council of Ministers further to the proposal of the Minister of Security. The director and deputy director of a police body are appointed in accordance with the Law on Independent and Supervisory Bodies of Police Structure of BiH²⁴⁹ and the law establishing the particular police body.

The procedures for selection of the entity police heads are identical in both entities: heads are appointed by the entity governments further to the proposal of the interior ministers. The Independent Board for the Appointment of Police Managers of BiH is an independent body of the Parliamentary Assembly of BiH which implements the process of selection of candidates, proposes removal from office of police heads and deputy heads,

announces open competitions and reviews candidates' applications.²⁵⁰

There are no laws or provisions in the existing laws explicitly preventing political interference in the activities of law enforcement agencies. The Law on Police Officials of BiH provides that "in performing his/her duties, a police official shall act in an impartial and legal manner, guided by the public interest to serve and assist the public, promoting the development and preservation of democratic practices consistent with the protection of human rights and fundamental freedoms".²⁵¹ Police agencies operate "exclusively on professional grounds and [are] not involved in furthering, protecting or undermining the interests of any political party, registered organisation or association, any constituent or other people in BiH".²⁵² Police agencies are independent with regard to detection of criminal offences and application of police measures and actions aimed at their discovery. Under the provisions of the Law on Criminal Procedure, after they inform the competent prosecutor's office of the existence of a criminal offence, the autonomy of police agencies ceases and they work as instructed by the prosecutor's office.

The independence of prosecutors is fully regulated by the Law on HJPC (Article 82, paragraph 1), which strictly prohibits engagement in any function that is incompatible with or could be seen to interfere with the fair and impartial execution of prosecutorial function. No one can impose the obligation on prosecutors or instruct them to prosecute cases or offences for which there is no legal basis to prosecute, nor can anyone prevent them from prosecuting cases for which there is a legal obligation to prosecute.

INDEPENDENCE (PRACTICE)

To what extent are law enforcement agencies independent in practice?

SCORE 25

There are conspicuous examples of attempts to place the police under the control of political parties. In most cases, candidates for the heads of police agencies must have the support or enjoy the favour of the ruling political structures if they are to be appointed. Prosecutors are appointed by the HJPC, but as this institution comprises a certain number of prosecutors, there is a possibility that the independence of the appointment is not absolute, but is based, in part, on collegiality. Law enforcement agencies do not base their decisions or their work on political pressure, but very often they come under various forms of pressure exerted through the media outlets owned by certain political parties, which hinders the work of these agencies. This creates pressure on prosecutors and police to "convict" or "acquit" some persons in advance, which violates the presumption of innocence and obstructs the professional work of agencies.

One such example was observed in 2011, when SDP [Social Democratic Party] planned, via amendments to the Law on Internal Affairs of Canton Sarajevo, and subsequently of FBiH, to place the operations of the police under the control of ministries, as well as to interfere with the appointments to the Independent Board, which would have had a direct influence on the personnel policy and work of the police.²⁵³ An earlier preliminary draft of the Law on Internal Affairs of FBiH, adopted by the FBiH government,²⁵⁴ contains numerous provisions that are consistent with European standards, as well as provisions on breach of operational independence of the Police Administration. The Law transferred the responsibility for controlling the work of the police

administration from the Parliament to the government. The European Commission's BiH 2012 Progress Report states: "A new draft Federation Law on Internal Affairs was adopted by the Federation government, introducing more extensive political and administrative oversight over the work of the police and appointment and dismissal of the Police Director".²⁵⁵

Along the similar lines are the repeated attempts by some media outlets to discredit and initiate removal of the Director of FBiH Police Administration Dragan Lukač.²⁵⁶ In an interview for the "Oslobođenje" daily, Lukač said: "Certain views or objections, as you call them, about the work of the FBiH Police Administration are completely unfounded, tendentious, and have a subversive and fomenting purpose. They come from individuals who exert "will to power" and from their manipulated satellites, and are aimed at creating conditions for the politicisation of the police, not only the FBiH Police Administration, but also a number of cantonal police administrations, and placing the police work under political control. This politicisation is to be achieved through the adoption of new laws on internal affairs in FBiH, with the ultimate intention of adopting a new Law on Internal Affairs of FBiH".²⁵⁷

According to members of law enforcement agencies, there have been no serious attempts to exert political pressure on inspectors in police agencies and prosecutors. However, anonymous reports of criminal offences allegedly committed by candidates are a common practice before selection and appointment of new managers in government agencies, which the police authorities are obliged to investigate. The frequency of such reports before the selection of managers is evidenced by the latest case of SNSD's denigration of Goran Lujčić, candidate for the director of SIPA.²⁵⁸

Although there are attempts to exert pressure on inspectors, they are not officially reported because

inspectors do not take them seriously and do not respond to attempts at interfering in their work. There are frequent complaints from the political level (the legislature or the executive) about the work of police agencies with regard to war crime investigations, alleging that the agencies investigate and arrest members of only one ethnic group, while "favouring" other ethnic groups. All these types of pressure do not compromise the functionality, independence and impartiality of law enforcement agencies, but they do hinder their work to a considerable extent. When organised crime groups are concerned, there have been recorded cases of threats against inspectors who handle cases. Serious threats containing grounds for suspicion have been reported to the competent prosecutor's office, which prosecutes such cases as part of its regular prosecutorial activities. Similar situation is found in prosecutor's offices which are, like the police profession, at risk of such intimidation and their staff is aware of that when taking office.

Business Anti-Corruption Portal states that "RS also has a special prosecutor's office for combating corruption, but the entity government has only acted against former officials of the former government who now oppose it".²⁵⁹ Also, the Global Integrity Report 2007 reports that "prosecutors cannot depend on police or other law enforcement agents to investigate complex cases because they are unskilled, poorly funded and politically influenced".²⁶⁰

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can access the relevant information on law enforcement agency activities?

SCORE 75

As a rule, all law enforcement agencies are open to the

public, unless where the disclosure of certain information would compromise their work or threaten the investigations they are conducting.

The current laws contain provisions stipulating that the information about the assets of officials of law enforcement agencies is publicly available. The Law on Police Officials of BiH provides that every police official “shall disclose, in accordance with this Law, all information on functions or activities performed by him/her or by the members of the close family, as well as information on properties at his/her disposal and at the disposal of the members of the close family, when appointed as a police official”²⁶¹ Laws at the entity level stipulate that candidates for directors of police agencies are required to provide, along with the application for open competition, a written statement of their property, which will be available to the public,²⁶² while prosecutors are required each year to complete and submit assets declaration forms.²⁶³

Freedom of information about the activities of public authorities in BiH is regulated by the Law on Freedom of Access to Information in BiH.²⁶⁴ Article 11 of the Law on Prosecutor’s Office regulates transparency and notification of public, specifying in paragraph 2 that “within limits of and when the interest of procedure so requires, the Prosecutor’s Office may inform the public and interested parties of individual cases upon which it takes action”. All law enforcement agencies have published their guides for access to information which describe the procedure for requesting access to information, as well as the conditions under which access to information will be denied. The guides are available on agencies’ websites. Transparency International BiH has introduced an effective way of requesting access to information via an online form.²⁶⁵

TRANSPARENCY (PRACTICE)

To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?

SCORE 25

Generally, in practice, transparency is present insofar as it does not compromise work or interfere with investigations. However, when it comes to certain criminal offences, notably those related to corruption and implicating politicians as suspects, the public finds it rather difficult to get access to adequate information on the decisions that were made, and how they were made. The same is true of disciplinary actions against specific prosecutors, with websites of the Prosecutor’s Office and HJPC often lacking in this information, so the public can only get the relevant information through the media. Law enforcement agencies tend to be somewhat more transparent in these cases than prosecutor’s offices.

Since there is no legal obligation to disclose information on the assets of heads or officials of law enforcement agencies, disclosure does not occur in practice.

Most of the information about the work of law enforcement agencies can be found on their official websites,²⁶⁶ which are set up in accordance with the Instruction of the Council of Ministers of BiH on the Development and Maintenance of Official Websites of BiH Institutions.²⁶⁷ Information about the work of law enforcement agencies is mainly disseminated by agencies’ PR services or spokespersons, although the managers or the staff can also give statements and information to the public through the media. However, various problems exist. For example, the Prosecutor’s Office of BiH has never responded to any of the crucial questions asked by TI BiH, for example – Why was the case against Milorad

Dodik and others assigned to the Special Prosecutor's Office of RS (or more specifically, how is it possible that, after the Prosecutor's Office of BiH ordered an investigation, the Special Prosecutor's Office of RS issued an order to drop the investigation)? Given that the HJPC is responsible for the work of the Prosecutor's Office of BiH, and that they have never responded to the request for a meeting between the author and their representatives for the purpose of writing this report, no relevant information has been received from them.²⁶⁸

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?

SCORE 75

Heads of the entity police agencies are required to report to their respective interior ministers and entity governments. In handling prosecutorial cases, i.e. when police agencies inform the prosecutor's office that there are grounds for suspicion that a criminal offence has been committed, they are answerable to the prosecutor's office for taking further measures and actions in the given case (Article 218 of the Criminal Procedure Code). Heads of police agencies are required to annually report to the security minister, and the Council of Ministers to which they are answerable for the operation of the agencies, and if necessary, to submit special reports as well as report to the Parliamentary Assembly and the Presidency of BiH upon their request.²⁶⁹

When police agencies act on prosecutors' cases, i.e. when they notify the prosecutor's office that there are grounds for suspicion that a criminal offence has been committed, they report to the prosecutor's office for all further measures and actions in this case (Article 218 CPC).

The Prosecutor's Office submits reports on its activities and is answerable for its work to the HJPC. The Prosecutor's Office, upon its own initiative or upon request, is entitled and required to provide the Presidency of BiH, Parliamentary Assembly of BiH, and the Council of Ministers of BiH with information on its operation and implementation of the Law.²⁷⁰ Pursuant to Article 13, paragraph 2, of the Law on the Prosecutor's Office of BiH, at the end of each budgetary year, on the basis of the statistical overview, the Chief Prosecutor is required to submit a report to the Parliamentary Assembly of BiH and elaborate on the development of criminality in the country and indicate crime trends. If during the course of an investigation, the Prosecutor finds that there is enough evidence for grounded suspicion that the suspect has committed a criminal offence, the Prosecutor shall prepare and refer the indictment to the preliminary hearing judge (Article 226, paragraph 1). In applying the law, prosecutors act on the basis of the CPC, and are required to state in the bill of indictment all facts required by the law. In this respect, the only relevant instance is the competent court (Court of BiH), which evaluates the bill. This means that prosecutorial decisions may be contestable, because the court accepts or rejects the prosecutor's bill of indictment and formally establishes the degree of criminal offence. The existing legal framework stipulates that all victims of crime, or aggrieved parties, have equal access to the justice system, without any restrictions. The Constitution guarantees equal rights to all citizens of BiH, so the Criminal Procedure Code does not exempt any categories of persons from that right on any ground. The only problem in this respect is what happens in real life – namely, not all aggrieved parties are cognizant of legal science, so if they bring an action against the perpetrator of the crime of which they were a victim, they must hire an expert lawyer, whose costs they must cover themselves, in addition to any court costs if they lose the lawsuit.

Citizens can lodge complaints and grievances about the work of police authorities or misconduct of individuals in several ways: (a) in writing, addressing them to the head of the police agency whose employee they are complaining against or directly to the agency itself; (b) orally in the police agency; (c) through offices for public complaints operating within the entity Ministries of the Interior; (d) Public Complaints Board on Work of the Police Officers in Police Bodies in BiH operating within the Parliamentary Assembly of BiH; (e) the Office of the State Ombudsman. Investigation based on these complaints are conducted by the internal control departments or professional standards units. The competences of these offices and investigation methodology are available to citizens via the website www.vasapolicija.ba.

However, the functionality of these mechanisms can be called into question for several reasons. The departments for internal control / professional standard units that conduct investigations and act on complaints filed by citizens operate within police agencies and cannot be considered completely independent. The Public Complaints Board, albeit not operating within police agencies, has no essential role because it does not have the authority to directly investigate citizens' complaints against the police²⁷¹ (for more information about the work of the committee see the report of Parliamentary Assembly of BiH on the work of the Public Complaints Board for the period January –December 2010).²⁷² The Ombudsman Office, as an external body, can only make recommendations, but these, again, are not binding on the institutions to which they relate.

For the purposes of this study, SIPA has made available data showing that in the first nine months of 2011, 79 of its police officers were reported to the agency's internal control: 71 procedures were completed by December of that year, of which 17 were citizens' grievances and complaints about the misconduct of police officers, and

31 were complaints lodged by police officers against other police officers within SIPA.²⁷³

There is no special agency or body responsible for prosecuting solely corruption-related criminal offences committed by members of law enforcement agencies. Within the law enforcement agencies there are the internal control departments / professional standards units, which are responsible for conducting internal investigations based on citizens' complaints about the misconduct of police officers. Their scope of remit also includes the investigation of excessive use of force, firearms, corruption and abuse of police powers. If, following the internal investigation, it is found that a violation of official duty was committed, a request for disciplinary procedure is filed.

Complaints about and reports of grounded suspicion of corruption in the police can be lodged in the same way as complaints about police misconduct, but can also be reported via the anonymous "Krimolovci" [Crime-Busters] hotline 0800 20505, introduced by EUPM, as well as via the central emergency phone number 122. Citizens can call these phone numbers to share any information they might have about all criminal offences. Also, TI BiH has made it possible for citizens to report corruption online through its web portal,²⁷⁴ as well as via toll-free hotline 0800-55555. If police officers are considered to have committed a criminal offence in the discharge of their tasks and duties, under the CPC, a report against them may be filed with the competent prosecutor, who is required to act in accordance with the law in regard to researching and documenting the existence of a criminal offence. Pursuant to Articles 214 and 215 of the CPC BiH, this report may be filed directly by citizens.

According to the Law on Protection of Secret Data, security checks are run on high-ranking inspectors and managers, and are not run on those at lower levels, but

who nevertheless have contact with secret information. Practice has shown that there is a risk of non-compliance with the principle of secrecy in the investigation work. Indeed, investigations were often obstructed by lack of professionalism in the work of inspectors who, intentionally or not, made confidential information available to suspects thus violating the principle.²⁷⁵

ACCOUNTABILITY (PRACTICE)

To what extent do law enforcement agencies have to report and be answerable for their actions in practice?

SCORE 25

In practice, law enforcement agencies report about their activities to the competent authorities, as well as all other relevant stakeholders, in accordance with the law, through annual reports and information on major actions taken. In addition, there is the practice of parliamentary questions for police agencies. Agencies respond to these questions unless answering them would reveal operational or other data that would disrupt further work and investigation by the police.

The law does not prescribe a period within which the internal control departments of police agencies have an obligation to respond to the complaint. According to police sources, replies are sent to citizens within 30 days. However, no concrete cases of individual actions being taken or deadlines within which individuals received a response have been made public. In addition, during the writing of this study we have not found any surveys on this topic or interviews of the citizens who lodged complaints, so it was not determined if the citizens really received replies to their complaints within a reasonable time. In addition, the score for the accountability of these agencies is reduced by the fact that there are no absolutely independent mechanisms in place for ac-

countability and control of police agencies (as described in the section “Accountability (Law)”) and prosecutorial agencies. As stated earlier, the HJPC as an “external body” is made up of judges and prosecutors, where prosecutors perform the prosecutorial function, but are at the same time members of the HJPC.

Law enforcement officials do not enjoy immunity from criminal proceedings. Criminal proceedings are instituted after an indictment has been brought before the court, and bill of indictment is prepared by the competent prosecutor on the basis of the evidence submitted to him/her by investigators of police agencies. There is not a single piece of legislation requiring prosecutors to answer to the public or any other instances for their actions when it comes to the priorities of their work.²⁷⁶

Police forces, as part of their broader actions, may deprive of liberty their fellow police officers, which is evidence that there is no immunity in this regard. For example, in one of these actions, taken in 2010 following an order of the Prosecutor’s Office, among 60 arrested persons there were 22 police officers,²⁷⁷ although no charges were brought against any of these persons. Furthermore, as part of another case, a prosecutor of the Special Department for Organised Crime, Economic Crime and Corruption of the Prosecutor’s Office of BiH issued on 10 June 2011 an indictment against 29 persons, including a large number of official persons (border police officers and customs officers), who were charged with the criminal offence of conspiracy to commit criminal offences of abuse of office or official authority.²⁷⁸ The proceedings against these persons are still ongoing before the Court of BiH.

INTEGRITY MECHANISMS (LAW)

To what extent is the integrity of law enforcement agencies ensured by law?

SCORE 75

There are codes of ethics in place for all members of law enforcement agencies, adopted at the level of individual agencies, but the rights and duties of the law enforcement officials are regulated by laws (Law on Police Officials, Law on Prosecutor's Office, as well as the laws on their respective agencies). Codes stipulate the principles of impartiality and independence in the work of police officers.

The Law on Conflict of Interest in Governmental Institutions of BiH, which also applies to police officials and prosecutors, stipulates that officials "must not be in any relationship of dependence in respect of persons who might influence their impartiality". (Article 2, paragraph 3). The Law on Prosecutor's Office and the Law on Police Officials contain provisions on the incompatibility of police and prosecutorial functions. The Law on Police Officials (Article 38) expressly states that a police official shall not exercise a function, an activity or hold a position, which is in conflict with his/her official duties, in particular: "shall not hold any public function; shall not perform any other additional remunerative activity, unless authorised by the Head; shall not be a member of a political party, shall not follow political parties' instructions, and shall not attend neither party nor other political gatherings in a police uniform, unless on duty".

General provisions on the prohibition of accepting gifts contained in Article 10 of the Law on Conflict of Interest in Governmental Institutions of BiH apply to the officials of law enforcement agencies.²⁷⁹ However, these provi-

sions are inconsistent, given the fact that, following the legal interpretation, it may be considered that it is allowed to receive such gifts from more than one person in any one year, since the number of such persons is unlimited. Accepting gifts and other forms of benefits is a criminal offence under the Criminal Code of BiH (Article 217). The law also criminalises the acceptance of promises and demanding of gifts.

The Law on Police Officials and the Law on Prosecutor's Office of BiH provide that police officials and prosecutors must declare their assets and incomes when taking office. Declaration forms submitted by police officials are verified by the Intelligence and Security Agency (OSA), and if the officials are found to have declared their assets falsely, disciplinary procedure is instituted against them.

In terms of post-employment restrictions for members of law enforcement agencies, there are no such legal or regulatory provisions, unless when members of the agencies are found to be criminally liable for or convicted of a criminal offence. If this is the case, they can no longer perform the function of prosecutor or police official.

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of members of law enforcement agencies ensured in practice?

SCORE 25

The approach to ensuring integrity of members of law enforcement agencies is not entirely satisfactory. Mechanisms for disciplinary measures against prosecutors are, to some extent, more independent than those for disciplinary measures against police officials,

given the fact that the disciplinary procedures against prosecutors are conducted before the HJPC as an external authority, as opposed to those against police officials which are conducted in-house. However, even the procedures conducted before the HJPC cannot be considered completely independent (this is discussed in more detail in the section “Accountability (Law)”).

However, the disciplinary mechanism for prosecutors leaves much to be desired in terms of efficiency. For example, the Chief Prosecutor Milorad Barašin was suspended from duty for misconduct by the decision of the First Instance Disciplinary Panel of the HJPC on 1 July 2011. Upon completion of disciplinary procedure before the First Instance Disciplinary Panel, Barašin was demoted from the position of the Chief Prosecutor to that of an ordinary prosecutor in the Prosecutor’s Office of BiH and can hold this position until 15 May 2012.²⁸⁰ The website of the HJPC has very little information about this case or the circumstances surrounding this decision, and since the HJPC, as already noted, did not respond to the request for a meeting with representatives of TI BiH, it was not possible to obtain more detailed information. In 2010, the Office of the Disciplinary Counsel of the HJPC received 17 disciplinary complaints and issued a total of 12 disciplinary measures: four written warnings, four public reprimands, and four reductions in salary.²⁸¹ The majority of the disciplinary measures were imposed for disciplinary offences of neglect or careless exercise of official duties as well as unjustified delays in making decisions or in other actions in connection with the publication or making of decisions.

CORRUPTION PROSECUTION (LAW AND PRACTICE)

To what extent do law enforcement agencies detect and investigate corruption cases in the country?

SCORE 25

“The level of effectiveness of investigation, prosecution and conviction of corruption cases remained low. Both criminal law sanctions and prosecution capacity are weak and ineffective. Proactive investigation into abuse of authority in the public sector is at an early stage. Very few high-level corruption cases involving public officials are pursued. Further specialisation of prosecutors and improved coordination with the police is needed. The level of judicial follow-up to corruption cases remained low. Only a limited number of high-level cases led to prosecution”.²⁸² The Criminal Code of BiH, in Chapter XIX – Criminal Offences of Corruption and Criminal Offences against Official Duty or Other Responsible Duty (Article 217–229) – sets forth 12 criminal offences, many of which are punishable by imprisonment of up to 10 years.

Statutory powers and official actions taken by the Prosecutor’s Office in cooperation with police agencies in detecting, investigating and proving all criminal offences, are clearly defined in the CPC. However, the manner of execution of some investigative actions does not allow sufficient efficiency in practice due to the shortcomings in the legislative framework and difficulties in its practical implementation. Also, special investigative actions may be ordered for the investigation of corruption offences.²⁸³

In practice law enforcement agencies face problems in documenting corruption offences. The problems primarily lie in the lengthy delays between the commission

of the offence and its being reported, and the fact that the classical forms of bribery are generally committed without witnesses, where both the recipient and the giver are mutually interested parties and try to keep the act secret. Those who give bribes are not willing to cooperate given the fact that they used bribery to derive some personal benefits. In addition, inspectors who work on the documenting of these cases often state that even when a person who has given a bribe comes forward, and is ready to cooperate with police and prosecutors, they do not meet with support by the acting prosecutor, as prosecutors often fail to encourage such persons to testify by granting them immunity from prosecution.

Also, the members of SIPA, Police Administration of FBiH and MI RS state that the Prosecutor's Office of BiH is understaffed and thus unable to handle all the reports about corruption-related crimes that it receives from police agencies, and it cannot analyse in a timely manner the documentation received from the police and recommend further action.²⁸⁴ According to the Communication on the Work of the Prosecutor's Office for 2010, the Department II (Special Department for Organised Crime, Economic Crime and Corruption) issued 44 new orders for investigation against a total of 273 persons. A total of 11 orders to drop investigation against 40 persons were issued, while in 22 cases orders were issued to suspend investigation against 82 persons. Thirty-two indictments were brought against 134 persons, of which the Court confirmed 29 indictments against 128 persons. Of the total number of cases processed by the Department II in 2010, the Court of BiH handed down a total of 41 judgments against 106 persons.²⁸⁵ That there is political motivation behind the investigation of this type of criminal offences and use of political methods is further evidenced by the establishment of the Special Prosecutor's Office for Organised Crime and Most Serious Corporate Crimes of RS, which was formed in 2006 within the District Prosecutor's

Office in Banja Luka.²⁸⁶ After the establishment of this prosecutor's office, the criminal charges against Milorad Dodik and others were submitted by SIPA to the Prosecutor's Office of BiH. The Prosecutor's Office then ordered an investigation for abuse of power, but the charges ended up under the jurisdiction of the Special Prosecutor's Office, which in December 2011 ordered that the investigation be dropped for lack of evidence.²⁸⁷ That the whole thing was politically motivated is particularly obvious from the fact that the public were not given adequate information about why the competence for the charges in question was ceded to another prosecutor's office.

For example, in 2010 the Special Prosecutor's Office of RS had a total of 54 pending cases, of which 21 were for organised crime, 15 for abuse of office or official authority, and one for lack of commitment in office. The Office ordered one investigation of abuse of office or official authority and dropped four investigations for the same criminal offence. For the same offence, in the same year, the Court pronounced two prison sentences, one suspended sentence and one acquittal. Of the total number of reported criminal offences in the work of the Special Prosecutor's Office in 2010, 21 were related to organised crime. For that criminal offence, four orders were issued to conduct an investigation, one investigation was dropped, eight indictments were issued and confirmed, and seven prison sentences were handed down.²⁸⁸

Global Integrity Report (Global Information on Governance and Corruption) reported in its 2009 Global Integrity Report for BiH that the corruption scandals that are publicised in the media are often ignored and that prosecutors and law enforcement agencies do not investigate them.²⁸⁹ Also, the same organisation, in its analysis of law enforcement agencies, rated the results of BiH agencies in investigating corruption in 2009 as very weak (a score of 45 on a performance scale of 1 to

100, where every score below 60 is rated as *very bad*).

RECOMMENDATIONS

- Introduce greater transparency in the Prosecutor's Office of BiH with regard to the referring of cases, especially politically sensitive ones, to other prosecutor's offices, as well as the obligation to keep the public informed of any further developments in these cases;
- Allow candidates who were not selected as prosecutors to lodge appeals;
- Review pay grades for prosecutorial associates/assistant in order to stimulate quality staff;
- Strengthen the capacities of the Prosecutor's Office;
- Increase cooperation between prosecutor's offices and police, particularly in terms of documenting corruption-related crimes;
- Make necessary amendments to the CPC with the aim of enabling more effective conduct of investigative actions and preparation of evidence;
- Ensure continuing education of inspectors, prosecutors and judges;
- Introduce a legal obligation for the Intelligence and Security Agency (OSA) to perform safety checks of all inspectors, police officers, civil servants and employees in police authorities who work on more complex cases of organised crime and who have contact with classified information;
- Introduce a legal possibility of hiring temporary employees during the suspension of police officers for a longer period of time;
- Make legal provisions on acceptance of gifts, and put a limit on the number of people from whom one is allowed to accept gifts and within which period.

6.7. ANTI-CORRUPTION AGENCY

OVERALL PILLAR SCORE: 27/100

STATUS: WEAK



SUMMARY

In 2009 for the first time in BiH a law was passed with the aim of establishing a comprehensive system to oppose corruption by establishing a normative framework and building institutional capacity as well as other necessary mechanisms which should act in conjunction and harmony to prevent and curb corruption. However, so far no significant success in the fight against corruption has been achieved in BiH. One of the indicators in favour of this conclusion is the current level of organisation and operation of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, which was to become an important pillar of the national integrity system. The basic requirements for successful

operation of the Agency have remained unfulfilled for over two and a half years after the law was enacted, mostly due to the low level of political will and readiness to address the problem of corruption in a decisive and open way. The Agency has not become operational, let alone achieved the necessary level of institutional independence and integrity.

STRUCTURE AND ORGANISATION

In accordance with the statutory responsibilities of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, its internal organisation is governed by the Rule Book on Internal Organisation. This implementing regulation provides that the Agency will have a total of 29 employees, three of whom will have the status of appointed persons (the director and two deputies), three managerial civil servants, a chief of staff, sixteen civil servants and six employees. The Agency has four basic organisational units, as follows: Director's Office, Corruption Preven-

tion Sector, Sector for Coordination of the Fight Against Corruption, and Sector for Legal, Personnel, General and Financial Affairs. Sectors as basic organisational units are headed by Deputy Directors, while the Director's Office is headed by the chief of staff. The Director's Office and the Sectors for Corruption Prevention and Coordination of the Fight against Corruption have the same number of employees (eight), while the Rule Book provides for five people in the Sector for Legal, Personnel, General and Financial Affairs. As for the envisaged professional profiles of the Agency's staff, the Rule Book on Internal Organisation sets high standards for their recruitment. Most job positions in the Sectors for Corruption Prevention and Coordination of the Fight against Corruption should be filled with civil servants in the ranks of senior advisors and senior officials, which, under the general legal norms, require years of work experience in the profession. Besides the jobs envisaged in the Rule Book, the Agency will be able to recruit trainees, which will facilitate continuity of work and transfer of knowledge between the Agency's employees.

TABLE WITH SCORES
ANTI-CORRUPTION AGENCY
OVERALL PILLAR SCORE: 27/100

DIMENSION	INDICATOR	LAW	PRACTICE
CAPACITY 31/100	RESOURCES INDEPENDENCE	50	0
		50	25
GOVERNANCE 33/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY	100	25
		50	0
		25	0
ROLE 17/100	PREVENTION EDUCATION SANCTIONING		50
			0
			0

RESOURCES (LAW)

To what extent are there provisions in place that provide the ACA with adequate resources to effectively carry out its duties?

SCORE 50

The legal framework governing the provision of funds for the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (herein-after called the Agency) is the same as for all other administrative bodies at the state level, that is, its work is funded from the budget of BiH institutions. Director legally represents the Agency and is authorised to draw up a budget proposal which is submitted to the relevant institutions (Ministry of Finance and Council of Ministers of BiH) for further procedure.²⁹⁰ Pursuant to the regulations governing the approval and execution of the budget of BiH institutions and international obligations, the Agency has adequate fiscal stability during the budget year. Specifically, once budget funds have been allocated for its operation, the Agency has the funds at its disposal and utilises them in line with its annual work plan. Also, the procedures for the execution of the budget of BiH institutions provide allow the Agency to seek a restructuring of its revenues as well as a reallocation between budget users. This request must be supported by appropriate explanatory material that is based on cost estimates, cost-benefit analyses, analyses of priorities, as well as elements of expected outcomes and objectives (in the same way as for the proposed annual budget of the institution).²⁹¹ There is no legal basis for the Agency to directly obtain additional financial resources for the financing of its work from funds raised through confiscation of material gain acquired through perpetration of a criminal offence.²⁹² All this indicates that the current legal framework allows the executive to exert some influence on staffing issues and the overall work of the Agency through the

procedure for approving and revising the budget.

RESOURCES (PRACTICE)

To what extent does the ACA have adequate resources to achieve its goals in practice?

SCORE 0

Since its establishment, that is, adoption of the law providing for its establishment, the Agency has not had the budget for its operation. From the beginning of 2012 to June 2012, the Agency used the funds allocated to it under the Decision on Temporary Financing of Institutions of BiH and International Obligations for the period July – September 2011. This situation has arisen from the failure to adopt the budget for 2011, as a result of the overall delay in the establishment of government in BiH after the October 2010 parliamentary elections. Funding for the Agency's operation is therefore approved on a quarterly basis, and is used to finance contractual services (salaries of persons who are employed in the Agency for the interim period, that is, for a fixed term) with the aim of carrying out basic functions of the Agency. Currently available funds are insufficient for performing the full range of Agency's responsibilities. Also, no budget funds have been planned for the coming period to enable recruitment of the required number of staff within the Agency. This issue is directly related to the adoption of the fundamental internal legal act, adopted in July 2012, namely the Rule Book on Internal Organisation and Job Classification in the Agency, which specifies the number of staff and the conditions necessary for each position. According to the current budget projections for the institutions of BiH, conducted by the Ministry of Finance and Treasury of BiH (for the period 2011-2012), the Agency will be able to employ no more than 24 employees, which is below the number that should be reasonably sufficient for the Agency's efficient operation. A particular problem is the fact that

the Agency does not have its own premises (it is currently using, for a temporary period, the premises of the Ministry of Security of BiH and the State Investigation and Protection Agency – SIPA) and technical equipment (the procurement of equipment for the Agency has not been announced yet). This situation directly affects the stability of human resources in this institution. Currently, the Agency employs nine members of staff for a fixed term (based on temporary service contracts) and their contracts expired on 30 September 2011. Such a recommendation was also made by the Office for the Audit of BiH Institutions. The Agency has three permanent employees, namely the director and two deputies. The Agency has not yet adopted internal rules on integrity checks for employees before they start work. Integrity tests, as a separate instrument for ensuring independence and effectiveness of the Agency, should also be regulated by internal legal acts that are yet to be adopted. Exception to this are the provisions of other regulations on integrity checks that are made for the Agency's management with the aim of identifying possible conflicts of interest or security risks.²⁹³ This type of checks are carried out by the Central Election Commission of BiH and the Intelligence and Security Agency of BiH. It is necessary to introduce integrity checks for employees prior to their recruitment, but this issue is not elaborated in the law governing the establishment and activities of the Agency.²⁹⁴ Recruitment of the Agency's staff is identical to recruitment in the civil service, because the law stipulates that the employees of the Agency have the status of civil servants.²⁹⁵ The Agency Director is elected from among recognised experts in their respective fields, the selection is done by the Parliamentary Assembly, further to the proposal of the special Commission for the Selection and Monitoring of the Agency's Work. Procedure for the election of the director is open to the public. The Commission for the Selection of the Agency's Director (which is composed of three representatives of the House of Representatives and three representatives of the House of Peoples

of the Parliamentary Assembly, two representatives of the academic community and one representative of the NGO sector) conducts the procedure on the basis of its own rule book, interviewing the applicants who meet the statutory requirements, and submits to the Parliamentary Assembly the scoring list for each candidate. The final decision regarding the selection of the directors is made independently by the Parliamentary Assembly of BiH, by selecting the director and two deputies from the submitted rank list of candidates. The law does not stipulate that the parliament is bound to comply with the order of candidates proposed by the Commission. The Agency has no training plan for its employees and no score can be given at this time for the career advancement opportunities for the Agency's employees.

INDEPENDENCE (LAW)

To what extent is the ACA independent by law?

SCORE 50

The law provides that the Agency is an independent and autonomous administrative organisation, which reports solely to the Parliamentary Assembly of BiH.²⁹⁶ The key mechanism for ensuring the Agency's independence from political and other influence is established by the fact that the law provides for a special body (the Commission) which reports to the parliament, and which is responsible for monitoring the Agency's work and informing the Parliament. The Commission has no authority to interfere in the daily work of the Agency, or to request information held by the Agency relating to individual cases.²⁹⁷ One of the moot legal mechanisms that may affect the Agency's independence is related to the manner of enacting the Rule Book on Internal Organisation and Job Classification in the Agency, which is passed by the Director with the prior consent of the Council of Ministers. As the Rule Book is a very impor-

tant act, which determines the Agency's organisational capacity and efficiency, it would be in the interest of the Agency's independence that this act be passed with the Parliament's consent or internally. On the other hand, the law provides that the Director is elected for a five-year mandate, with the possibility of one re-election.²⁹⁸ The law also contains provisions on director's dismissal, which apply in cases where the Director: (a) resigns, (b) an indictment has been verified against him/her, (c) performs duties or functions that are incompatible with the position of director or is otherwise found to be in conflict of interest, (d) has permanently lost the ability to perform his/her job due to illness or death, and (e) violates the Agency's Code of Conduct during the performance of his/her duties.²⁹⁹ The Agency's employees are adequately protected against wrongful dismissal or other disciplinary measures.

INDEPENDENCE (PRACTICE)

To what extent is the ACA independent in practice?

SCORE 25

The current employees of the Agency believe that the Agency is completely independent in its work, corroborating their position by the fact that it reports for its work solely to the BiH Parliament.³⁰⁰ The Agency is at the very beginning of its operation, and it is still too early to assess its independence. The same is true of the Agency's relations with other law enforcement authorities in BiH. Initial information suggests that other institutions in BiH are still largely unaware of the Agency's role and competences. There have even been reports of certain institutions bringing its competences into question. This is especially true of a potential conflict of competences between the Agency and the Central Election Commission of BiH in the field of performing conflict of interest checks. This is due to the fact that the Agency does not yet have a defined com-

munication strategy which would specify the modalities of its inter-agency cooperation and public communication.

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ACA?

SCORE 100

The Agency has an obligation to make its work accessible to the public, and the key principles of the Agency's operation (in addition to legality, equal access, continuity, etc.) are transparency and openness to public scrutiny.³⁰¹ Regulations define the Agency's obligation to inform the public about all aspects of corruption as well as publish reports, analyses and other documents. The law provides for two modes of reporting to the public: (a) via the website or (b) in another way.³⁰² Public access is also provided for indirectly within the Law on Freedom of Access to Information, upon request of any individual or legal entity.³⁰³

TRANSPARENCY (PRACTICE)

To what extent is there transparency in the activities and decision-making processes of ACA in practice?

SCORE 25

The possibilities for the public to gain direct and efficient access to information about the Agency's activities are currently limited. The Agency does not have its own official premises so the public has no information on where it is located, while the website that provides publicly accessible information about the Agency's daily

activities has been set up only recently. It is important that the Agency adopt its internal procedures to ensure the necessary level of transparency in its work. This will help build up the Agency's reputation with the public, which is of the utmost importance in the initial stages of its establishment.

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the ACA has to report and be answerable for its actions?

SCORE 50

The mechanism of oversight of the Agency, which includes the submission of reports on its work, is set up in such a way to impose an obligation on the Agency to submit biannual reports on its work to an independent parliamentary commission.³⁰⁴ Although there is no legal requirement to make these reports public, there is a legal provision under which all sessions of the independent parliamentary commission are open to the public, which is an indirect mechanism of gaining access to the Agency's reports. Also, the law establishes the obligation of public disclosure of the Agency's annual reports.³⁰⁵ However, individual cases are strictly protected by the provisions of the law which stipulate that even the Independent Parliamentary Commission for the Selection and Monitoring of the Agency's Work has no right to request information about individual cases.³⁰⁶ There is no internal act on "whistleblowers", but its adoption is planned for the near future.³⁰⁷ Currently in force are general provisions of the law prohibiting the punishing of or any form of sanctioning against persons who report *bona fide* any form of behaviour that is indicative of corruption or other forms of irregularities in certain procedures. Also, the law provides for the obligation to adopt a special regulation to set up mechanisms for indemnification of persons who may

have suffered some consequences arising from the fact that they reported corrupt behaviour. The obligation to adopt this regulation rests with the Agency.³⁰⁸

Currently there are no mechanisms in place for citizens to lodge complaints about the Agency's work. This issue could be regulated by two separate but interconnected internal acts of the Agency. One of these acts would establish clear and transparent mechanisms for lodging complaints, while the other, namely the Rule Book on Disciplinary Liability of the Agency's Employees, would define the types of violation of duty, as well as sanctions to be imposed against the Agency's employees for such actions. There are no clearly laid down procedures and mechanisms for judicial review of the Agency's work, except the provisions of the law regulating director's dismissal. The Independent Parliamentary Commission for the Selection and Monitoring of the Agency's Work is of mixed composition, as it is made up of representatives of both houses of parliament, academics and an NGO representative. As members of Parliament make up a relative majority in the Commission, there is a partly established mechanism of civil supervision of the Agency's work. Being the budget user, the Agency is subject to regular auditing by the Office for the Audit of BiH Institutions.³⁰⁹

ACCOUNTABILITY (PRACTICE)

To what extent does the ACA have to report and be answerable for its actions in practice?

SCORE 0

So far the Agency has submitted one report on its work. Namely, by the time of publication of this article the independent parliamentary commission which supervises the Agency's work has met six times, only for the purpose of implementing the procedure for selecting the management, and no reports have been made public.

INTEGRITY (LAW)

To what extent are there mechanisms in place to ensure the integrity of members of the ACA(s)?

SCORE 25

The current regulations emphasise the obligation to adopt the Code of Conduct for the Agency's employees. After the Director of the Agency sent a draft code to the Council of Ministers for approval in late 2011, the Council of Ministers approved this document on 23 July 2012.³¹⁰ The Agency has not passed other internal acts to further regulate the integrity of its members. The Agency's unique role and need for staff who will be a symbol of integrity in public institutions impose additional requirements to ensure the highest standards of integrity. The Agency has not yet adopted internal rules for testing the integrity of staff who apply for positions in the Agency, as required by the Anti-corruption Strategy (2009-2014) and its Action Plan in accordance with relevant international standards and best global practices.

INTEGRITY (PRACTICE)

To what extent is the integrity of members of the ACA(s) ensured in practice?

SCORE 0

In the past short period of the Agency's operation, there have been no reported violations of official duties by temporary employees. Also, no mechanisms have been put in place within the Agency for training employees on the subject of integrity. This issue should be regulated by adopting the Training and Education Programme for the Agency's employees.

PREVENTION (LAW AND PRACTICE)

To what extent does the ACA engage in preventive activities regarding fighting corruption?

SCORE 50

Specific responsibilities of the Agency regarding prevention of corruption are visible: (1) on the strategic level, (the Agency has the obligation to develop, coordinate and supervise the implementation of the Anti-corruption Strategy and its Action Plan as well as give an opinion and instructions with regard to their implementation), (2) in the analytical area (one of the responsibilities delegated by the law refers to the collection and analysis of statistical and other data with the aim of determining corrupt practices), (3) in the area of harmonisation of legislation (the Agency has the obligation to monitor the effects of implementation of laws and implementing regulations in the field of corruption prevention, and provide opinions and instructions regarding their implementation, as well as initiate adjustment and harmonisation of these regulations), (4) in the establishment of inter-institutional cooperation (i.e. cooperation in corruption prevention with local scientific and professional organisations, media and NGOs), (5) on the educational level (the Agency has the obligation to develop educational programmes on corruption prevention and anti-corruption combat, and supervise their implementation), (6) on the advisory level (the Agency should inform the competent institutions and the public about the obligations under international legal instruments and provide necessary recommendations for the fulfilment of these obligations in connection with corruption prevention), (7) in the field of enhancing the integrity (in terms of developing a uniform methodology and guidelines for preparing integrity plans and providing assistance to all public institutions

in their implementation), and (8) in other areas related to corruption prevention.³¹¹

On the other hand, the Anti-corruption Strategy, under its chapter “Corruption Prevention”, contains 32 specific measures devoted to this issue in relation to which the Agency has a dominant role. Based on the aforementioned Agency’s competences, it is evident that the Law allows the Agency to initiate activities in connection with amendments to the existing legislation in the field of corruption prevention. So, the Agency cannot directly put forward motions to amend legislation, but may initiate with the relevant ministries a formal procedure in this direction. Besides corruption prevention as its original competence, the Agency has a very important role in coordinating anti-corruption combat. This role is related to coordination in the field of preventing corruption and conflict of interest, i.e. suppression (repressive treatment) of corruption, when the Agency establishes the necessary cooperation with other public institutions and institutions with public authority throughout the country.³¹² Given the short period of the Agency’s operation and all the difficulties it currently faces in its work, it is impossible to assess the effectiveness of the cooperation and coordination mechanisms which were created in the abovementioned legal regulations.

Based on the current institutional capacities, particularly in the area of human resources, we can conclude that the Agency does not have adequate skills in the field of research and publication of studies on anti-corruption efforts in BiH. The same is true of cases when requests for an opinion on anti-corruption issues are received. The Agency has not yet been in the position to be expected to give these opinions to citizens and other public institutions. At present there is no information on whether the agency has put forward any motions to the parliament or government bodies regarding some of the anti-corruption issues.

EDUCATION (LAW AND PRACTICE)

To what extent does the ACA engage in educational activities regarding fighting corruption?

SCORE 0

The Agency’s main function is to develop educational programmes on corruption prevention and anti-corruption combat, and supervise their implementation. In addition, the issue of education and training is addressed in several places within the Anti-corruption Strategy (2009–2014), where the Agency has an obligation to undertake a series of activities (establishment, enforcement and strengthening of training programmes) in this area to ensure that its employees, as well as a host of other entities (public institutions, private sector, educational institutions, media), acquire specialised knowledge about the phenomenon of corruption, prevention and control measures, etc. By the time of writing this analysis, the Agency has signed memorandums of cooperation with several NGOs,³¹³ and the Agency’s management has attended many events organised by civil society.

INVESTIGATION (LAW AND PRACTICE)

To what extent does the ACA engage in investigation regarding alleged corruption?

SCORE 0

Pursuant to the existing regulations, the Agency has no investigative powers with regard to combating corruption in BiH. In cases of possible receipt of reports containing indications of corrupt behaviour, the Agency for-

wards such information, in accordance with the law, to the relevant police or prosecutorial authorities, who are responsible for criminal prosecution of perpetrators. In the context of a very complex constitutional structure in BiH, where there are several levels of government with different competences of security services, the Agency was established as a governmental body that will coordinate, in the domain of repression, the work of institutions having public authorities in combating corruption. This basically means that the Agency has no authority to issue binding orders to act repressively, nor can it urge other criminal prosecution institutions to apply repressive measures against any person. Also, it is worth noting that the Agency's employees have the status of civil servants (and not police officers), which further points to the conclusion that it has no authority to take repressive measures when it obtains information about alleged corrupt activities.

nisms are put in place for indemnification of persons who may have suffered some consequences arising from the fact that they reported corrupt behaviour;

- Establish mechanisms for the public to lodge complaints against the Agency;
- Adopt internal procedures that define the integrity of employees, such as for receiving gifts and other services, employment after termination of employment in the Agency, etc.;
- Adopt internal rules for testing the integrity of staff who apply for positions in the Agency;
- Adopt an Education and Training Programme for the Agency's employees.

RECOMMENDATIONS

- Allocate financial resources necessary for the Agency's effective operation in the amount sufficient to meet the real needs and the envisaged workload of this institution;
- Address as soon as possible the issue of permanent premises for the Agency as well as other material and technical conditions necessary for its smooth functioning;
- Undertake activities aimed at the adoption of internal rules on integrity checks for the Agency's employees;
- Work intensively on raising the awareness of the professional and general public about the Agency's roles and responsibilities and developing communication strategy which would define the modalities of its inter-agency cooperation and public communication;
- Adopt internal procedures in the Agency to regulate the issue of public access to information about its work;
- Adopt an internal act on the protection of whistle-blowers as well as a regulation to ensure that mecha-

6.8. ELECTORAL MANAGEMENT BODY

OVERALL PILLAR SCORE: 45/100

STATUS: MODERATE



SUMMARY

The institution responsible for conducting elections in the country is the Central Election Commission of BiH (CEC BiH), which was formally established in late 2001. In addition to the Election Law, the CEC BiH is responsible for the implementation of several other important anti-corruption laws, such as conflict of interest laws at the level of BiH, FBiH and Brčko District, the Law on the Financing of Political Parties in BiH, as well as part of the Law on the Council of Ministers of BiH.

Over the years, the establishment and work of the CEC BiH was largely supported by the international community in BiH, making it one of the institutions which enjoyed the greatest public confidence, especially when it comes to the election process. Ever since the withdrawal of international representatives from its membership, the CEC BiH has been facing increasingly serious challenges, especially in terms of the lack of political consensus to make the competent institutions independent, impartial and effective, particularly in the area of the fight against corruption and crime. This is reflected in the refusal of improvements and continuous attempts to derogate the laws within the CEC BiH's scope of responsibility, as well as direct political pressure on the decision-making process of this institution.

STRUCTURE AND ORGANISATION

The competent authorities responsible for the conduct of elections in BiH are the election commissions and the

polling station committees, and their work is coordinated by the CEC BiH.

The CEC BiH is composed of seven members appointed by the House of Representatives of the Parliamentary Assembly of BiH for a period of seven years. The CEC BiH is chaired by the President.

The administrative, technical and professional duties for the CEC BiH are conducted by the Secretariat headed by the Secretary General, who is appointed by the CEC BiH. The secretariat functions are carried out in five main organisational units: CEC BiH Cabinet, Department for Legal Affairs and Implementation of the Law on Conflict of Interest, Department for Elections and Information Technology, Department for Financial and Administrative Affairs, and Department for Financial Audit of Political Parties.

The internal regulation on job classification envisages 89 staff for the performance of tasks within the CEC BiH's remit, while in practice, the number is about 80

TABLE WITH SCORES
ELECTORAL MANAGEMENT BODY
OVERALL PILLAR SCORE: 45/100

DIMENSION	INDICATOR	LAW	PRACTICE
CAPACITY 50/100	RESOURCES INDEPENDENCE	75	50 25
GOVERNANCE 46/100	TRANSPARENCY	50	25
	ACCOUNTABILITY	75	25
	INTEGRITY	75	25
ROLE 38/100	CAMPAIGN REGULATION	25	
	ELECTION ADMINISTRATION	50	

on average, which makes it difficult for the CEC BiH to adequately perform its tasks, especially in the area of financial audit of political parties.

RESOURCES (PRACTICE)

To what extent does the electoral management body (EMB) have adequate resources to achieve its goals in practice?

SCORE 50

Annex 3 to the General Framework Agreement for Peace in BiH³¹⁴ provided for the creation of a permanent election commission with responsibilities to conduct future elections in the country. In August 2001 the Parliamentary Assembly of BiH (PA BiH) adopted the Election Law of BiH, establishing the permanent Election Commission of BiH. The institution was formally created on 16 November 2001, and later changed its name to the Central Election Commission of BiH (CEC BiH). The Commission is based in Sarajevo. Other authorities for the conduct of elections are local election commissions and polling station committees.

In addition to the Election Law, the CEC BiH is responsible for the implementation of several other important anti-corruption laws, such as conflict of interest laws at the level of BiH, FBiH and Brčko District, the Law on Financing of Political Parties in BiH, as well as part of the Law on the Council of Ministers of BiH.

Financial resources for financing election activities, as well as regular operations, are provided from the budget of BiH institutions and from various international donations. Budget funds are generally received in a timely manner, and working conditions are gradually improving; however, this is still not enough for efficient and effective performance of all tasks within the CEC BiH's remit.³¹⁵

The CEC BiH Secretariat has about 80 permanent staff, most of whom have the status of civil servants. In an election year about 400 additional persons are hired temporarily to work in the centralised counting centres.³¹⁶ According to the Regulation on the Internal Organisation of the CEC BiH Secretariat, the functions of the Secretariat are carried out in five main organisational units: CEC BiH Cabinet, Department for Legal Affairs and Implementation of the Law on Conflict of Interest, Department for Elections and Information Technology, Department for Financial and Administrative Affairs, and Department for Financial Audit of Political Parties, requiring a total of 89 employees; however, not all positions have been filled yet.

The majority of complaints regarding the lack of resources in the CEC BiH relate to the audit department due to the shortage of auditors and the fact that their salaries are much lower than those of their colleagues working in the SAs. Therefore, this department finds it difficult to retain high-quality staff, which complicates and slows down the process of financial auditing of political parties. As a result, publication of audit reports can take as much as two to three years. Thus, the 2009 reports on the audit of the financial statements of political parties were published in 2012 and those for 2008 were published in 2011.

This is further confirmed by the results of the CRINIS study – Study of the Transparency of Political Party Financing in BiH in 2010, where the resources available to the CEC BiH received a score of only 4.2 on a scale of 1 to 10, because of the shortage of auditors.³¹⁷ As an alternative to this, there were proposals to transfer the responsibility for the process of controlling financial operations of political parties from the CEC BiH to the Audit Office of the Institutions of BiH. However, such proposals were rejected by the Inter-ministerial Working Group for Amendments to the Law on Political Party Financing of BiH.

Training of the staff of election authorities is required by law.³¹⁸ For the staff of the local election commissions trainings are organised by the CEC BiH, and for the staff of the polling station committees by the local election commissions. Training of the Secretariat staff is organised by the CEC BiH and the Civil Service Agency of BiH.

Ethnic representation in the electoral authorities is defined by law. Thus, the CEC BiH consists of two members from each of the three constituent peoples plus one other member, while the ethnic representation in the local election commissions should match the most recent population census. The law also provides that, where possible, gender representation should be paid due regard.

INDEPENDENCE (LAW)

To what extent is the electoral management body independent by law?

SCORE 75

In the period from its establishment in 2001 to 30 June 2005, of the seven members of the CEC BiH, three were acting as representatives of the international community and the remaining members were representatives of constituent peoples and other peoples in BiH. After that date, by virtue of the OHR's decision, the international members were withdrawn and their positions were filled by representatives of the peoples in BiH. The Election Law of BiH provides for the independence of election authorities and stipulates that the CEC BiH is an independent body which derives its authority from and reports directly to the Parliamentary Assembly of BiH.

Under the same law, the CEC BiH consists of seven members: two from each constituent people plus one other member, and they are responsible for the decision making. The members of the CEC BiH must be legal

experts with experience in the administration of elections and/or electoral experts, and may not hold any office in the bodies of a political party, association or foundations organisationally or financially related to the political party, and may not be involved in any political party activity.

Local election commissions (consisting of three, five or seven members, depending on the size of their electorate, as determined by the CEC BiH) are appointed by local parliaments, on the basis of a public competition, subject to the approval of the CEC BiH. Members of the local election commissions are appointed for seven-year terms, while the polling station committees are formed for each election separately. The Election Law provides for the independence of members of election commissions and polling station committees in terms of defining the incompatibility of functions for these persons.

Administrative, technical and professional support to the CEC BiH is provided by the Secretariat, established by the CEC BiH. The Secretariat's staff are mainly civil servants employed by the CSA and their rights and obligations stem from the Law on Civil Service in the Institutions of BiH, which provides for independence in their work and defines situations that can lead to termination of the civil service office.³¹⁹

Members of the election commissions are also formally protected from removal without relevant justifications, because the Election Law strictly defines criteria for their removal.

One of the shortcomings of regulations regarding the independence of the CEC BiH is the ambiguity and vagueness of laws which are implemented by the CEC BiH, particularly the conflict of interest laws and the Law on the Financing of Political Parties. This gives the responsible persons very broad discretionary pow-

ers and the opportunity for liberal interpretation of the rules, which leaves ample scope for undue external influence. Several national and international organisations, including the Council of Europe's Group of States against Corruption (GRECO) and TI BiH, have been calling for the laws within the CEC BiH's remit to be improved and refined in such a way to reduce the scope not only for abuse, but also for discretion in the CEC BiH's decision making.

INDEPENDENCE (PRACTICE)

To what extent does the electoral management body function independently practice?

SCORE 25

While in practice there have been no cases of removal of members or staff of the CEC BiH (the only registered cases were those of the Parliamentary Assembly not extending the mandate to individual members), given that there is no legal provision allowing politically motivated removals, the public has often talked about political pressures on this body.³²⁰

Regarding the audit of political party financing, GRECO finds that the independence and impartiality of the CEC BiH are somewhat questionable. In its latest report for BiH, GRECO states that the provisions of the relevant laws are unclear or incomplete, which has led the CEC BiH to interpret them extensively and apply them in a sometimes uneven manner. This has given rise to complaints by some political parties about double standards being applied by the CEC BiH as regards financial audit and sanctions, usually to the detriment of the opposition parties.³²¹

The electoral process has not been free of pressure either, given that there have been several attempts to remove, without relevant justifications, certain

members of local election commissions before the end of their term, but the CEC BiH did not give approval for their removal.³²²

In the wake of the general election in 2010, the independence and integrity of the CEC BiH were somewhat compromised by none other than the international community itself, after the OHR overturned the CEC BiH's decision concerning the formation of the FBiH government following the election.³²³ The CEC BiH made that decision on 24 March 2011 because the election to the House of Peoples of the FBiH Parliament had not been conducted in all ten cantons in accordance with the provisions of the Election Law of BiH, and no conditions were met for its constitution, as was also the case with the election of President and Vice Presidents of FBiH. The High Representative suspended the decision, thus legalising the newly-formed government in FBiH until such time as the Constitutional Court of FBiH decided otherwise. However, in November of the same year the Constitutional Court of FBiH declared itself incompetent, which further discredited the whole process,³²⁴ and controversy over the legitimacy of the newly-formed Government of FBiH continued in 2012. This only goes to show how fragile the overall national integrity system is, making BiH a failed state.

The CEC BiH's independence was further undermined by the open division of functions in the institutions of BiH among political parties during negotiations on the formation of government following the 2010 general elections, including negotiations on which party will appoint how many members to the CEC BiH.³²⁵ In this way, the representatives of the ruling parties openly showed in their media statements that the procedures for selection and appointment of the members of this body were a mere formality, and that the real decisions on the appointments to the CEC BiH were made by politicians.

According to the latest report for BiH by the Global

Integrity for 2011, the independence of the CEC BiH received a score of 25 (out of a maximum of 100), not least because of the party loyalty demonstrated by the majority of its members.³²⁶

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB?

SCORE 50

Transparency of the CEC BiH is ensured by regulations within the CEC BiH's remit as well as the Law on Freedom of Access to Information of BiH, but in compliance with the provisions of the Law on the Protection of Personal Data.

The schedule of publication of election results is provided for in the Election Law. Under this Law, the CEC BiH announces preliminary, unofficial and incomplete results of the elections for all levels of government.

The Election Law of BiH (which governs, *inter alia*, the area of financing election campaigns) and the Rules on Pre-election and Post-election Financial Reports of Political Entities³²⁷ require political entities to submit two types of financial reports related to campaign financing: a financial report for the period beginning three months prior to the date of submission of the application for certification to participate in the elections, and a financial report for the period beginning on the day of submission of the application for certification until the certification of the results. These reports include cash at hand, all incomes and expenditures from home and abroad, including donations in kind, the identity of the person who made any donation in excess of BAM 100, the cost of political campaigns, as well as any out-

standing debts and obligations owed by or to the person who files a report. The law provides that the CEC BiH is obliged to provide public access to these reports and take appropriate measures to ensure that all citizens have access to the information contained in the reports.

The Election Law also provides that the candidates standing for elections and the elected candidates have to report on their own property situation as well as the property situation of their family members. These reports are to be submitted prior to taking office (for candidates for elected office at the state and entity levels), upon taking office (for other levels of government), as well as 30 days after the expiry or in the event of termination of term of office. These reports are required to be made public by law, and the responsibility for their publication rests with the CEC BiH. However, by the decision of the Court of BiH, the publication of assets declaration forms has been discontinued in order to protect the personal data of public officials.³²⁸

The law on Political Party Financing and the Rules on Annual Financial Reports of Political Parties³²⁹ stipulate, *inter alia*, that political parties have to submit to the CEC BiH regular financial reports for each calendar (financial) year, in the prescribed format. These reports include: an overview of all transaction accounts of the political party, the total income of the party – membership fees, any contribution from individual persons or legal entities in excess of BAM 100, income generated by property owned by the political party as well as profit from the income of the enterprise owned by the party, non-financial donations and bills that the political party was not obliged to pay, incomes from the budget, other incomes, expenditures, loans, credits and debts. According to the regulations, the CEC BiH is also responsible for the publication of these reports; however, it is not clearly defined whether this obligation refers to complete reports or just parts thereof, which is why the CEC BiH publishes only summarised financial state-

ments of political parties.

The same law provides for the financial audit of political parties which is performed by the Audit Office operating within the CEC BiH. These audit reports are published in the official gazettes and on the CEC BiH's website.

Information on the implementation of the conflict of interest laws at various levels of government, as well as other ongoing activities of the CEC BiH, is contained, according to the law, in the CEC BiH's annual report submitted to the Parliamentary Assembly of BiH and is a public document.

TRANSPARENCY (PRACTICE)

To what extent are reports and decisions of the electoral management body made public in practice?

SCORE: 25

Generally, the CEC BiH informs the public of its official decisions and activities regularly and in a timely manner, mainly through press releases, and when necessary special press conferences are held. Also, the CEC BiH meetings are open to the public.³³⁰

The CEC BiH also has its website (www.izbori.ba) which is updated relatively regularly. According to the CEC BiH's 2010 annual report, during that year the CEC BiH published on its website announcements of all its meetings, 173 press releases and more than 1040 different documents of public interest (decisions, instructions, reports, spreadsheets, forms).³³¹

In the election year special telephone lines are opened for all participants in the electoral process, and the telephone numbers are published in the media. Also, in the election year an SMS centre is opened through which voters can check the location of their polling

station. On the day of announcement of elections, the CEC BiH publishes the Guidelines on the Timing and Schedule of Electoral Activities, which are submitted to the local electoral commissions, political entities and published on the website,³³² where the election results are also published.

On its website the CEC BiH publishes summarised financial statements of political parties, which do not contain detailed information on individual donations, their sources, or individual expenditures. The CEC BiH justifies not disclosing this information by referring to the Law on Personal Data Protection, and the lack of legal framework on party financing. Complete financial statements of political parties can be obtained only by lodging a request for access to this information in the premises of the CEC BiH, provided that, prior to accessing the reports, a statement is signed that the information will not be misused. Given that only the identification numbers of legal entities and individual persons are marked as confidential in the financial statement forms of political parties,³³³ and not the names or amounts of donations, it is clear that there is no willingness on the part of the CEC BiH to ensure full access to the information about the financing of political parties. Even where laws do not prevent this information from being made publicly available, the CEC BiH still refuses to make them public.

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the EMB has to report and be answerable for its actions?

SCORE 75

In addition to annual reports which are submitted for adoption to the Parliamentary Assembly of BiH, the CEC BiH has the obligation to produce annual financial

reports which are submitted to the Ministry of Finance and Treasury of BiH. The content of these reports is regulated by the Rules on Financial Reporting of the Institutions of BiH,³³⁴ an integral part of which is the analysis of budget execution. Local election commissions submit their annual reports to their respective local parliaments, at the request of the CEC BiH.

The regulations provide for appeal procedure against the decisions of the CEC BiH.

The Audit Office of the Institutions of BiH conducts audits of the CEC BiH's financial operations. Audit reports, along with recommendations, are submitted to the Parliamentary Assembly of BiH and published on the website of the Audit Office.

The Rules on the Internal Organisation of the Secretariat of the CEC BiH envisage one position for an internal auditor.

ACCOUNTABILITY (PRACTICE)

To what extent does the EMB have to report and be answerable for its actions in practice?

SCORE 25

Upon approval of the reports which are public under the law, they are in practice made public either by the CEC BiH or by other competent authorities (PA BiH, Audit Office and others). If any of the documents with a public availability status are not published on the Internet, they can be obtained on request, in accordance with the Law on Freedom of Access to Information.

In terms of content, these reports are very comprehensive and contain remarks on certain aspects of the CEC BiH's operation, made by relevant national and international bodies, as well as any action taken by

the CEC BiH based on them. The Election Law requires other election commissions to submit reports and the Law on Freedom of Access to Information obliges them to make these reports available to the public.

As regards the audit, in the past the CEC BiH received unqualified opinions from the Audit Office of the Institutions of BiH, with accompanying comments and recommendations. Some of the recommendations concerned the continuing need for the CEC BiH to improve its public procurement practices and procedures, which was not complied until 2011, as well as to improve the internal controls system and fill a vacant position of internal auditor.³³⁵

Since the adoption of the other laws that belong to its scope of remit, the CEC BiH has been active in organising training programmes for the persons to whom these laws apply. A series of training sessions were organised in the past for elected officials, executive officeholders and advisors about the Law on Conflict of Interest, as well as representatives of political parties about regulations on the financing of political parties. Civil society was often a partner in those training programmes, as well as an organiser of special training sessions for other interested parties.

However, repeated attempts to establish political control over the CEC BiH have increasingly given rise to doubts about the impartiality and quality of its decisions. The fact with which the CEC BiH often distances itself from public criticism – namely, that the Court of BiH confirmed most of its decisions – cannot be accepted given the state of affairs in the judiciary, which itself was rated quite negatively in terms of integrity and fight against corruption.

INTEGRITY MECHANISMS (LAW)

To what extent are there mechanisms in place to ensure the integrity of the electoral management body?

SCORE 75

Mechanisms to ensure the integrity of election commissions are provided for in certain laws and regulations.

Although there is no code of conduct for members of the CEC BiH, the Law on Conflict of Interest in BiH applies, *inter alia*, to the members of the CEC BiH. The principles of this Law³³⁶ are reminiscent of a code of conduct, since they contain the provisions and rules of ethical conduct. The Law further includes the incompatibility of functions, rules on gifts and services, post-employment restrictions, obligation to submit financial statements and other matters. However, the Law also contains a number of shortcomings, and needs to be improved as soon as possible, of which the CEC BiH itself is aware. Some of these shortcomings include inappropriate system of sanctions relative to the damage resulting from acquiring unlawful material gain, as well as the fact that one of the most important sanctions for proven conflict of interest – dismissal and cancellation of the act arising from the conflict of interest – is not incorporated. Also, the period of four years to institute proceedings is too long and completely inadequate, since an official can be in a conflict of interest over his/her entire term of office. There are no provisions on *pantouflage* [revolving door] or preventing inappropriate migration of officials from the public to the private sector, and control mechanisms for reporting gifts are inadequate. Furthermore, the CEC BiH's capacities for implementation of laws are insufficient, and the involvement of other authorities in the implementation of laws is inadequate (tax authorities, prosecutor's offices,

the Public Procurement Agency, etc.).

When it comes to the CEC BiH's staff, this Law applies only to its members, while the staff working in the CEC BiH's Secretariat, who have the status of civil servants, are subject to the Law on Civil Service in the Institutions of BiH, which also includes provisions on conflict of interest.

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of the electoral management body ensured in practice?

SCORE 25

By 2010, the integrity of the CEC BiH and other electoral authorities was never questioned, at least when the electoral process was concerned. However, in the general elections held in October 2010, a number of members of the polling station committees were found to have violated the Election Law. They were fined and barred from working in electoral authorities for a period of four years. Administrative procedure was instituted against these individuals, during which statements were taken and hearings were conducted. The CEC BiH released their names and submitted to the relevant prosecutors the complete information based on which the prosecutor's offices would evaluate whether there were elements of a criminal offence, and possibly press charges.³³⁷

According to the Global Integrity report for 2011, the CEC BiH's integrity has often been compromised because of delays and selective application of the law, as well as refusing to implement some court decisions, which further testifies to the partisanship of the majority of its members.³³⁸

The public is not aware of any major omissions in the work of civil servants employed in the Secretariat of the CEC BiH.

CAMPAIGN REGULATION (LAW AND PRACTICE)

Does the electoral management body effectively regulate candidate and political party finance?

SCORE 25

The financing of political parties and election campaigns is regulated by the Election Law of BiH,³³⁹ regulations issued by the CEC BiH (rules, instructions, forms, and other implementing regulations), laws on the financing of political parties (at the level of the state, RS³⁴⁰ and Brčko District), conflict of interest laws (at the state, entity and Brčko District levels), laws relating to the registration of political parties, as well as laws that apply to the operation and functioning of all legal entities, including political parties in BiH. The laws set limits and determine the allowable sources of funding, allowed amounts and ceilings for the funding from private sources, obligation to report donations and do financial reporting, audit and control of financial statements, sanctions and other issues.

Of the aforesaid legal documents, the CEC BiH has the competence to implement the Election Law, Law on the Financing of Political Parties of BiH as well as conflict of interest laws at all levels except RS, the first two of which, along with their respective implementing regulations, are crucial for the field of financing.

The main shortcomings of these regulations, which must be taken into account in future amendments, are as follows:

- the existing legal framework is very complex and poorly harmonised, especially bearing in mind that, unlike RS and Brčko District, FBiH does not have a law on the financing of political parties which would prescribe the method of budget allocation from various levels in this entity;
- inadequacy of the provisions relating to the control of expenditure of political parties, which allows the parties to not report significant amounts of their resources for financing;
- absence of the obligation to finance campaigns through single bank accounts, which prevents the CEC BiH from having a complete overview of parties' transactions, and therefore reduces the possibility of detecting fraud;
- lack of transparency in the financial statements of parties and election campaigns, and – consequently – in audit reports made by the CEC BiH, which are, due to lacking audit capacity, often published too late to be able to have an appropriate effect;³⁴¹
- imprecisely defined provisions relating to the misuse of public funds for campaign purposes; as a result, political parties finance their campaign activities from the budgets of the institutions they manage, with the CEC BiH having no basis for sanctioning such behaviour;
- absence of a credible system of verification of property statements filed by every candidate standing for elected office;
- lack of institutional cooperation between the CEC BiH and other law enforcement agencies;
- inadequate system of sanctions, etc.

That the aforementioned shortcomings really occur in practice is further evidenced by the Global Integrity Report, which rated the efficiency of the legal framework for the financing of political parties and election campaigns, and its actual implementation, as being very weak (25 out of a maximum of 100 points).³⁴²

ELECTION ADMINISTRATION (LAW AND PRACTICE)

Does the EMB effectively oversee and administer free and fair elections and ensure the integrity of the electoral process?

SCORE 50

The legal framework for elections in BiH is quite comprehensive and provides a good basis for the conduct of democratic elections. It, however, fails in one key area, i.e. regarding the constitutional restrictions that are based on ethnicity. Thus, persons who do not declare themselves as Bosniaks, Croats or Serbs cannot run for the Presidency of BiH and the Presidency of RS, while Serbs registered in FBiH and Bosniaks and Croats registered in RS cannot run for the Presidency of BiH. Voters are further limited by their place of residence; RS voters can only vote for a Serb candidate for the Presidency of BiH, while voters in FBiH can only vote for either a Bosniak or Croat candidate.³⁴³

In any case, the CEC BiH has, in part due to the support of foreign donors, made reasonable efforts through educational, promotional and awareness campaigns to educate and motivate voters, both in the country and abroad. As a result of all the activities performed, on the day of the general election on 3 October 2010, a total of 3,132,231 voters were registered in the Central Voter Register. At 5,276 polling stations, the turnout was 1,770,388 (or 56.52%) voters, of whom 1,571,132 women (50.16%) and 1,561,099 men (49.84%).³⁴⁴

During the election campaign, a total of 62 complaints were lodged against the behaviour of political actors and violation of the campaign rules. Of those, 22 decisions were issued by the CEC BiH in matters within its jurisdiction and regarding appeals against first-instance

decisions issued by municipal election commissions. The majority of complaints dealt with torn down election posters, illegal placement of posters, hate speech, and preventing journalists in their work.³⁴⁵

There were also problems with timely publication of election results because the CEC BiH's website was overloaded and virtually inaccessible for three days as a result of the introduction of a new information system.

There were also objections regarding the regularity of the elections in some polling stations. Thus, the Party of Democratic Progress objected to the election results for the Serb member of the Presidency of BiH, claiming that they had identified irregularities at some polling stations (unrealistically high turnout, invalid ballots, etc.).³⁴⁶ However, the CEC BiH refused to annul the results in those polling stations on the grounds that that would have had no impact on the final election result, which cast a slight shadow of doubt on the integrity of the electoral process.

Additional burden imposed on the CEC BiH during the election period is the fact that this is also a period when the majority of work on checking and determining conflicts of interest takes place as a new batch of people take up office, as well as that a great deal of previous officeholders take up new office. All this can make this period very difficult for the CEC BiH and can affect the quality of its work.

Observation of the election process is provided for in the Election Law of BiH (Chapter XVII). Under this Law, representatives of international observers, associations of citizens, political parties, coalitions, lists of independent candidates and independent candidates may observe all electoral activities in BiH provided that they are accredited in accordance with this Law. Observers have access to all relevant documents and

public election commission meetings, and are free to contact the CEC BiH at any time during the entire period of the electoral process, and have access to all Voter Registration Centres, Polling Stations, Counting Centres, and other relevant locations in the manner specified by the CEC BiH. In practice, however, these rights remain underutilised by civil society and the media. By way of illustration, on the election day political party observers were noted in more than 97 per cent of polling stations visited and NGO observers in only 10 per cent.³⁴⁷ Several opposition parties complained that their representatives had been prevented from effectively observing the elections.

RECOMMENDATIONS

- In order for the CEC BiH to perform its tasks and duties efficiently and in a timely manner, it is necessary to fill all the vacant positions anticipated in the internal regulation on job classification and even consider the establishment of additional positions or find an alternative solution. This especially applies to the Department for Auditing Financial Operations of Political Parties, whose lack of professional personnel and necessary equipment, combined with deficient legal provisions, leaves a significant proportion of irregularities in the financing of political parties undetected;
- In order to enhance the integrity of and strengthen public confidence in the CEC BiH, it is necessary to ensure that it acts on the recommendations of the Audit Office of the Institutions of BiH, and above all to improve the system of internal controls and fill the vacant post of internal auditor;
- Laws which are implemented by the CEC BiH need to be improved in accordance with the recommendations of organisations such as GRECO, OSCE, TI BiH and other relevant standards in order to eliminate the ambiguities and lack of precision giving the responsible persons in the CEC BiH too much discretion and allowing them to be inconsistent in decision-making, which lives scope

for undue influence;

- In order to fully and timely implement extremely important regulations within the CEC BiH's scope of remit, it is necessary to ensure political independence and increase the capacity of CEC BiH, as well as ensure and precisely elaborate its engagement and coordination with other relevant authorities (particularly tax authorities, prosecutor's offices, the Public Procurement Agency, audit offices, etc.);
- For the purpose of providing timely access by the public to information, it is necessary to enhance the transparency of the electoral process, especially the announcement of the election results, through further development of the information system, as well as the proactive action of the CEC BiH, in particular through its website;
- In order to avoid violations of the Election Law by members of polling station committees, such as were observed in the October 2010 general election, it is necessary to introduce mechanisms to enhance their professionalism and accountability;
- In order to minimise election irregularities, it is necessary to ensure greater participation of civil society and the media in the observance of the election process;
- Not only must property statements be made fully public, but the data should be submitted throughout the term of office if there are any significant changes in the property, as recommended by GRECO;
- It is necessary to improve financial statements of political parties and election campaigns as soon as possible. The prescribed reporting format is dubitable and seen as too summative as it does not contain sufficient information of interest to the public, which is why all financial statements submitted to the Commission should be made publicly available.

6.9. OMBUDSMAN

OVERALL PILLAR SCORE: 54/100

STATUS: MODERATE



SUMMARY

The Human Rights Ombudsman of BiH is an independent institution mandated to oversee the activities of institutions at all administrative levels and make relevant reports. The reports with recommendations are submitted to the concerned authorities, as well as the public. In this way, as well as by means of their annual reports, the ombudsmen are supposed to promote good governance and the rule of law.

The ombudsmen have adequate resources to achieve their goals in practice. In 2011, legal staff made up 42.85% of the total number of 56 employees. The independence of the ombudspersons is guaranteed by the laws on the ombudsmen, and further guarantees are provided by the provisions of the Constitution of

BiH. In general, the legislative framework allows public access to relevant information on the activities of the Ombudsman and his/her decision-making process, but in practice it is necessary to improve certain processes and activities of the Ombudsman.

The question of the accountability of the Ombudsman institution is relatively well regulated by law, given that the Ombudsman is answerable to the legislatures at multiple administrative levels; however, the laws do not provide for the dismissal of the ombudsperson on the grounds of lack of accountability of the whole Ombudsman institution. The Integrity of the Ombudsman institution is governed by relevant laws, but in practice it is necessary to continuously train staff on issues of integrity.

STRUCTURE AND ORGANISATION

The Human Rights Ombudsmen are a state-level institution headquartered in Banja Luka. The institu-

tion has regional offices in Mostar, Sarajevo and Brčko District, and a field office in Livno, which is attached to the regional office in Mostar. The Law on Amendments to the Law on Ombudsman for Human Rights of BiH³⁴⁸ provides that the institution has special organisational units to monitor rights of children, rights of people with disabilities and rights of national, religious and other minorities.

According to the law, the ombudspersons can monitor the activities of the authorities in BiH, which includes all institutions, organs, agencies and all other authorities (state, entity, Brčko District, cantonal and municipal authorities as well as private institutions performing public services).

The Regulation on Internal Organisation and Job Classification, which the ombudspersons adopted at their meeting on 5 January 2009, established the following departments: the Department for Protection of Economic, Social and Cultural Rights, the Department for Protection of Political and Civil Rights, Department for Elimination of All Forms of Discrimination, the

TABLE WITH SCORES
OMBUDSMAN
OVERALL PILLAR SCORE: 54/100

DIMENSION	INDICATOR	LAW	PRACTICE
CAPACITY 50/100	RESOURCES INDEPENDENCE	75	50 25
GOVERNANCE 63/100	TRANSPARENCY	75	50
	ACCOUNTABILITY	75	50
	INTEGRITY MECHANISMS	75	50
ROLE 50/100	INVESTIGATION	50	
	PROMOTING GOOD PRACTICE	50	

Department for Protection of the Rights of Detainees/ Prisoners, and technical services.

The institution comprises three ombudspersons appointed by the Parliamentary Assembly of BiH.³⁴⁹ On 31 December 2011, the total number of employees in the Ombudsman Institution of BiH was 56, two employees fewer than in 2010. The institution has 11 graduate lawyers who have passed the Bar examination, of that three ombudspersons, seven heads of departments and two advisors. Thirteen lawyers are employed as expert associates and advisors. Twelve employees with a university degree are assigned to administrative and financial positions and 20 employees with secondary school degree are assigned to administrative-financial and technical jobs.

RESOURCES (PRACTICE)

To what extent does an ombudsman or its equivalent have adequate resources to achieve its goals in practice?

SCORE 50

In 2010 the institutions had a budget of KM 2.721.000, with the level of budget execution of 87%. In 2011 the budget was KM 2.473.406, which was executed in full amount.

In addition to funds from the budget of BiH institutions, since 2009 the Ombudsman Institution has received support for the work of its Department for Protection of the Rights of the Child from the NGO Save the Children Norway.³⁵⁰ In 2011 Save the Children Norway provided KM 85,377.37 for strengthening the Department's capacity to monitor children's rights. So far, no funding has been secured for the operation of the Department for Elimination of All Forms of Discrimination, which, according to some NGOs,³⁵¹ suggests that the central

institution for the protection from discrimination³⁵² cannot operate at full capacity. Also, the U.S. Embassy provided funds in the amount of KM 21,564 to support the capacity building of the Human Rights Ombudsman Institution through the involvement of trainees/ lawyers. The current ombudspersons assumed office in late 2008 and adopted the Regulation on Internal Organisation and Job Classification the following year. In 2010, five lawyers resigned from office as assistant ombudsmen because of inadequate pay. Statistical data on employment in the Ombudsman Institutions show that at the end of 2009 the Institution had a total of 43 employees, of which: eight graduate lawyers who have passed the Bar examination, working as heads of departments/ regional branch offices (three in the headquarters in Banja Luka, three in the Regional Office in Sarajevo, one in the Regional Office of the Brčko District and one in the Regional Office in Mostar); four lawyers working as "expert associates"; eight employees with a university degree performing administrative and financial jobs; and 15 employees with a secondary school degree performing administrative-financial and technical jobs. Also, the Ombudsman Institution employed eight lawyers with the status of trainees on a one-year fixed-term contract. The decision on employment of trainees was also made by the BiH ombudspersons, as required by the conclusion of the Council of Ministers issued at its 82nd session held on 5 May 2005.³⁵³ In 2011, legal staff made up 42.85% of the total number of 56 employees.

INDEPENDENCE (LAW)

To what extent is the ombudsman independent by law?

SCORE 75

The independence of the ombudspersons is guaranteed by the laws on the ombudsmen, and further guarantees

are provided by the provisions of the Constitution of BiH.³⁵⁴ Ombudspersons are appointed from the three constituent peoples (Bosniak, Croatian and Serbian), which does not preclude the appointment from among the ranks of Others.³⁵⁵

The legislative framework provides for functional and institutional independence³⁵⁶ of the ombudspersons with regard to the issues that they can investigate, their powers in the investigative process and formulation of their decisions.

INDEPENDENCE (PRACTICE)

To what extent is the ombudsman independent in practice?

SCORE 25

Although the Constitution of BiH and relevant laws guarantee them a high degree of independence, the BiH ombudspersons have not shown to be exercising this independence in practice. Their annual and special reports have failed to show which public authorities carry out their functions properly, how transparent and accountable they are in their work, and to what extent they ensure equal treatment of all citizens in the exercise of their human rights. This may be a consequence of their political appointment by the legislature.

Foreign experts who have worked in these positions point out that the independence of ombudspersons, particularly in new democracies and post-conflict societies, is extremely important. Ombudspersons in these countries must work on the promotion of the protection of human rights of individuals, stabilisation and rehabilitation of society, and changing the mentality of government bodies towards becoming more responsive to the public. They are expected to enhance their accountability to the public, point out the problems in the

functioning of the rule of law, and thus strengthen public confidence in both the government and the institution of Ombudsman.³⁵⁷

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ombudsman?

SCORE 75

The 2002 Law on the Ombudsmen of BiH provided for the possibility of publishing ombudspersons' general recommendations in the "Official Gazette of BiH" and stipulated that all other recommendations were available to the public, except when they were related to confidential and secret matters or when the complainant requested so. Furthermore, the Law provided for the publication of the Institution's annual and special reports. The Institution's Rules of Procedure, which were adopted as far back as 2004 and are available online, provide that the communication with citizens is to take place only in writing; however, the ombudsperson or staff working on the case may decide, for the sake of urgency, to use less formal ways of communication including face-to-face interviews. The above Rules also govern the confidentiality of communication with those who seek ombudspersons' assistance.

TRANSPARENCY (PRACTICE)

To what extent is there transparency in the activities and decision-making processes of the ombudsman in practice?

SCORE 50

The public can access the information mainly through the website as well as through press conferences organised for the presentation of annual reports, which, if at all, printed, are delivered to a very limited number of institutions to whom the recommendations are addressed, but also to professionals and non-governmental organisations. Only in exceptional cases, individual recommendations are published in the media – only a few have been published so far. The ombudspersons participate in conferences and roundtables organised by non-governmental organisations and inform them of their activities and work.

The Ombudsman Institution of BiH has a web page where the following information is published: annual reports, special reports, recommendations, some of the internal rules and regulations governing the work of ombudspersons, and news related to their work. As the laws do not specify the type of information the ombudspersons are required to make available to the public, they themselves decide what recommendations to publish on the website. Due to the limited capacities of the website, the site publishes only typical recommendations that are related to a specific violation. The institution is currently in the process of reconstructing the website and solving this problem with the support of the Embassy of the Kingdom of Norway. Each annual report includes as an annex a list of all recommendations that can be made available on request.

The law further stipulates that, in their annual report, the ombudspersons are required to state the num-

ber and nature of the complaints received, as well as indicate which were not pursued and the reasons thereof. However, the annual reports do not contain that information at all. Also, they do not indicate the time period when the individual decisions were made. Unfortunately, the law does not set any deadlines for the execution of certain activities and neither do the Rules of Procedure³⁵⁸ or the Institution's Work Strategy.³⁵⁹

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the ombudsman has to report and be answerable for its actions?

SCORE 75

The legislative framework provides that each year the Institution is to submit a report on the results of its work to the Presidency of BiH, Parliamentary Assembly of BiH, Parliament of FBiH, and National Assembly of RS, as well as that the report is to be published. The laws also stipulate that, as part of their duties, the ombudspersons are to make rules concerning disciplinary liability of the employees in the Ombudsman Institution. Due to the different dynamics of passing the entity laws on cessation of the laws on the entity ombudspersons (in FBiH in 2007 and in RS as late as 30 December 2009), events surrounding the merging of the entity ombudspersons with the ombudspersons of BiH resulted in the Conclusion of the Board of the House of Representatives of the FBiH Parliament issued on 24 March 2009, according to which the merging must be implemented simultaneously,³⁶⁰ i.e. once RS adopts its own law.

Therefore, the ombudspersons, as well as the Institution as a whole, are answerable to the legislatures at multiple administrative levels. However, only the Parliamentary Assembly of BiH can appoint and dismiss the

ombudspersons, and the laws do not specify whether initiatives for dismissal of the ombudspersons may come from the entity parliaments which discuss their reports. The laws do not provide for the termination of an ombudsperson's duties because of the irresponsibility of the whole Ombudsman Institution. This can happen only for the reason of "his or her manifest inability to perform his or her duties". Thus, for example, the ombudspersons cannot be held responsible for inadequate results in the work of the Institution. The responsibility for the selection and dismissal of employees rests with the Institution.

There is no legal requirement for the authority to which reports are submitted to analyse the data and propose measures to be taken with a view to improving the human rights situation, rectifying the omissions identified in the report and preventing any further violations. Also, there are no provisions specifying the time period within which feedback reports must be completed and submitted.

In conclusion, the accountability of the ombudspersons is regulated only partially, through the legal obligation of drawing up an annual report. The laws fail to establish any framework or standards of the ombudspersons' social accountability.³⁶¹ Also, the laws do not provide for any obligations of the bodies that consider their reports. This misses the opportunities for ombudspersons' reports to create an environment for strengthening the accountability of all government institutions, as well as raising awareness of human rights in general.³⁶²

ACCOUNTABILITY (PRACTICE)

To what extent does the ombudsman report and is answerable for its actions in practice?

SCORE 50

The ombudspersons are required by law to report annually on the results of their activities. In the reports, they state their responsibilities and discuss the activities undertaken by the Institution, complaints received, their structure, the opposing parties, how the ombudspersons acted on the complaints, recommendations, special reports, how individual departments acted on appeals, functioning of the Institution, and its cooperation with other institutions, international organisations, the media and civil society.

The reports provide more information than the law requires in part related to the number of complaints received and the violations to which they refer, as well as the number of complaints resolved and violations to which these complaints refer. However, the reports do not provide information about which complaints were not pursued, as well as the number of unresolved complaints, nor do they specify the reasons thereof. Also, the reports do not include an overall assessment of the state of human rights, nor do they point to the causes of such a state, and, consequently, do not provide any recommendations on how to address them.

The annual reports are extensive (the 2010 report has 183 pages and the 2009 report 109 pages). The statistics about complaints contained in the reports are disaggregated by individual offices and by types of violations. Textual parts of the reports, on the other hand, are full of inconsequential details.

The explanation that the unresolved complaints relate, *inter alia*, to cases of discrimination, which is difficult to

prove, is inadequate given that the Law on Prohibition of Discrimination³⁶³ clearly states that the burden of proving discrimination falls on the alleged violator.³⁶⁴

In 2011 the Ombudsman Institution of BiH received **3,067 complaints** (65%) and, along with **1,683 complaints** (35%) carried over from 2010, the Institution worked on a total of **4,750 cases** in 2011. In 2011, a total of 2,889 cases were solved. Of that number, 891 cases were in execution, 128 were closed with ombudspersons' recommendations, 488 case files were closed because the complainant abandoned the complaint, 711 were found to have no grounds, 59 were handed over to the competent authority for lack of jurisdiction, 23 were forwarded to another Ombudsman office, 14 were closed with a special report, and 575 were solved in an otherwise manner. Of a total number of 6,821 contacts with citizens, direct contact was made in 4,188 cases (61%), written communication in 197 (3%), and phone contact in 2,436 cases (36%).

Jasminka Džumhur, one of the three ombudspersons, has confirmed that the Institution's internal regulations contain no provisions concerning the time period within which complaints are to be solved, because the lack of responsiveness on the part of other institutions reduces the efficiency of the Ombudsman Institution, but ombudspersons insist that every case should be completed within two years.³⁶⁵

INTEGRITY MECHANISMS (LAW)

To what extent are there provisions in place to ensure the integrity of the ombudsman?

SCORE 75

Provisions of the ombudsman laws relating to the

appointment of ombudspersons require that ombudspersons should be persons who have a demonstrated experience in the field of human rights and high moral stature. The laws also stipulate which political positions are incompatible with the office of the ombudsperson, but do not regulate other ombudspersons' behaviours that could constitute a conflict of interest, as ombudspersons, being appointed officials, are not considered elected officials in terms of the Law on Conflict of Interest in Governmental Institutions of BiH.³⁶⁶ The Institution's internal rules and regulations that are available on the website do not show that the ombudspersons issued any special regulations relating to integrity, such as restrictions on political engagement, rules on gifts or assets declarations, etc.³⁶⁷ The Institution is currently drafting new rules, but whether they will solve the outstanding issues related to integrity is yet to be seen.³⁶⁸

The internal rules and regulations regulating the work of the Ombudsman Institution, which were either enacted or amended in 2010 and 2011, include: Rules of Procedure for the Staff of the Institution of Human Rights Ombudsman of BiH, Rules of Procedure of the Human Rights Ombudsman of BiH, Rules on the Use of Funds Approved as Entertainment Costs, Rules on the Conditions and Manner of Use of Official Vehicles, Rules on the ID Card, Decision on the Right to the Use of Official Telephones and Reimbursement for their Use, Rules on Office Operations, Regulation on Disciplinary Liability, Rules on the Safeguarding and Use of Official Seals, Rules on the Reimbursement of Costs for Business Travel, Regulation on Internal Organisation and Job Classification, Regulation on Public Procurement, Regulation on Continuing Professional Development, Training Programme for Trainees, Guidelines for Exercise of the Right to Access to Information, Index Register, Decision on the Merging of Entity Ombudsmen, and Regulation on Internal Obligation-Creating Procedures. Furthermore, the Institution has also adopted the Rules of Procedure of the Institution of Hu-

man Rights Ombudsman of BiH, Code of Conduct for the Employees of the Ombudsman Institution, Regulation on Occupational Safety, Regulation on Fire Protection, Rules on the Work of the BiH Ombudspersons, and Rules on Archiving.³⁶⁹

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of the ombudsman ensured in practice?

SCORE 50

The integrity of the ombudspersons is ensured partially and generally in the aforementioned laws and regulations. The Institution's webpage does not provide information on the existence of a code of conduct for the ombudspersons and staff, so there are no standards by which to assess their level of integrity. There is the Regulation on Disciplinary Liability, but no information as to whether, when, and why any procedure was conducted against the employees, and whether the procedure resulted in sanctions and what type of sanctions. Ombudsperson Jasminka Džumhur points out that no such procedure has been conducted against the staff, because there was no need.³⁷⁰

No data are available on whether staff are trained on issues of integrity.

INVESTIGATION (LAW AND PRACTICE)

To what extent is the ombudsman active and effective in dealing with complaints from the public?

SCORE 50

The Rules of Procedure provide that complaints must be submitted in writing. Those who are computer literate can use an online complaint form on the Institution's website.

The public in BiH is not sufficiently informed about the work of the BiH ombudspersons, and the dialogue with NGOs dealing with human rights takes place in accordance with the Platform of Cooperation with NGOs. The Platform, published on the Institution's website in November 2010, is a document defining ways of cooperation with NGOs. It was developed as the result of a series of consultation meetings with over 70 NGOs from across the country in 2009 and 2010. Furthermore, the Annual Report shows that the institution collaborates with NGOs beyond the extent envisaged in the Platform.

In 2011 the Institution of Human Rights Ombudsman had a total of 191 registered cases dealing with discrimination.³⁷¹ In 2011 there was an increase in the number of complaints compared to the year before. This may be due to the intensive promotional campaigns of both the Ombudsman Institutions and other human rights organisations. By comparison, the Institution received 135 discrimination-related complaints in 2010 as opposed to 156 in 2009.

The laws give the ombudspersons in BiH powers that are far broader than those of ombudspersons in developed democracies. Thus, for example, one of their obligations is to alert the legislature of the laws

identified as being mutually conflicting, containing legal loopholes, or not being in compliance with international conventions. Also, the ombudspersons should help the executive change its practices to become more responsive to the public. It is therefore essential that ombudspersons use their powers as broadly as possible, in order not only to assert themselves as defenders of human rights of citizens, but also to fulfil their role as monitors of the executive and the legislature.³⁷²

The effectiveness of the BiH ombudspersons builds on the results of their work and public trust in them. According to a survey,³⁷³ only 2.2% of the citizens surveyed recognise the Ombudsman as an institution that is also responsible for preventing discrimination. This suggests that the effectiveness of the Ombudsman Institution of BiH should be significantly enhanced.

PROMOTING GOOD PRACTICE (LAW AND PRACTICE)

To what extent is the ombudsman active and effective in raising awareness within government and the public about standards of ethical behaviour?

SCORE 50

The existing legislation states, inter alia, that the Ombudsman Institution is set up in order to promote good governance and the rule of law.

Annual reports of the Ombudsman Institution show activities related to work on the complaints, but do not contain full analyses of the rule of law and independence of the judiciary and the administration. Such assessments would be important to raise awareness, not only of citizens but also of government, of the necessity to implement reforms in these areas. Also, the Institution did not run a campaign to promote good practices

of public institutions. In its Work Strategy, the Institution envisages to promote the values and good practices of internationally achieved level of human rights.

In accordance with its authority, the Ombudsman Institution has been giving recommendations about the need to harmonise laws with the conventions, depending on the findings of investigations of individual cases. One such example is the publication of the Analysis of the Compliance of BiH Legislation with the Convention on the Rights of the Child. Each Special Report discusses one topic from the point of view of international standards and national legislation. However, the non-compliance of national legislation with international standards continues to result in BiH losing disputes before the European Court of Human Rights in Strasbourg.

Public campaigns about the implementation of particular laws or the mandate of ombudspersons have to be implemented on a continuous basis and presented in the media, especially electronic media.

RECOMMENDATIONS

- When changing the Constitution of BiH, the chapter relating to human rights should contain a section relating to the ombudsman institution, which would give additional support and importance to this institution and its independence;
- It is necessary to set up stricter criteria that candidates must meet; the selection commission should comprise representatives of all political parties participating in the BiH Parliament as well as independent legal experts, e.g. those from the Constitutional Court and the university; it is also necessary to establish rules of procedure for the selection commission and define the role and importance of the observers;
- The institution should adopt internal regulations to regulate conflicts of interest, ethical and other issues

that involve obligations to officials, favours and the like. It is necessary to strengthen the institution with professional high quality personnel;

- The ombudspersons should report more often on their work to the legislature and the public, as well as the non-governmental sector; it is necessary for the Institution to significantly increase communication with the media and show more initiative in this regard;
- It is necessary to start producing analyses relating to the work of public institutions. Such analyses should be made public with the aim of increasing the authority and credibility of the Institution, on the one hand, and promoting good governance and the rule of law, on the other.

6.10. AUDIT INSTITUTIONS

OVERALL PILLAR SCORE: 65/100

STATUS: STRONG



SUMMARY

Being an independent institution whose establishment and operation are based on ethics, professionalism and standards, the Audit Office of the Institutions of BiH plays an important role by providing the competent authorities and the public with independent and objective information contained in audit reports.³⁷⁴ The Law on Auditing Institutions of BiH (hereinafter: Audit Law) stipulates that, when performing audits, the Audit Office of the Institutions of BiH must apply auditing standards issued by the International Organisation of Supreme Audit Institutions (INTOSAI) and the International Standards issued by the International Federation of Accountants (IFAC). Financial audit is conducted ac-

cording to the established methodology. Subject to audit are always annual financial statements and financial audit is, therefore, conducted on an annual basis. In order for the auditor to form and give his/her opinion on the financial statements, he/she implements audit procedures with the aim of obtaining sufficient evidence to support his/her opinion. The state audit office is, like other state institutions, financed from the state budget. The independence of public sector audit, as well as its relations with the legislature and the executive, are defined by the Lima Declaration (adopted more than two decades ago, in October 1977, at the Ninth INTOSAI Congress in Lima, Peru).

STRUCTURE AND ORGANISATION

International Standards of Supreme Audit Institutions (ISSAI) consist of documents adopted by INCOSAI

(International Congress of Supreme Audit Institutions – INTOSAI) which are aimed at managing professional standards of Supreme Audit Institutions (SAIs). The standards include recommendations on legal, organisational and professional prerequisites, as well as how to conduct audits and any other tasks that may be entrusted to the SAIs.³⁷⁵ General public sector auditing standards include requirements for qualification, independence, conflict of interest, expertise and professionalism. The traditional task of the Supreme Audit Institution is audit of the legality and regularity of financial management and accounting. In addition to this type of audit, which retains its importance, there is another important type – performance audit. It is oriented towards the study of performance, economy, efficiency and effectiveness of public administration. Performance audit covers not only specific financial operations, but also the total volume of government activities, including the organisational and administrative systems. The Supreme Audit Institutions have adequate

TABLE WITH SCORES
AUDIT INSTITUTIONS
OVERALL PILLAR SCORE: 65/100

DIMENSION	INDICATOR	LAW	PRACTICE
CAPACITY 58/100	RESOURCES INDEPENDENCE	75	50 50
GOVERNANCE 88/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY MECHANISMS	100 75 100	75 75 100
ROLE 50/100	EFFECTIVE FINANCIAL AUDITS DETECTING AND SANCTIONING MISBEHAVIOUR IMPROVING FINANCIAL MANAGEMENT	50 75 25	

financial resources to perform their duties. If necessary, the SAIs have the right to directly apply for necessary financial means to the public institution that decides on the public budget.

RESOURCES (PRACTICE)

To what extent does the audit institution have adequate resources to achieve its goals in practice?

SCORE 50

The audit offices in BiH secure their annual funding through application of specific procedures stemming from three audit laws (procedures that ensure financial independence from the executive in BiH; parliamentary commissions in charge of auditing, finance and budget directly approve the budget of audit institutions for the coming year). However, similar to other budget users, budget requests are harmonised with the frameworks and criteria established in the Budget Framework Papers (BFP).³⁷⁶ In this way, the audit offices conform to the overall budget framework of entities and institutions of BiH. Unfortunately, the two entity offices do not have adequate capacities to fully carry out their statutory scope of financial audit. Furthermore, all three audit offices are in the early stages of developing their capacities for conducting performance audits (capacity development and increasing the scope and coverage of performance audit depends on the training of personnel). Important conditions are determined by the environment, consistent system of planning activities of public administration and system for monitoring execution of work plans, development of programme budgeting system, upgrade of the control environment, and other elements. If a SAI deems resources to be insufficient on an annual basis, the procedures allow each office to apply to the legislature directly for approval of the additional necessary financial resources, especially if they are producing special reports. SAI staff members

have an adequate academic background and sufficient previous work experience as well as adequate career development and training opportunities.

INDEPENDENCE (LAW)

To what extent is there formal operational independence of the audit institution?

SCORE 75

In carrying out its tasks prescribed by the Law on Audit Institutions in BiH, Auditing Office is independent and is not subject to control of any other person or institution.³⁷⁷

The relations between the SAI and the legislature are not laid down in the Constitution, but are regulated by the law. There is no state body which by law can influence the SAIs' agenda. However, the Parliamentary Committee for Finance and Budget may request from the Auditing Office to perform special audits at any time. The law protects the auditor's independence and gives him/her the legal possibility to accept or reject, at his/her own discretion, the request for the conduct of a special audit.

Recruitment to the SAIs is based on clear professional criteria. The Auditor General, the Deputy and staff are protected by law from removal without relevant justifications. The SAIs are headed by their respective Auditors General and their respective deputies. They are appointed by the competent legislatures. The tenure of the Auditor General and his/her Deputy is fixed by law and lasts seven years, without possibility of reappointment. Staff are recruited through the publication of a vacancy announcement, as required by law.³⁷⁸ The meaning behind the seven-year tenure is that it should last longer than one assembly of the parliament, i.e. longer than the election period for the parliaments and

the executive level of public administration, so as to avoid possible synchronisation of mandates and potential pressures on the SAls at the beginning and end of the period between general elections.³⁷⁹

INDEPENDENCE (PRACTICE)

To what extent is the audit institution free from external interference in the performance of its work in practice?

SCORE 50

Under the audit laws, the SAls must act in a professional and non-partisan manner. Codes of ethics and standards used by the SAls prohibit any acceptance or tolerance of the interference by the audited entities or authorities in the performance of the SAls' work and, by the same token, the management and staff of the Audit Office are prohibited from any political activity. However, some attempts at interference on the part of the executive cannot be ignored.³⁸⁰ It suffices to cite the example of bringing the Audit Office of the Institutions of BiH under the scope of the Law on Ministries and Other Bodies of Administration of BiH, where the Office was placed within independent administrative organisations which are, *inter alia*, required to report on their work to the Council of Ministers. However, amid considerable political and professional furore, the said provision, which could be categorised as political pressure of the executive on the Audit Office of the Institutions of BiH, was repealed by the Parliamentary Assembly of BiH in autumn 2011.

The latest attack on the independence of the Audit Office of the Institutions of BiH occurred in January 2012, when representatives of the six largest political parties in BiH organised public division of positions in state institutions of BiH, including the Audit Office. Taking into account that audit institutions should be free from

political interference, this is considered to constitute undue influence and a blatant attempt to exercise control over the institution. Furthermore, RS government did not flinch from openly attacking and insulting the auditor due to their dissatisfaction with his negative assessment of how public money from the privatisation was spent and warnings of violations of the Public Procurement Law.³⁸¹

After having analysed the contents of audits which were presented to the public, it appears that a professional distance from political or other influence on the work of the SAls has been maintained. The audited budget users and public companies meet with serious and professional criticism in audit reports.

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the SAI?

SCORE 100

Under the provisions of the Audit Law, the SAls are required to submit to the competent parliamentary committees in BiH annual reports on their work as well as quarterly, semi-annual and annual financial reports about their financial operations. In addition to information about the operations of the SAls, annual reports contain key financial indicators of the SAls' financial operation which include the obligation to obtain an independent appraisal of the SAls' financial operations by an independent auditing entity.³⁸² Namely, the competent parliamentary committees may appoint an independent auditing firm or auditing commission consisting of five members, who have to be experts in the sphere of auditing and accounting, to audit the SAls' annual financial statements. The competent parliamentary committee also has the obligation to appoint a special

three-member commission, with adequate experience, for the purpose of reviewing the SAls' final report.

Evaluations of the SAls' performance are conducted periodically on the initiative of the parliamentary finance and budget committee and are performed by a specially formed working group of auditors from other countries in accordance with the peer-review concept. The last such review was performed by the agency "SIGMA" from Paris (2005/2006). Currently ongoing is the implementation of the new initiative, which was also agreed to be performed according to the same principle.

All three SAls in BiH have high-quality websites which allow the public to obtain information on the SAls' financial operations and activity reports in the same manner and to the same extent as the competent parliamentary committees do. This obligation is not defined by the Audit Law, but any citizen or journalist can use the provisions of the Law on Freedom of Access to Information to obtain detailed information on the SAls' operation. Also, the SAls have developed and categorised information about their activities, as well as instructional materials, in accordance with the obligations arising from the Law on Freedom of Access to Information.

TRANSPARENCY (PRACTICE)

To what extent is there transparency in the activities and decisions of the audit institution in practice?

SCORE 75

The SAls in BiH actively respond to public demands in terms of reporting on issues within the remit of these three institutions, and at the same time meet the visible level of transparent communication about their activities.³⁸³ As part of a technical support project, a communication strategy was developed and all three

SAI offices designated their respective public relations officers. SAls' websites contain up-to-date information on the SAls, most important internal acts, relevant regulatory framework, standards as well as other relevant information.

While the SAls demonstrate virtually the highest level of transparency compared to other institutions, room for improvement still exists. There is a growing interest among the public and MPs in the criteria for and methods of expressing auditor's opinion, as well as the activities of the three SAls in BiH. Occasional pressures related to some reports, as well as the attitudes of managerial structures towards auditor's opinions indicate the need for further development and strengthening of transparency in this area. Together with the Documentation Centre of the Parliamentary Assembly of BiH, the Audit Office of the Institutions of BiH has produced a useful booklet about the auditing process which was presented to the newly elected legislature.

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the SAI has to report and be answerable for its actions?

SCORE 75

The SAls are first required to submit a draft audit report, and after the expiry of the deadline for comments to the revised report, the final report is submitted to the competent parliament. Reporting to the parliament and public availability of audit reports serve the purpose of oversight, i.e. prevention of wasteful spending of public funds, as well as detection of fraud and abuse by giving recommendations to the management of institutions and the legislative level of public administration about how to improve financial management and strengthen control mechanisms. Furthermore, the audited entities

continue to be monitored after the audit period, and account is taken of actions undertaken to implement the recommendations contained in audit reports, new reports on compliance with the law are produced, and relevant information is prepared to be disclosed to the media and the public in annual audit reports.

The SAls have recently started to test the economy, effectiveness and efficiency of institutions (performance audit) and publish the first performance audit reports. Article 3 of the Audit Law defines the main goal of the SAls in BiH, as well as their obligation to inform responsible authorities and the public about its findings and recommendations by timely publishing audit reports. The Law also contains provisions defining the competences of the SAls, rules and standards that they are required to apply in their work, as well as the responsibility of the SAls for performance of their statutory obligations.

ACCOUNTABILITY (PRACTICE)

To what extent does the SAI have to report and be answerable for its actions in practice?

SCORE 75

The main objective of the audit institutions is public disclosure of audit reports. If this was not the case, the lack of transparency would gradually lead to complete politicisation of the audit function. Therefore, the audit staff and management of the SAls must be strictly non-partisan and professional, which is a prerequisite for obtaining reasonable assurance that the analyses conducted are professional and unbiased.³⁸⁴ In accordance with the provisions of the Audit Law relating to the competences, deadlines and annual scope of audits, the SAls established a very stable practice of public disclosure of annual audit reports with structured, consistent and comparable contents of audit reports.

All reports are published and available to the public on three official websites from budget year 2000 to budget year 2010 (download is free and without limitations). A draft report on financial audits of budget users must be delivered to every audited institution no later than 15 days after 1 June each year for the preceding fiscal year, and the report on the audit of reports on budget execution for the previous year are submitted to the relevant parliaments by 1 September of the current year at the latest. Reports on completed performance audits are submitted after correspondence with the audited institution, at the level of the draft document. Only in such a context can audit offices expect fruitful discussion after they submit information about budgets to the legislative bodies and/or governments, and then they can participate in the further process, hearings and decisions regarding the audit reports (taking care to avoid being dragged into political disputes). It is also important to note that the public is very interested in legislative and budgetary reforms. Especially vocal is the business sector which calls for cutting back on public spending and redirecting the money into supporting production and reducing the trade deficit. Therefore, the audit offices have a key role in the rationalisation of public spending.³⁸⁵

The SAls do not have the mandate, nor do they use the practice of independently conducting criminal and misdemeanour proceedings, but they are required to perform the audit in accordance with the Audit Law, international standards and generally accepted international practices in public sector auditing. However, if the SAls find or document certain indications of major violations of law, they are required to inform law enforcement and investigation authorities.³⁸⁶

Auditors are not liable for the acts or omissions committed in the course of their work, unless these constitute a criminal offence.

INTEGRITY MECHANISMS (LAW)

To what extent are there mechanisms in place to ensure the integrity of the audit institution?

SCORE 100

The SAs in BiH, like most government SAI offices around the world, have their own codes of professional ethics, which are based on the code of conduct for state auditors. The Coordinating Board adopted the Code of Ethics for Auditors in the Public Sector in 2001. This Code defines the following principles of professional ethics:³⁸⁷

- trust, confidence and credibility,
- integrity,
- independence, objectivity and impartiality,
- political neutrality,
- preventing conflicts of interest,
- professional secrecy,
- competence, and
- professional development.

Public sector auditors are required to follow international standards in the form of the International Standards of Supreme Audit Institutions (ISSA), including, *inter alia*, the Code of Ethics for Auditors in the Public Sector, which the SAs in BiH strictly adhere to.³⁸⁸ The INTOSAI Code of Ethics is directed at the individual auditor, the head of the SAI, executive officers and all individuals working for or on behalf of the SAI who are involved in audit work

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of the audit institution ensured in practice?

SCORE 100

The Code applies to all employees, the audit and non-audit staff alike, as well as the management structures. In ten-year practice of the SAs in BiH, from 2001 to 2010, there have been no examples of misconduct or serious breach of the code of conduct.³⁸⁹ In case there is a violation of the code and postulates of independence by the SAI management and staff, the procedures under the above described framework require that this should be promptly reported to the competent parliament. As part of continuous education, the personnel and management of the SAs receive regular training on issues of integrity.

EFFECTIVE FINANCIAL AUDITS

To what extent does the audit institution provide effective audits of public expenditure?

SCORE 50

Financial audit is conducted according to the established methodology. Subject to audit are always annual financial statements and financial audit is, therefore, conducted on an annual basis. On the other hand, the objective of performance audit is to assess the efficiency, effectiveness and economy of a specific process, the criteria are generally more subjective and reports are not standardised, plus the structure of the content is different.

The Audit Office of the Institutions of BiH has, since its inception, focused on financial audits, i.e. review of the financial statements of institutions, aimed at assessing whether the financial statements are reliable and fully reflect the results of budget execution. Public expenditures make up a great share of the GDP in BiH. Therefore, it is necessary to create legal and organisational preconditions for ensuring parliamentary oversight of public expenditure, because otherwise auditing, unfortunately, will not be effective.

The SAIs' role is instrumental in detecting and preventing fraud and corruption. The law stipulates that the SAI is required, once it informs the manager of the audited entity, to inform the competent law enforcement authorities when there is suspicion of a major violation of the law. The SAI is also obliged to inform the Ministry of Finance and the responsible minister.³⁹⁰

DETECTING AND SANCTIONING MISBEHAVIOUR

Does the audit institution detect and investigate misbehaviour of public officeholders?

SCORE 75

The audit institution has adequate mandate and professional procedures with which to successfully identify financial operations which deviate from the legal regulations in force. At the same time, the SAIs do not act in the capacity of inspection or supervision practiced by the financial police, investigative institutions or disciplinary boards. The main results of the SAIs are their reports, opinions and particularly recommendations aimed at improving the management of public funds.³⁹¹

Over the last ten years, the SAIs have developed and

publicly released several hundred audit reports containing thousands of recommendations. The public sector has been very slow to grasp how important these recommendations are and that their implementation is the main mechanism for the promotion of transparency and accountability in the public sector. The problem is that after the audit has been conducted and recommendations given for every budget user, there is no visible progress in the management of public funds. This is obvious from the audit reports published annually by the Audit Office. In recent years, however, the awareness of their importance has been growing, and the percentage of implemented recommendations has increased and now ranges from 55 to 60 per cent, with a continuing upward trend. The SAIs in BiH can be satisfied with the growing awareness and need for improvement through the adoption and implementation of the recommendations contained in audit reports, but still cannot be satisfied with the extent of their implementation, especially given the fact that in developed democracies, this extent ranges up to 95%.

IMPROVING FINANCIAL MANAGEMENT

To what extent is the SAI effective in improving the financial management of government?

SCORE 25

One of the tangible results of the state-level SAI over the last ten years is the fact that the committees for finance and budget of the Parliamentary Assembly of BiH, faced with the need to properly process audit reports as well as ensure the implementation of recommendations and improve the overall operations of government institutions at the level of BiH, have adopted, with external support, their own procedures for acting on financial audit reports.³⁹² The committees

are obliged to seek from audit institutions explanations for audit findings and opinions, and audit institutions are obliged to provide them with these, which includes the "hearings" of the management of the audited clients.

Unfortunately, the authorities to which the recommendations are addressed often continue to disregard them. Thus, each year the SAI's reports are repeated, and the institutions that spent their budgets inadequately, continue to operate without change and with impunity. Through their public and transparent operation, the SAI in BiH have contributed to the awakening and development of civil society in terms of supervision and oversight of governmental institutions and emphasising the need for improving their efficiency. By making their reports available to the media and general public on their websites and in their public appearances and conferences, as well as by speaking openly about the issues affecting the public sector and aiming to help resolve them, the SAI and CSOs encourage people to be more proactive in their actions. The resulting analyses conducted by NGOs are increasingly focusing on unsatisfactory performance of governmental institutions, which is yet another step in improving public accountability.³⁹³

RECOMMENDATIONS

- Audit institutions are faced with a lack of resources in performance of their auditing duties in entity offices, as well as obstacles when building capacities for performance audits, which really is a major shortcoming on the part of the SAI;
- There have been observed occasional obstructions of the SAI's activities affecting the independence of the SAI, including sporadic incidents, improper treatment of the SAI and the like. It is necessary to ensure full independence of the SAI and avoid any kind of incidents between the staff and management in the SAI;
- It is necessary for the SAI to continue to abide by the regulations allowing lawmakers and the public to

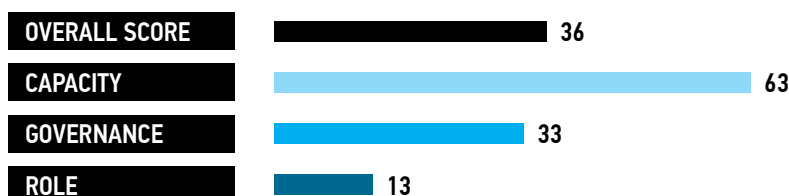
obtain information on the organisation and functioning of the audit institutions;

- The SAI should improve transparency in the decisions that concern them and how these decisions are made, with the aim of providing the public with easier access to information about their work;
- It is necessary to find a solution to the problem when the SAI are unable to conduct all audits under their scope of remit (in terms of volume) due to lack of audit capacities or budget shortfall;
- The existing provisions are implemented effectively, except insofar as their implementation is affected by the capacity gaps of the entity SAI to conduct full-scale financial audits and the lack of capacity of the three SAI in BiH to conduct major performance audits; it is necessary to increase the capacity for conducting performance audits and full-scale financial audits;
- It is necessary to mainstream and standardise the procedures for parliamentary debate on audit reports as well as establish mechanisms for corrective measures to be taken based on audit reports, in order to maximise the impact of public expenditure control;
- It is necessary to strengthen and connect the mandates of other institutions that use audit reports in their work, especially with competent Prosecutor's Offices;
- It is necessary for the highest representative bodies in the country to publicly summarise and present all the recommendations that have remained unimplemented, so as to accelerate their implementation through greater public pressure.

6.11. POLITICAL PARTIES

OVERALL PILLAR SCORE: 36/100

STATUS: WEAK



SUMMARY

Regulations governing the establishment and operation of political organisations vary in different parts and administrative levels in BiH, which puts political parties in a disadvantageous position, generally to the benefit of the parties in power.

From the public interest point of view, particularly problematic are the financial aspects of the operation of political parties, both in terms of revenues as well as in terms of expenditures and financial control. Regulations are numerous, albeit imprecise and inefficient, especially in FBiH, which, unlike other levels, has not yet passed a law on party financing. Transparency of financial data of political parties is also very problem-

atic, and parties violate the provisions of the Law on the Financing of Political Parties through financial speculations.

The public are well aware of this and believe that the funds available to political parties are much higher than shown in their reports. Parties in BiH pay scant attention to economic, social and other important issues, contribute to ever deeper divisions in society with their inflammatory rhetoric, and, because of the numerous abuses and financial scandals, continue to be perceived by the public as the most corrupt segment of the society.

STRUCTURE AND ORGANISATION

The CEC BiH is responsible for the implementation of the regulations relating to party financing, including the provisions of the Law on the Financing of Political Parties and the Election Law of BiH. The Audit Depart-

ment operating within the CEC BiH is responsible for the inspection and control of financial reports of political parties.

The existing legislative framework is quite unbalanced and is made up of the Law on the Financing of Political Parties of BiH, Law on the Financing of Political Parties from the Budget of the Republic, City and Municipality of RS,³⁹⁴ Law on the Financing of Political Parties from the Budget of the Brčko District of BiH,³⁹⁵ as well as the Election Law insofar as it concerns the financing of election campaigns.

As there is no comprehensive law on political parties at the state level, parties are established and registered at the entity level, according to the relevant entity laws on political organisations.³⁹⁶ Political organisations are established at founding assemblies, where the founding decision, statute and political programme are adopted. Within 30 days after its establishment, each political organisation has to file a request for registration, along with the aforementioned documents, with the compe-

TABLE WITH SCORES
POLITICAL PARTIES
OVERALL PILLAR SCORE: 36/100

DIMENSION	INDICATOR	LAW	PRACTICE
CAPACITY 63/100	RESOURCES	75	50
	INDEPENDENCE	75	50
GOVERNANCE 33/100	TRANSPARENCY	25	0
	ACCOUNTABILITY	50	25
	INTEGRITY MECHANISMS	75	25
ROLE 13/100	INTEREST AGGREGATION & REPRESENTATION		25
	ANTI-CORRUPTION COMMITMENT		0

tent entity court. Unless the competent court rejects the request, in which case appeal is allowed to a higher court, the registration process is completed within 15 days and the political organisation acquires legal personality.³⁹⁷

According to the data submitted to the CEC BiH by the competent courts, there are 190 political parties registered in the country, among which 120 parties took part in elections between 2004 and 2008 and submitted financial reports according to the Law on the Financing of Political Parties.³⁹⁸

RESOURCES (LAW)

To what extent does the legal framework provide a conducive environment for the formation and operations of political parties?

SCORE 75

Freedom of association and political organisation as well as the basic democratic principles of the country are enshrined in the Constitution of BiH, which provides that BiH is a democratic country that operates on the basis of free and democratic elections.

As there is no comprehensive law on political parties at the state level, parties are established and registered at the entity level, according to the relevant entity laws on political organisations.³⁹⁹ With the exception of the restrictions relating to the prohibition of discrimination of any kind, as well as the obligation to comply with the national regulations and relevant international instruments (European Convention on Human Rights, etc.), there are no other notable restrictions on party ideology or establishment and functioning of political organisations and their members. Due to the differences between the relevant entity laws, political organisations are founded on unequal terms, since the founding

thresholds vary depending on the jurisdiction. Thus, a political organisation may be founded by at least 50 citizens in FBiH, at least 500 citizens in RS, and at least 300 in the Brčko District of BiH.

Political organisations are established at founding assemblies, where the founding decision, statute and political programme are adopted. Within 30 days after its establishment, each political organisation has to file a request for registration, along with the aforementioned documents, with the competent entity court. Unless the competent court rejects the request, in which case appeal is allowed to a higher court, the registration process is completed within 15 days and the political organisation acquires legal personality.⁴⁰⁰

According to the data submitted to the CEC BiH by the competent courts, there are 190 political parties registered in the country, among which 120 parties took part in elections between 2004 and 2008 and submitted financial reports according to the Law on the Financing of Political Parties.⁴⁰¹

In addition to the rules on campaign financing, the Election Law of BiH lays down the rules of conduct in the election campaign.⁴⁰² These rules prohibit hate speech and various forms of discrimination, and provide for the respect of fundamental human rights and freedoms.

RESOURCES (PRACTICE)

To what extent do the financial resources available to political parties allow for effective political competition?

SCORE 50

Unequal status of political parties in terms of finances has its justification in the legislative framework and practice of political parties.

The existing legislative framework is quite unbalanced and is made up of the Law on the Financing of Political Parties of BiH, Law on the Financing of Political Parties from the Budget of the Republic, City and Municipality of RS,⁴⁰³ Law on the Financing of Political Parties from the Budget of the Brčko District⁴⁰⁴ as well as the Election Law insofar as it concerns the financing of election campaigns.

These regulations provide that the right to direct budget funding is reserved only for the political parties, independent candidates, lists and coalitions that are represented in the parliaments at different levels. Thus, the state-level law governs the financing of political parties or groups participating in the BiH Parliament; in RS, direct public financing is provided to political parties and coalitions who have members in the assemblies at entity and lower level, as well as to political parties, coalitions and independent candidates with confirmed electoral lists. FBiH, on the other hand, does not have similar legislation in place – a situation that has, for years, caused unregulated and arbitrary funding of parties in this entity. In this regard, highly illustrative is the example of allocations to political parties from city budgets in FBiH in 2009, reaching as much as 231.81% of the originally planned funds.⁴⁰⁵

These funding rules are mostly based on the principle of proportionality, which means that the party with more seats gets more money from the budget. As the law does not regulate the relationship between the public and private funding, budget allocations constitute the largest source of funding for the majority of parties (particularly judging from the financial reports of political parties).⁴⁰⁶ In practice, however, the transfer of these budget funds is sometimes delayed for several months, which places smaller and opposition parties at some disadvantage as they state that they have no access to other major sources of funding.⁴⁰⁷

The parties in power, on the other hand, reap considerable benefits in terms of making free use of the existing infrastructure in governmental authorities and other public institutions and public enterprises, etc. Private funding of parties is regulated under the Law on the Financing of Political Parties in terms of the permitted sources and amounts of funding. A number of political parties state that the regulations are too restrictive on donation limits and discriminated against parties not represented in the BiH legislative bodies.⁴⁰⁸

As regards the indirect budget funding, it does exist, albeit partially, within the rules of media representation in the election campaign (Election Law of BiH). Under these rules, the media have to provide free air time for broadcasting the campaigns of political contestants in the period of 30 days prior to the election day. However, although the Law states that “officials at all levels of authority who participate in the elections as candidates must not enjoy a privileged position with respect to other participants in the electoral process”, the chapter on the representation in the media⁴⁰⁹ does not contain any provisions on abuse of power for personal promotion or the promotion of the party, which does happen in practice.⁴¹⁰

INDEPENDENCE (LAW)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?

SCORE 75

As regards the national legal framework and institutions of BiH, political parties are very well protected before the law, in relation to the public interest.⁴¹¹

The laws on political organisations in BiH set out the

conditions under which political organisations cease to exist. The parties cease operation by the decision of the bodies defined in their statutes if the number of their members falls below the statutory minimum, if they do not perform the activities under the statute for a period longer than provided by law, or if they are banned in accordance with the law. The last-mentioned option can happen only if the acts or actions of a political organisation threaten the generally accepted principles of democratic governance and the rights and freedoms guaranteed by the Constitution of BiH.

Government oversight of political parties is largely the responsibility of the CEC BiH. In the implementation of the laws within its remit, the CEC BiH can undertake investigations or take appropriate measures, on its own initiative or based on a complaint received. According to the Law on the Financing of Political Parties, the CEC BiH has the right to seek access to the premises of a political party in order to audit its financial statements, or, if it concludes, on the basis of reports submitted by the party, that a more detailed financial review is warranted. Political parties have the right to deny access, for which they may be banned from participating in the upcoming elections.

In the event that there is a reasonable suspicion that the individuals who are members of political parties have committed a criminal offence, law enforcement agencies have the right, in accordance with the criminal law, to undertake the necessary investigations. However, even in such cases there are no discriminatory provisions for political parties.

INDEPENDENCE (PRACTICE)

To what extent are political parties free from unwarranted external interference in their activities in practice?

SCORE 50

In the short democratic history of BiH, there have been no reported cases of any political party being banned, or any state attempts in this regard.

However, discrimination on political grounds is very present in the majority of parties, especially between those with different ethnic backgrounds. They often engage in public verbal confrontations and spread ethnic and religious intolerance, which results in the deepening divisions in the whole society. Furthermore, political discrimination is also present among the parties belonging to the same ethnic group. The individuals interviewed for the purposes of this study, who are members of opposition political parties, cited cases of threats of dismissal levelled at their party colleagues by officials from the ruling coalition. In smaller communities there may even be mutual physical assaults between members of opposing parties, but none of the interviewed members of political parties could confirm that such behaviour constitutes official party policy, ascribing it rather to the desire of individuals to prove themselves in their local communities, or to similar personal motives. That such behaviour is commonly displayed by members of the ruling parties is confirmed by the example of the MP from SNSD [*Party of Independent Social Democrats*] Miroslav Kraljević who, along with the former SNSD's mayor of the Osmaci municipality, Branislav Bošković, in September 2010 kidnapped Lazo Vidaković, local councillor from Naša Stranka [*Our Party*] in the Osmaci municipal assembly, and held him in captivity in Serbia for 12 days. In March 2012 Kraljević was convicted of kidnapping and fined

BAM 4,000, after he agreed to a plea bargain with the District Prosecutor's Office in Bijeljina. However, he still serves as an MP and is even a member of the Security Committee of the NARS, against which the opposition SDS [Serb Democratic Party] filed a parliamentary initiative.⁴¹²

The CEC BiH, which is competent for overseeing the activities of political parties, uses its power to deny the right of nomination to parties or candidates in the upcoming elections for failure to submit financial reports only after all other legal means have been exhausted. Before the 2010 election, this measure was imposed against eight political parties that had failed to submit annual financial reports for 2008 and denied access to their premises to the CEC BiH. GRECO also notes that the CEC BiH sometimes demonstrates bias in favour of the parties in power. Also, if the CEC BiH sanctions a party related to one ethnic group, the following sanction will be imposed on a party related to other ethnic groups – out of misplaced concern for political balance.⁴¹³

Special authority and control over the work of the political parties in the country was held by the high representative of the international community, who, under Annex 10 to the General Framework Agreement for Peace in BiH, had a very broad mandate to monitor the implementation of the civilian aspects of the peace settlement (so-called *Bonn powers*). These powers were exercised to such an extent that some 200 officials were removed from public office, and one of the leading parties, the Serb Democratic Party, had its bank accounts blocked for some time on account of alleged support to war criminals. A number of those officials were later rehabilitated due to lack of evidence and adequate explanation for the removal, and the said party continued operation. In recent years, however, the Bonn powers were limited and have been used to a significantly lesser extent.

TRANSPARENCY (LAW)

To what extent are there regulations in place that require parties to make their financial information publicly available?

SCORE 25

The financial accounting of political parties, as well as transparency and public availability of financial statements of parties and candidates standing for elections, are governed by: Law on the Financing of Political Parties, Chapter 15 of the Election Law of BiH, implementing regulations related to this legislation,⁴¹⁴ laws on conflict of interest (at the state, entity and BD levels), laws relating to the registration of political parties, rules relating to the operations of all legal entities, which also includes political parties in BiH (the Law on Accounting and Auditing and International Auditing Standards), as well as laws on freedom of information and the Law on Protection of Personal Data.

According to these regulations, there is a clear obligation for political parties to keep proper books, designate a person responsible for bookkeeping tasks and deliver regular financial reports for each calendar (financial) year to the CEC BiH.

The basic problem, however, is that political parties, since they are not public authorities, are not subject to the freedom of information laws or any other similar rule allowing public access to financial data in their possession or requiring parties to publish them. There is only an obligation on the part of the CEC BiH to publish aggregated annual and electoral financial reports of parties which contain very limited information. For example, these reports do not contain very important information such as the amount of individual donations and the identity of donors, the type of individual contributions, individual expenditures of parties, etc.

The CEC BiH publishes reports on the audit of political parties, but these reports, too, are very limited in terms of timeliness and quality, which is explained in more detail in the section dealing with the CEC BiH.

As regards transparency of sources of political party financing, the only available data are those on budgetary allocations for parties, published by the CEC BiH, and they can be determined based on the budgets of all levels of government in BiH (which are publicly available). Also, on the basis of the Law on Freedom of Access to Information one can obtain the amounts of public funds apportioned to parliamentary groups.

The obligation to report only donations in excess of a certain limit leaves a significant portion of private funding entirely unregulated and inaccessible to the public. If the amendments to the Law on the Financing of Political Parties that were submitted to the parliament in 2012 are adopted, parties will be required to report all donations, regardless of the amount – but again, it is not specified whether the obligation will refer to entire reports or just summarised versions thereof, as is the case now.

TRANSPARENCY (PRACTICE)

To what extent do political parties make their financial information publicly available?

SCORE 0

Since the existing legal framework does not require them to do so, political parties invest very little or no effort at all to make their financial information available to the public.

In its reports, the CEC BiH publishes detailed information on budget allocations for parties. However, a survey conducted by TI BiH with a view to reviewing budget

allocations for parties⁴¹⁵ indicates that it is difficult to determine the exact amounts, given that at different levels these allocations are presented as different budget items, and shows that the data obtained by TI BiH differ from those published by the CEC BiH.

Various aspects of the financial transparency of political parties were mostly studied by TI BiH, as part of the CRINIS study in BiH. According to this study, parties expressed verbal support for citizens' right to access information. Unfortunately, in practice they have failed to respect that same right. Namely, the transparency test for political parties received a score of 0, given the fact that none of the parties involved in the study responded to citizens' requests for information about their financial data, or provided any explanation as to why they are unable to supply that information. On the other hand, when similar requests were sent by the TI BiH staff, only three of the ten parties involved submitted the required information.⁴¹⁶ Also, due to the inability of the public to access information about the donors and the amounts of their donations to political parties, this indicator received a score of 3.6 on a scale of 1 to 10.

In addition to political parties, TI BiH sent requests for information to the caucuses in the Parliamentary Assembly of BiH, in order to determine how transparent they were in the expenditure of funds in practice, and to measure their accountability in the expenditure of public funds.⁴¹⁷ The caucuses were strongly disinclined to disclose any information and did not provide any answer or information. This should not be surprising given the fact that they did not even submit reports to the relevant parliamentary committee,⁴¹⁸ which is an indicator enough of their lack of accountability to the competent institutions and the general public.

ACCOUNTABILITY (LAW)

To what extent are there provisions governing financial oversight of political parties?

SCORE 50

Besides the abovementioned legal shortcomings, the following ones are also important in terms of financial accountability of political parties:

- The existence of a number of mutually conflicting regulations on the financing of political parties and election campaigns creates confusion in practice both for the implementers of the law and for political parties and candidates.
- The law does not encourage political parties to use a single bank account for all ingoing and outgoing transfers, thus allowing them to use of several bank accounts, which results in the use of cash and hinders financial control.⁴¹⁹
- Donors, service providers to political parties, as well as the media (at least when the advertising of parties is concerned) are not required to report on the services provided to political parties. This leaves room for failure to report on donations and services, and thus undermines financial control. The same is the case with third parties that are possibly linked to political parties (non-governmental organisations, civil society), so they may get indirectly involved in supporting the electoral campaign, with their involvement remaining financially unrecorded.
- The law provides no clear distinction between the expenditures that are to be considered campaigning costs and the regular, operating expenses of political parties during the campaign, which prevents independent verification of the campaign spending.⁴²⁰
- The existing regulations do not include the activities of the directors of public enterprises and institutions, as well as elected representatives and employees, which

prevents separation of the professional function from the function as the representative of a political party. This puts directors in a privileged position, particularly in the pre-election period.

- Obstacle to effective oversight of allocation and spending of budgetary resources for parties is also posed by the fact that the laws do not define specific cost categories that can, and those that cannot, be covered from the budget. Except for the apportionment, the legal framework in RS does not deal with questions of control of budgetary funds, while the state-level legislation deals only with determining whether limits on campaign spending have been exceeded. At the same time, the CEC BiH has no competence to conduct detailed control of how resources are spent, so political parties can spend taxpayers' money arbitrarily and however they see fit.⁴²¹
- Resources available to the CEC BiH for carrying out financial audits are insufficient, and deadlines for the publication of audit reports, particularly those related to election campaigns, are inadequate, resulting in reports that are published too late to have any impact on the election result.
- There is no legal obligation for other control authorities (tax authorities, inspection bodies and the like) to work in cooperation with the CEC BiH.
- The range of measures available to the CEC BiH to sanction parties is quite limited, as it only includes fines of up to BAM 10,000, which is not proportionate to the gain that may be obtained through breaking the law, as well as the prohibition of participation in the elections in case of noncompliance with the obligation to submit financial reports. On the other hand, the sanctions for other legal entities and individuals affiliated with political parties, including donors, who do not act in accordance with the financing rules, do not exist.
- There is still no independent control of the data contained in candidates' property statements. Such control needs to be put in place, given that the responsibility for it was assigned to the newly established Agency for the

Prevention of Corruption and Coordination of the Fight against Corruption, which is still neither operational nor equipped with basic resources. Also, the law still contains the principle of voluntary submission of such data, which should be abolished. On the other hand, following the decision of the Agency for the Protection of Personal Data, the Court of BiH ordered the CEC BiH to discontinue publishing property records of public officials,⁴²² with a view to protecting their privacy, which is in conflict with all international standards and undermines the system of accountability of public officials to the public, as well as with the Election Law, which provides for disclosure of property records.

- The laws governing elections do not contain provisions on the criminal liability of leaders of political parties for violating rules related to finance and reporting. The section of the Criminal Code dealing with election-related offences, does not provide for a criminal offence that would apply to the responsible persons in political parties for failure to abide by the provisions of the Election Law.⁴²³

Because of the obvious lack of precision in the relevant provisions, the CEC BiH itself often calls for these regulations to be amended and for the existing laws to be harmonised with each other, while taking into account the recommendations of the Council of Europe. The CEC BiH emphasises the need to define more precisely the provisions relating to the financing of political parties from the property owned by them, as well as those relating to the giving of office space to political parties for use.⁴²⁴

ACCOUNTABILITY (PRACTICE)

To what extent is there effective financial oversight of political parties in practice?

SCORE 25

Given the strict legal provisions that include a disqualification of the right to participate in the next election for parties that fail to deliver their financial reports to the CEC BiH or to grant the Audit Department access to their premises for audit, parties generally submit their financial reports, although often tardily. The quality and reliability of these reports seem to be questionable, because in practice parties often violate the provisions of the Law on the Financing of Political Parties. Shortcomings in the legislative framework allow financial speculation, and parties often operate on the very edge of legality.

According to the audits of political parties' financial statements, the most common violations include: parties generating illegal income, income from property not owned by the parties or profit from enterprises dealing with activities other than those permitted by law; parties accepting contributions from individuals and legal entities in excess of the allowed limit, not reporting all contributions in excess of BAM 100 from individuals and legal entities; parties using, free of charge, offices assigned to them by entity, cantonal and municipal authorities or non-profit organisations; parties receiving contributions from public enterprises; parties submitting financial reports late, not submitting them in standard format or not submitting additional financial documentation at the request of the CEC BiH; parties failing to keep appropriate records of their revenues and expenditures, etc. That the list of parties' irregularities does not stop here is further evidenced by the CEC BiH's notes accompanying its audit reports, which state that, given the sample and the existing

“limitations in the accounting system and internal control system, there is a possibility that some material misstatements may remain undetected.”⁴²⁵

In addition to the aforementioned, the following problems were observed in practice:

- Avoiding to report donations by breaking up individual contributions into amounts below BAM 100,⁴²⁶ and by using cash transactions – it has become a common practice for a certain percentage of the regular monthly income of the members who, thanks to the party, have made it to a public office, to be returned to the party, which is not fully accounted for.
- Violation of the rules on treasury operations which require daily management of changes in cash balance, while parties generally update their accounting records on a monthly or quarterly basis.
- Abuse of positions in institutions or of funds available to institutions for the purpose of pre-election promotion of the party. This was particularly observed during the 2010 general election campaign, where the advertising and promotion of parties were paid as promotion of ministries or government.⁴²⁷

INTEGRITY MECHANISMS (LAW)

To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?

SCORE 75

The internal organisation, membership, party organs and the manner of their appointment, as well as many other issues, are regulated by statutes as the highest acts of political parties.⁴²⁸ Statutes are largely based on democratic principles and promote maximum internal

democratic governance of parties.

Membership is largely organised on a territorial basis. Depending on the size of the party, organisational units can include local, municipal, city, regional, cantonal and other territorial boards. Members have the right to publicly express their opinions, to elect and be elected to party bodies. The statutes of most parties envisage similar bodies.

According to the statutes, the party leaders are elected democratically, i.e. by vote from among several candidates, by the highest party bodies (congresses, councils, assemblies or similar bodies). In principle, candidates for president and vice-presidents of parties are nominated by the general committees, as the highest decision-making bodies of parties between two congresses (councils, assemblies).

Selection procedures for other party or non-party (public) functions are often described in other internal rules, in addition to the statute. Major parties tend to have larger and more complex internal regulations. The level of democracy in these regulations vary somewhat, in terms of how much discretionary power the party leader(ship) has to make decisions as well as propose or directly appoint party members to certain functions.

INTEGRITY MECHANISMS (PRACTICE)

To what extent is there effective internal democratic governance of political parties in practice?

SCORE 25

Despite satisfactory party regulations on internal democratic governance, the actual lack of internal democracy in the functioning of political parties in practice remains

one of the major complaints by the public and political analysts.⁴²⁹ In the majority of parties throughout the country, it is their first man who decides on all the key issues, policies and personnel decisions, while the party bodies serve more as verifiers. This personification of political parties can be best illustrated by the fact that in a number of political parties the name of their leader is an integral part of the party's name.

The intra-party autocracy is also reflected in the fact that, instead of several candidates for the president of the party, the party election bodies are offered only one candidate – the incumbent party leader, who is often also the founder of the party. Very few political parties depart from this practice. As stated by the respondents interviewed for the purposes of this study, of the major political parties in the country only the Democratic Action Party had offered three candidates in the last election for the party leadership, which is why they highlighted that party as having the highest degree of internal democratic governance.⁴³⁰ Party leaders also have great autonomy and discretionary power in appointing candidates to other party and non-party/public functions.

The most recent example of this are resignations tendered in 2012 by a number of officials of the Social Democratic Party (SDP), including the party's vice president, on the grounds that they did not agree with the authoritarian policy of the party leader.

The lack of effective internal democratic governance is also obvious from the accessibility of financial information within parties. A TI BiH's survey into this practice shows that the information on revenues and expenditures within parties is available only to a closed circle of party leaders, primarily to the person in charge of submitting annual reports. The political parties' standard practice is to present the data on revenues and expenditures in the general committee meetings.⁴³¹

INTEREST AGGREGATION & REPRESENTATION (PRACTICE)

To what extent do political parties aggregate and represent relevant social interests in the political sphere?

SCORE 25

With the exception of youth forums and women forums, which are provided for in the statutes of most major political parties, the majority of parties in BiH do not have institutionalised cooperation with various social groups. Among major parties, the sole exception is the Social Democratic Party of BiH whose statute provides for a special organisation of trade union activists as well as organisations of senior citizens and pensioners. In practice, the activities of party members are largely guided by financial and other personal interests and conflicts. Also, quite common are conflicts of different financial interests within a party, usually in the area of public contracts, to the detriment of citizens.⁴³²

Clientelism and political favouritism are seen as major problems by the European Commission in its 2010 BiH Progress Report. These two are usually manifested through inadequate enforcement of conflict of interest laws, particularly in RS, as well as highly politicised civil service and virtually no progress in limiting the role of political affiliations in public administration.⁴³³

The legitimacy of political parties among the population exists insofar as the constituent peoples in BiH perceive that the parties protect their ethnic and religious interests.⁴³⁴ In all other matters of interest to the public, particularly in the economic and social sphere, parties do not enjoy public confidence, since they do not invest considerable effort into necessary reforms in all fields.

Citizens are condemned to joining political parties and demonstrating a certain measure of political loyalty because otherwise they would not be able to get a job or save one.

In recent years, political parties have started to recognise, to some extent, the need for cooperation with civil society, in part because of the country's international obligations. However, this cooperation has not yet been adequately institutionalised. There are still cases of assaults and threats against activists and CSOs, mainly those who investigate cases of corruption.⁴³⁵

On the other side is the interest-based collaboration between the ruling parties and CSOs, where CSOs usually have financial benefits, while parties use that for propaganda purposes or to extract funds from the budget through a variety of NGO funding programmes. What is also unique about BiH is the regular allocation of significant budgetary resources to organisations affiliated on an ethnic or religious basis,⁴³⁶ given that nationalist and religious rhetoric is still a powerful propaganda tool.

ANTI-CORRUPTION COMMITMENT (PRACTICE)

To what extent do political parties give due attention to public accountability and the fight against corruption?

SCORE 0

In recent years, lip-service support to the fight against corruption, along with stirring up national and religious hatred, has become one of the basic tools of pre-election political campaigns. Among the topics of the campaign in the latest election, held in October 2010, were unemployment, alleged corruption, construction of

roads, as well as health care and education reforms.⁴³⁷

In reality, political parties are actually generators of a high level of corruption in the country and, according to surveys conducted by TI BiH, have for years been perceived as the most corrupt segment of society in BiH. In the period before the global economic crisis, which has deeply affected the already inefficient and unsustainable economy, most of the discussions focused on issues related to public contracting, particularly the privatisation of public enterprises, and the rigging of public procurement contracts for partisan purposes.

Thus, in February 2009 the State Investigation and Protection Agency (SIPA) submitted to the Prosecutor's Office of BiH a report suspecting of organised crime, abuse of office, money laundering and tax evasion the then Prime Minister of RS Milorad Dodik, six ministers in the RS Government and six senior officials and heads of public institutions, as well as owners of the firms within "Integral" group – Slobodan Stanković and his wife, with whom the government and other institutions of RS entered into contracts for construction and performance of other jobs. SIPA stated, *inter alia*, that violations of the law had been observed in the construction of the buildings for the Administrative Centre of the RS Government and the RS Public Service Broadcaster in Banja Luka, as well in the construction of a section of the Gradiška – Banja Luka motorway, causing damage to the RS budget to the tune of BAM 115 million.⁴³⁸

Shortly thereafter, acting on the report filed by a prominent businessman, the FBiH police launched an investigation against several high-ranking members of the SDP, including the president of the party, in an affair called "SDP Racket", which referred to the alleged bribery in the process of adoption of an urban regulatory plan. After two years, during which the said parties exerted constant pressure on the judiciary from their position of power, the Prosecutor's Office of BiH de-

clared itself incompetent in both cases and forwarded the cases to the entity-level judicial institutions, which dropped the investigations for lack of evidence.

In recent years, which have been characterised by extremely high unemployment and poverty, there has been a growing incidence of nepotism in recruitments, to the point that more and more citizens join parties so that they could get a job based on the party's influence. The reports received by the TI BiH's Advocacy and Legal Advice Centre (ALAC) in 2011 seem to suggest that the irregularities in recruitment procedures are the biggest problem faced by citizens. Most of the complaints lodged were against public administration.⁴³⁹

On the other hand, as stated by members of political parties themselves, participants in minor corruption scandals are prosecuted just to demonstrate commitment to the fight against corruption, while in reality this is done to divert public attention from much more serious irregularities that typically do not see an appropriate epilogue in court. The European Commission characterises the prosecution of corruption in BiH as ineffective and subject to political pressure, since the investigations rarely result in indictments and convictions.

In 2011 the parties in power pressured for the amendments to the Law on the Financing of Political Parties and the Law on Conflict of Interest of BiH to be put on the agenda and be supported by the Commission for the Constitutional Law, which was in clear violation of the rules for drafting legislation and the relevant parliamentary procedures.⁴⁴⁰ These amendments will narrow the circle of people subject to the conflict of interest legislation, reduce penalties for conflict of interest, and at the same time increase the limits on donations to political parties as well as increase the range of permitted sources of income. All this makes it clear that parties put their own interests before the need for establishing

a better anti-corruption legal framework.

Furthermore, it has been observed that the parties in power divide among themselves key positions in the public institutions that are supposed to be independent and oversee the work of the government, such as the Audit Office, CEC BiH, the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, etc.⁴⁴¹

RECOMMENDATIONS

- In order to ensure equal criteria for the establishment and operation of political parties and consistent behaviour of parties and candidates in the whole country, it is necessary to adopt uniform regulations on political parties at all administrative levels in BiH;
- Reports on the financial status of elected candidates, provided for in the Election Law, should also be submitted during candidates' term of office, as well as if there are any significant changes in the assets, in order to detect any acquirement of illegal gain in a timely manner. Additionally, it is necessary to establish legal mechanisms to control the accuracy of the information contained in these reports. Since the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption was assigned the competence to oversee property records, it is necessary to train its staff and provide it with the necessary resources and ensure its independence in performing this function. Also, the law still contains the principle of voluntary submission of such data, which should be abolished;
- The Law on the Financing of Political Parties should encourage political parties to use single bank accounts for all their ingoing and outgoing transfers. This would lend more credibility to the financial reports of political parties, streamline financial control, and prevent parties from obtaining irregular funding, especially in cash. It is necessary to define more precisely the provisions of the Law on the Financing of Political Parties relating to the

financing of political parties from the property owned by them, as well as those relating to the award of office space to political parties for use;

- The expenditures of political parties related to their routine activities and those related to election campaigns should be precisely determined and separated by law. Also, it is necessary to define the categories of costs that can be covered from public subsidies, in order to ensure their effective control. It is also necessary to broaden the competence of the CEC BiH in overseeing expenditures, since the existing regulations give far more focus on the incomes of parties;
- The prescribed formats of financial reports of political parties should be made more detailed and more credible, to include more information of public interest. In order to provide more comprehensive insight into party funding, these reports should also include information on legal entities that are affiliated with political parties or under their control;
- Detailed information on party donations, incomes and expenditures, as well as property data of election candidates and elected candidates and persons associated with them, should be publicly available;
- In addition to introducing heavier monetary penalties, it is necessary to expand the range of sanctions available to the CEC BiH against political parties and candidates with, *inter alia*, denial of budget funding to parties that do not adhere to the financing and reporting rules. Sanctions should also be introduced against all other legal entities and individuals affiliated with political parties, including donors, who do not act in accordance with the financing rules. Also, it is necessary to consider the introduction of criminal liability of leaders of political parties for violating the rules related to financing;
- It is necessary to strengthen the CEC BiH resources for law enforcement, as well as introduce time limits for performing financial audits, particularly in connection with election campaigns, given that audit reports are published too late to have any impact on the elec-

tion result;

- In order to restore public confidence in this important institution, as well as provide a consistent rule of law, it is necessary to ensure the independence and impartiality of the CEC BiH in implementation of the laws;
- In order to increase the efficiency of financial control and regularity of party financing, it is necessary to make it mandatory by law for other control bodies and law enforcement agencies, particularly tax authorities, inspectorates etc., to cooperate with the CEC BiH;
- In the legal framework governing conduct during the election campaign, it is necessary to distinguish between the performance of public functions and performance of party functions, in order to prevent misuse of public office for promotion of the party.

6.12. MEDIA

OVERALL PILLAR SCORE: 37/100

STATUS: WEAK



SUMMARY

Without a foothold in tradition and burdened by the dire economic situation and deep ethnic divisions in the country, the media in BiH do not meet the minimum standards of independence, impartiality and professionalism. Despite the satisfactory legal framework and institutions to ensure a suitable environment for the media which were established as a result of intense involvement of the international community, the situation in the media has not shown any signs of improvement for years and is still marked by complete instrumentalisation by the political and economic elites, hate speech, and even activities that border on criminality.

STRUCTURE AND ORGANISATION

Legal provisions stipulate that there are three public broadcasters in Bosnia and Herzegovina – one at the state level (BHRT), and two at the entity levels (FTV and RTRS). Although the law provided for the establishment of the Corporation of the three public broadcasters, this has not happened to date despite many years of trying.

Besides public broadcasters, a total of 45 television and 144 radio stations operate in the country. Although a large number of television and radio stations are owned by lower administrative units – cantons, cities and municipalities, in recent years there has been a significant increase in the establishment and operation of private broadcasters. There were also cases of the opening of regional media corporations, such as Al Jazeera.

The existence of a large number of commercial media outlets in BiH, however, does not mean that there is a greater level of objective information. Quite the contrary, private media outlets largely reflect the views and interests of their owners, who are often associated with party officials.

Oversight of the broadcasters is performed by the Communications Regulatory Agency (CRA) of BiH. However, the activities of some media outlets in recent years, although biased and often containing elements of hate speech and sweeping generalisations and qualifications (e.g. FTV and RTRS), have not been appropriately sanctioned by CRA.

A similar state of affairs is found in the print media, all of which are privately owned. In the country there are nine daily newspapers and BiH issues of foreign dailies (such as “Večernji list” [*Evening Gazette*] from

TABLE WITH SCORES
MEDIA
OVERALL PILLAR SCORE: 37/100

DIMENSION	INDICATOR	LAW	PRACTICE
CAPACITY 44/100	RESOURCES INDEPENDENCE	75	25
		75	0
GOVERNANCE 42/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY	50	25
		75	25
		50	25
ROLE 25/100	INVESTIGATE AND EXPOSE CASES OF CORRUPTION INFORM PUBLIC ON CORRUPTION AND ITS IMPACT INFORM PUBLIC ON GOVERNANCE ISSUES		25
			25
			25

Croatia), as well as five magazines. Most print media outlets, too, put themselves at the service of political parties. Regulation and supervision of the print media have never been fully established. The role of the Press Council of BiH largely boils down to making recommendations that do not have binding force.

Although the number of web portals and specialised Internet forums has been on the increase in recent years in BiH, their activities are not legally (or otherwise) regulated. These media are, therefore, often used to disseminate half-truths or spread hate speech.

The media scene in BiH is, therefore, generally characterised by diversity, but one which in no way reflects independence, objectivity, accuracy and quality of information.

RESOURCES (LAW)

To what extent does the legal framework provide an environment conducive to a diverse independent media?

SCORE 75

The existing legal framework governing the existence and activities of independent media is a highly favourable one.

Freedom of the media is guaranteed in the Constitution of BiH, European Convention for the Protection of Human Rights and Fundamental Freedoms (which is directly applicable in BiH), and Law on Communications.⁴⁴² Thanks to the involvement of the international community, which at times went as far as imposing legislation, BiH has been the first of all former Yugoslav countries to adopt freedom of information laws, which were revolutionary in that they introduced the principle that all information held by public authorities is a public

good and such as accessible to all citizens. Also, a very important step in the development of the media was the decriminalisation of slander.

Regulation of electronic media across the country comes within the purview of the Communications Regulatory Agency (CRA), in accordance with the Law on Communications, while the regulation of the print media is based on the principle of self-regulation, through the work of the Press Council.

The efforts of the international community to create a public broadcasting system resulted in the adoption of the Law on the Public Broadcasting System of BiH in 2005⁴⁴³ (Public Broadcasting System consists of four units: two entity-level broadcasters, one state-level broadcaster and the corporation as a public service umbrella), which, however, has not resulted in the establishment of a functional and independent public broadcasting system.⁴⁴⁴

RESOURCES (PRACTICE)

To what extent is there a diverse independent media providing a variety of perspectives?

SCORE 25

In BiH there are 144 radio and 45 TV stations (including public services), nine daily newspapers and five magazines (precise data on the circulation of printed media are not known).⁴⁴⁵ According to the CRA, the number of Internet users in 2010 was two million, which is about 52% of the population.⁴⁴⁶ Generally, the media landscape in BiH is characterised by diversity, which does not necessarily imply quality, independence and sustainability, which is actually the biggest problem for most media. The lack of media diversity is even more pronounced in small local communities, in part due to technical reasons: the signal of public broadcasters is

not strong enough, there are no cable operators or Internet providers, and no local newspapers are printed. Newspaper readership across the country is low for two reasons: lack of reading culture and reading habits (high illiteracy rate in BiH), and the low economic and purchasing power in the country.

Entity public service broadcasters are under the effective control of the ruling political parties and mainly reflect the views of those political parties. As regards the private media outlets, their editorial policy mainly represents the narrow interests of their owners, which often coincide with those of the ruling political parties. Such editorial policy results in financial benefit that is manifested through direct budget transfers, tax breaks or purchase of advertising space by public institutions or enterprises.

The Helsinki Committee for Human Rights in BiH reports that hate speech has become a common occurrence in a large number of media outlets and, what is particularly worrying, is also present to a significant extent⁴⁴⁷ in the public broadcasters.

The media are divided along the ethnic and entity lines, and thus do not cover the entire social and political spectrum, but are partially oriented and designed for predominantly ethnically divided segments of the public. Given that the political centres of power and decision-making are the key factor in the financial existence of the media which creates editorial policy, the media often become tools in the hands of the political elite for mutual confrontations.⁴⁴⁸ The best example to illustrate this was the conflict between two entity public broadcasters, which engaged for several months in a fierce campaign of heavy exchange of mutual accusations and allegations against leading political figures in both entities.⁴⁴⁹

In recent years, there has been an initiative by Croa-

tian politicians in BiH for the establishment of a public broadcaster in Croatian, with a formal explanation that the opinions and viewpoints of the Croatian people as one of the three constituent peoples in BiH in existing programmes, particularly public broadcasters, are under-represented.

INDEPENDENCE (LAW)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?

SCORE 75

The rights and freedoms provided for in the European Convention for the Protection of Human Rights and Fundamental Freedoms are directly applicable in BiH. The Law on Communications of BiH is founded on the principles of impartiality, fairness, non-discrimination, and separation of the broadcasters from political control and manipulation. The Law also provides for the independence of the CRA as the key authority for the regulation of electronic media. The Law clearly stipulates that state institutions must not interfere in the decision-making process of the Agency. Also, Article 40 stipulates that officials in legislative or executive functions at any level of Government, or members of political party organs, or persons who have financial relationships with broadcasters, cannot serve as the Director-General or a member of the CRA Council.

The independence of public broadcasters is guaranteed by Article 4 of the Law on the Public Broadcasting System of BiH, which provides that the public service broadcasters have editorial independence and institutional autonomy. However, by the subsequent amendments to the Law on PBS of FBiH, the Agency has been denied the competence to elect the members of the management board of this public broadcaster, and

the competence was transferred to the Parliament of FBiH. In RS the Law allows for the process of electing members to the management board of the PBS RS to be repeated indefinitely, until a candidate receives the required political support in parliament, which forces the agency to propose a politically suitable candidate.

The legal framework in this area is very good, with the examples of best European legal practices having been used in BiH with the help of the international community. The problem arises when it comes to actual implementation, because the CRA itself, as an independent body charged with implementing these laws, is trying to protect its own independence from political influence, which has a direct bearing on its work. So, the laws are, as is often the case when the laws imposed by the OHR are concerned, written for countries with much longer history of democracy and as a result, are unenforceable in practice in BiH.

INDEPENDENCE (PRACTICE)

To what extent is the media free from unwarranted external interference in its work in practice?

SCORE 0

It is a general opinion shared by numerous international and national organisations that the situation regarding the influence on the media has deteriorated significantly in recent years.⁴⁵⁰ The political interference in the work of the independent regulator (CRA) has intensified through attempts to install a politically elected person as head of the Agency. The appointment of the Director General of the Communications Regulatory Agency has been stalled for four years in the Council of Ministers of BiH, for exactly the above reasons, which has significantly affected the work of the Agency. When negotiating on the formation of the Council of Ministers, leaders of the ruling political parties also agreed on the

distribution of leading positions in independent agencies, including the CRA.⁴⁵¹

The CRA has therefore been brought in a precarious situation, in which its formal independence has been totally undermined. Due to the strong political pressures, self-censorship has become an increasingly common practice in the media outlets in BiH, especially in the public service broadcasters. Journalists are careful about what they write and how they report on the ruling political elite. The key factor contributing to self-censorship is finance, and is therefore present in the private media too, clearly depicting the relationship between media owners and advertisers.

In the election campaign a number of media outlets put themselves openly at the service of political parties. The problem is unique and serious as public broadcasters, too, found themselves in that position, which has significantly compromised the impartiality of their editorial policy.⁴⁵²

Report on the situation of human rights in 2011 emphasises that harassment and intimidation of journalists and civil society remain a problem in BiH. The report also states that the two entity public broadcasters (FTV and RTRS) in 2011 reflected the opinions of some of the political parties from FBiH and Republic of Srpska (SDP and SNSD).⁴⁵³

The House of Representatives of the FBiH Parliament attempted to circumvent the Law on the Public Broadcasting Service of FBiH, when it decided at its 26th session in June 2012, in contravention of the Law, to appoint temporary members of FTV's Governing Board. Decisions issued at that session were overruled by the Constitutional Court of FBiH, on the grounds that the session was held in contravention of the Standing Orders of the House of Representatives of the FBiH Parliament.

In contravention of the Law on the Public Broadcasting Service of FBiH, the chairpersons of the House of Representatives and House of Peoples of the FBiH Parliament issued a decision instead of the chairs of the Commissions for Information, re-inviting applications for the election of three members of FTV's Governing Board, even though the statutory provisions stipulate that only one member is appointed to the body each year.

The controversial decision to appoint three members of FTV's Governing Board was adopted in reverse order, first in the House of Peoples of FBiH on 24 July 2012 and then in the House of Representatives of FBiH on 11 September 2012. The texts of the decision have never been harmonised. The preamble of the published public vacancy announcement states that both chambers issued the decision publishing public vacancy announcement on the same day, namely 24 July, which was not the case. The item called Public Vacancy Announcement for the Appointment of Three Members of the Governing Board of FTV was sent for publication to the Official Gazette, *Dnevni Avaz* [Avaz Daily] and *Večernji list* [Evening Gazette] on 24 October 2012.

Journalists are often subjected to verbal threats and insults by politicians. RS President Milorad Dodik is the leader in attacking and assaulting journalists who are critical of his actions.⁴⁵⁴ Recently, the SDP leader Zlatko Lagumdžija begun to follow this practice and verbally attacked a journalist of BHTV because of the unpleasant questions that she asked. Also, in the media appeared a video showing Lagumdžija giving instructions to a FTV [Public Broadcaster of FBiH] reporter on how to prepare the news report about his press conference.⁴⁵⁵

The government of RS sent an official letter to all public institutions instructing them to withhold information from FTV reporters. Reporters of "Alternativna TV" were barred from entering the campaign headquarters of the

ruling Alliance of Independent Social Democrats (SNSD) during election night on 5 October 2010.

The 2011 Free Media Help Line (FMHL) report registered a total of 52 violations of journalists' rights, of which 16 threats and 4 physical attacks.⁴⁵⁶

In the last three years the Government of RS has introduced the practice of direct grant assistance to the media. However the allocation of direct financial assistance to the media without clearly defined criteria, especially in times of elections, has led to the assistance being allocated to close friends of leaders of the ruling political party in RS, while other media that have received support from the Government began to uncritically promote and advocate pro-government views. In 2009 a total of about KM 5 million worth of grants was awarded to 70 media outlets in RS, in 2010 KM 5 million, and in 2011 the RS government allocated over KM 3.6 million for direct grant assistance to the media.⁴⁵⁷

This practically means that the ruling structures have established full control over the media. "Rather than serve the interests of the citizens, the media tends to compete for favours from business and political interests. With a saturated media market, many commercial media outlets, in the absence of market sustainability, must turn to political sources of financing which demand control of content and silencing of dissent and critical reporting."⁴⁵⁸ It is difficult to talk about democratisation of society if such an important segment as the media is unable to ensure basic social safety for their employees.⁴⁵⁹

How cases of threatening media freedom are prosecuted can be illustrated by two examples. First, there was an ongoing lawsuit against the FTV journalist Damir Kaletović, because he recorded, without authorisation, conversation with the former human rights ombudsman Vitomir Popović, at the moment when Popović made an

explicit threat to the journalist saying that he deserved “a bullet in his head”. Second, the judge of the Municipal Court in Sarajevo Lejla Fazlagić demanded, during a court hearing, that the journalist of “Slobodna Bosna” weekly Mirsad Fazlić, who attended the trial as a witness, disclose the source of information, i.e. the name of the person who gave him documents. When the journalist refused to reveal his source, the judge reminded him that he was still under oath and that he had to say it. In the end, she added that she knew who his sources were, and expressed reservations as a judge over the witness’ testimony.⁴⁶⁰

Access to official and unofficial sources of information is not fully controlled, but Borka Rudić sees problem in the selective provision of information to the media. According to her, there is even targeted feeding of information to certain media outlets only, and the politicians and civil servants use this as a means of manipulating an already divided public or as a weapon to fight the political opposition. According to Borka Rudić, Secretary General of the Association “BH Journalists”, the state regulator has completely lost its independence, as have management and supervisory boards in the media. In support of this claim, Rudić puts forward the following arguments: decisions of the Management Board of RTVBiH [Public Service Broadcaster of BiH] rejecting final court judgments;⁴⁶¹ attempt by the Management Board of RTVBiH to create a parallel authority – Board Secretariat with the functions usually performed by the management and heads of departments; refusal of the BiH Parliament to appoint two members of the Management Board of RTVBiH even though they had passed all legal procedures; decision of the RTRS [Public Service Broadcaster of RS] to start implementing the digital switchover on its own.

The sound legal framework still prevents complete mastery over the media by political power centres. The state and other actors occasionally interfere in some,

but not all, media activities. These cases of direct interference are serious and include verbal and physical attacks as well as judicial influence, shape the media behaviour to a large extent, and are becoming more intense.

The political structures perceive the media as a threat that can endanger their position. They therefore show less and less understanding for the operation and function of the media, and try to gain control over them and use them as leverage to maintain power. The poor economic situation of the media and their dependence on the financial and political centres of power put them in a position of dependence on political lobbies. Also, economic reasons give rise to self-censorship. Judicial institutions are not entirely free of political influence and often show little interest, or even professionalism, in the interpretation of the legal framework in which the media are supposed to operate.

TRANSPARENCY (LAW)

To what extent are there provisions to ensure transparency in the activities of the media?

SCORE 50

The Law on the Public Broadcasting System of BiH⁴⁶² regulates the relationship between the three public broadcasters in BiH (BHRT, RTRS and RTVFBiH), which were established by separate laws as public companies. Since they have the status of public companies, they are subject to the provisions of the relevant freedom of access to information laws.

Rule 41/2009, issued by the CRA, on licenses for terrestrial broadcasting of radio and TV programmes applies to all broadcasters, except to the PSBs. When applying for licences for terrestrial broadcasting, all stations have to submit documents on media registration and

ownership structure to the CRA. The Agency then performs technical, programmatic and financial evaluation of each application individually. The information on the ownership structure of each broadcast company is available to the public in the courts and relevant authorities. These institutions perform all re-registration processes involving a change in ownership structure. The data on all stations with the CRA licence are kept in the Agency's Public Register.⁴⁶³ The Agency does not publish data on the ownership structure of broadcast companies – the records are kept solely for internal administrative purposes. The only classification that is published is the one that classifies the media into public and commercial. The Law on Communications does not make it a requirement for broadcast companies to disclose their ownership structure.

While a number of provisions do exist, they do not regulate all aspects related to the transparency and ownership of the media. Citizens and the public may obtain information on the ownership structure of the media only in the institutions in which these media are legally registered, in accordance with a specific and complex procedure.

TRANSPARENCY (PRACTICE)

To what extent is there transparency in the media in practice?

SCORE 25

The business operations of the PSBs, which are, being public companies, subject to the relevant freedom of information laws, remain insufficiently transparent. The attempts by TI BiH to obtain, in accordance with the freedom of information laws, information relating to the financial aspects of their business operations, particularly with regard to advertising during election campaigns, have remained fruitless.⁴⁶⁴

According to the 2011 Media Sustainability Index, transparency of media ownership has deteriorated significantly over the last few years.⁴⁶⁵ In some cases it is impossible to obtain information on the ownership of certain media. In this sense particularly illustrative is the case of RTV Travnik, where the fact that the actual owner of this media outlet is a political party, which is contrary to the law, was discovered only after a longer time period. Another major matter of concern is the lack of regulations on the concentration of media ownership, which leaves scope for virtually unlimited concentration of media ownership.

Media ownership structure is often intertwined with political interest groups, there is a strong clientelistic relationships between certain politicians, government structures and the owners of some media outlets. It is exactly because of this relationship that there is no sufficient transparency concerning relevant media activities or circulation/viewership.

ACCOUNTABILITY (LAW)

To what extent are there legal provisions to ensure that media outlets are answerable for their activities?

SCORE 75

In BiH there are defamation laws in place,⁴⁶⁶ under which defamation is completely decriminalised, so liability for defamation is established in a civil lawsuit. This has created conditions for strengthening the freedom of the media, especially because, under the Law, state institutions are barred from acting as plaintiffs in libel suits and any potential plaintiff is encouraged to first contact the media outlet that has broadcast the allegedly erroneous information and seek its correction, and only after that, if still dissatisfied, he or she may bring a lawsuit in court.

In addition to the defamation laws, the electronic media are subject to the CRA rules and codes. The print and Internet media, on the other hand, are subject to the Press Code, whose implementation is ensured by the Press Council on the basis of the principle of self-regulation.

ACCOUNTABILITY (PRACTICE)

To what extent can media outlets be held accountable in practice?

SCORE 25

All recent surveys generally agree that the accountability of the media is very low and that the situation in that area has deteriorated in recent years.⁴⁶⁷ Media reporting is characterised by frequent violations of professional standards, hate speech, and one-sided and unverified reporting. There is also the practice of instrumentalising the media where affairs are fabricated, on the order of the owner or political patrons, with the aim of discrediting individuals or organisations that may prove an obstacle to the interests of media owners or their political patrons. One such example happened to TI BiH, following their publication of an analysis of privatisation in RS, after which the media under the control of the media oligarch Željko Kopanja, close to the RS President, fabricated completely false reports about the alleged involvement of TI BiH in organised crime. Despite the fact that the court issued a ruling determining that the reports published by the said media were false, they continued to use the erroneous information in their reports.

Inconsistent implementation of the legal framework, rules and codes, has opened a space for the media to become an instrument in the hands of the political elite and tycoons, which they use for mutual confrontations and showdown with opponents. The huge backlog of

cases in the courts in BiH prevents access to justice within a reasonable period, while political pressures on the judiciary could lead to court decisions being made in the interests of holders of political or economic power. The process of self-regulation also entails requires a certain process of democratic maturation and awareness raising. The well-designed framework suffers from political and cultural legacy, which excludes the accountability of the media. Effective accountability mechanisms are noticeable in the electronic media, in part because of the sanctions available to the regulator; however, the same is not true of the press.

INTEGRITY MECHANISMS (LAW)

To what extent are there provisions in place to ensure the integrity of media employees?

SCORE 50

In BiH there are sectoral codes of ethics. One applies to the broadcasting of radio and television programmes. It was established by the CRA, and, as such, is binding on all electronic media. Also, there is the Press Code that was agreed upon together with the Press Council by six journalists' associations in BiH. The print media are self-regulated, so, unlike the CRA, the Press Council is not a substitute for a judicial authority. The Press Council monitors and analyses possible violations of the Code, acting on individual complaints about a particular news item or press article. The most important provisions of the Code include prohibition of discrimination and insults and the question of accuracy and fair reporting. As regards privacy, journalists are allowed to intrude into an individual's private life if such intrusions are necessary for the public interest, but there are also provisions to prevent abuses.

There are no individual codes of ethics or ethics committees within individual media outlets. Ethics committees, which are called councils of honour, exist in journalists' associations, whereas no such committees exist within individual media outlets.

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of media employees ensured in practice?

SCORE 25

In BiH there are six professional journalists' associations: Independent Union of Professional Journalists, Journalists' Association of RS, association "BiH Journalists", association "Apel", Union of Journalists of BiH, and Croatian Journalists' Association in BiH, which protect the interests of journalists and try to standardise media ethics. These associations follow the ethnic and entity division of the country. While problems faced by journalists in BiH are broadly similar, journalists mostly organise themselves along the ethnic lines. The exception to this is the association "BiH Journalists", which seeks to overcome this division in practice, especially in journalism.

The media often violate the existing codes, publishing incomplete and one-sided information. A survey by the Sarajevo-based Media Plan Institute shows that 65% of the published journalistic content has only one source of information. A survey into the 2010 election campaign, conducted by "BiH Journalists", reveals that as many as 90% of press articles were based on only one source of information. Journalists do not find it necessary to cite sources in their articles or mention that they are citing unverified anonymous sources. Also, they do not cite counter-arguments of other relevant parties,

and even fail to respect the right of people to their own comment when they are being reported on in a negative context, etc. There are frequent complaints in the public against journalists and media outlets alleging that they blackmail individuals by seeking various services from them in order not to disclose compromising information about them.

Media outlets generally attach very limited importance to the education of journalists. Professional associations of journalists operate on a voluntary basis.

INVESTIGATE AND EXPOSE CASES OF CORRUPTION (PRACTICE)

To what extent is the media active and successful in investigating and exposing cases of corruption?

SCORE 25

Without a foothold in tradition, under resourced and understaffed, and often pursuing biased editorial policy, the media in BiH seldom engage in investigative journalism.

Most of the media outlets do not practice investigative journalism, especially if investigative stories can lead to financial and political centres of power, with which the media are close. The few media outlets that do cultivate investigate journalism often come under pressure and are exposed to impromptu fiscal and tax controls, which hampers their work.⁴⁶⁸

Further discouragement for the media and journalists that are active in exposing high profile cases of corruption comes from the relevant judicial institutions which invariably fail to give their investigations an appropriate judicial epilogue. Corruption investigations in BiH

are selective in nature, depending on the relationship between media outlets and political structures. Some of the high profile cases are exposed only after a person or a political party falls from power. Journalists and the media focusing on these stories come under enormous pressure. Another factor contributing to such a state of affairs is the close relationship that the media have with their customers and advertisers, who are almost never the subject of major investigative reports. Journalists are therefore partially and selectively active in investigating corruption cases, and their work rarely results in charges and successful convictions.

The Centre for Investigative Reporting (CIN) deals exclusively with investigation of such cases and is the most well-known investigative journalism programme in the country. The CIN is entirely funded from foreign sources, which clearly confirms the inevitability of financial independence if the media are to engage in investigative journalism.

Very often the media and journalists who dare to engage in investigative journalism become the targets of pressures and threats by individuals or groups on whose activities they reported.⁴⁶⁹

INFORM PUBLIC ON CORRUPTION AND ITS IMPACT (PRACTICE)

To what extent is the media active and successful in informing the public on corruption and its impact on the country?

SCORE 25

Programmes that are implemented with the goal of educating the public on corruption and how to curb it are usually initiated by non-governmental organisa-

tions. The media almost never perform this role, except when they air anti-corruption awareness campaigns funded by NGOs and some international organisations. There are very few programmes run by the media to inform the public in an objective and unbiased way about corruption and its impact and consequences.

The growing number of Internet users in the country, however, allows citizens access to a wide number of local and international sources of information.

INFORM PUBLIC ON GOVERNANCE ISSUES (PRACTICE)

To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?

SCORE 25

A number of media outlets in the country are not under the direct control of the ruling political structures, but the most powerful and richest ones find their interest in representing and promoting the views of the government. Media pluralism in BiH has not resulted in the democratisation of society, or the media for that matter. The journalists and media outlets that criticise the current government (at any of the many levels of government in the country) are accused and exposed to attacks and pressures. Far more common is the critical reporting coming from the media in the region, which is rebroadcast by the media in BiH, than that coming from within the country. Sometimes the analyses of and findings about corruption are promoted regionally (in Croatia or Serbia) in order for the news to take on an added dimension and achieve the desired effect within the country. Media outlets that are critical of government are under threat of closure, because they find it

difficult to survive financially, while those that report affirmatively on government activities receive financial support from the budget and secure stable sources of funding, at least while the parties that they support are in power.

Interconnection between the media and politics, i.e. governments in BiH, is reflected in the following:

- journalists practicing self-censorship and siding with the ruling elite (partial independence);
- media knowingly neglecting important social topics and favouring politics instead;
- media's "watchdog" role being abolished, politics being reduced to the level of cheap popular entertainment, and media being politicised;
- politically suitable candidates being appointed to the control and management structures in public broadcasters;
- impact through advertisers;
- dependence of journalists on their own knowledge (or lack thereof).⁴⁷⁰

In order to get a relatively unbiased account of regular government activities, one need to consume several media simultaneously, reporting from different angles. The pro-government media paint a misleadingly rosy picture, in which everything the governments do is good and in the interest of citizens. This type of reporting is much more pronounced in the ethnically and politically monolithic RS than in FBiH, where power is shared among several political parties representing different ethnic constituencies.

RECOMMENDATIONS

- In the framework of market economy, it is necessary to ensure equal treatment of all media in the market by ensuring transparent and competitive procedures for state aid allocations or, alternatively, abolish this kind

of aid altogether;

- Establish transparent rules for advertising in the media in order to enhance media independence and competition, and compare the findings of audits of public companies with the financial performance of the media, about which the CRA should conduct surveys and make recommendations for future advertising;
- It is necessary to improve the legal framework by ensuring independent election of members of the management boards in the public broadcasters, through public and competitive procedures;
- In particular, it is important to ensure the participation of professional journalists' associations and CSOs in the continuous monitoring of compliance with legislation guaranteeing the independence of the media.
- Raise public awareness about media freedom, access to information as well as the harm and costs suffered by society because of lack of free media or hidden information – training that can be done at the regional level;
- Provide training for judges on the relevant legislation and manner of implementation of the media practice, as well as promote and foster professional solidarity;
- Strengthen the independence of the media through a gradual consolidation and reduction of media outlets to a more realistic number that can viably operate in the market, but more importantly – the public broadcasters whose independence is guaranteed by the legislative framework;
- It is necessary to increase the availability of information relating to the ownership of media outlets, through strict regulation of the obligation for public disclosure of ownership structure, as well as the transparent operation of public broadcasters;
- Given the poor financial status of individual journalists, journalists' associations should provide adequate legal aid to journalists in labour disputes or other situations where journalists are faced with the infringement of their rights. It is necessary to foster solidarity among journalists and encourage them to react if some of their

colleagues come under attack from politicians;

- Provide special training programmes for journalists in the higher educational institutions or through programmes run by journalists' associations and NGOs, to enable professional development of journalists in terms of investigative journalism skills and techniques;
- In the public broadcasters, it is necessary to strengthen the programming councils, whose members will be selected without external interference and be independent from the influence of management boards in these media houses.

6.13. CIVIL SOCIETY

OVERALL PILLAR SCORE: 46/100

STATUS: MODERATE



SUMMARY

Civil society in BiH is moderately developed with great concern regarding the capacities and management in CSOs. CSOs in BiH have a significantly greater role in society than their resources and management allow.

Even though the legal framework provides an environment conducive to the development of CSOs, the majority of CSOs suffer from serious problems related to financial viability and human resources, leading to a certain level of inefficiency in carrying out their duties and/or threatening their sustainability. There are no legal safeguards in place to prevent unwarranted external interference in the activities of CSOs, and in

practice there are cases of external pressure being exerted on CSOs, which the government invariably fails to condemn and/or processes.

Transparency of CSOs is unsatisfactory because, even though most of them publish relevant information about their activities, it is often incomplete and/or obsolete, while their Assemblies and Steering Committees are only partially effective in monitoring the implementation of CSOs management decisions.

Finally, CSOs are to some extent active in efforts to hold governments accountable and the effectiveness of their action has been trending upwards, which every so often results in changing the legal framework or government practices. This also applies to the cooperation of CSOs with other key stakeholders in society around initiatives to reform anti-corruption policies, where CSOs do not only have a reactive role but also explore and publicly raise the issues that are not on the agenda of the decision makers in BiH.

STRUCTURE AND ORGANISATION

Civil society in BiH is heterogeneous; it includes various forms of associations, ranging from informal communities and volunteers to professional organisations. It covers different areas of society, from sports, arts, culture to political associations or unions of veterans/disabled persons. CSOs often form coalitions or networks that may be permanent or temporary and gathered around particular, specific activities and goals.

There is no single database upon which to know the exact number of civil society organisations (CSOs), but the number of registered organisations is estimated at around 12,000, most of which are associations with no or very few employees (up to five). Of that number of locally registered organisations in the entities, only 6,600 are active.

TABLE WITH SCORES
CIVIL SOCIETY
OVERALL PILLAR SCORE: 46/100

DIMENSION	INDICATOR	LAW	PRACTICE
CAPACITY 44/100	RESOURCES	75	25
	INDEPENDENCE	50	25
GOVERNANCE 31/100	TRANSPARENCY		25
	ACCOUNTABILITY		25
	INTEGRITY MECHANISMS	50	25
ROLE 63/100	HOLDING GOVERNMENT		75
	ACCOUNTABLE POLICY REFORMS		50

A limited number of CSOs are financed from public funds (usually at the local level), while the majority rely on international donors, membership fees, self-financing, etc.

RESOURCES (LAW)

To what extent does the legal framework provide an environment conducive to civil society?

SCORE 75

In the legal system of BiH the right to freedom of peaceful assembly and association is regulated by constitutional and statutory provisions and regulations.⁴⁷¹ Special laws apply to religious communities and trade union organisations – the laws on political organisations, the Law on Freedom of Religion and Legal Status of Churches and Religious Communities in BiH, and the labour laws.

Despite there being three separate laws regulating CSOs in BiH (at the state and entity levels), they are all generally similar and positive. However, the implementation of these laws, especially at the state level (in terms of registration of CSOs and/or procedures to change an organisational statute), takes significantly longer than prescribed by legislation due to registration authorities' inefficiency. In 2009 a working group was formed to improve the existing law on associations and foundations, as well as simplify procedures and clarify the distinction between public benefit CSOs and other CSOs.⁴⁷² The Draft Law on Foundations of BiH and the Draft Law on Associations of BiH are currently in the parliamentary passage.⁴⁷³

The Constitution of BiH stipulates, on the basis of the international legal standard, that “the rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Free-

doms and its Protocols shall apply directly in Bosnia and Herzegovina” and “shall have priority over all other law”.⁴⁷⁴ Among these freedoms, the Enumeration of Rights expressly provides that all persons within the territory of BiH “shall enjoy [...] freedom of association with others”.⁴⁷⁵ This means that the “freedom of association with others” is a constitutional right belonging to all persons within the territory of BiH.

To register a CSO is a relatively simple process⁴⁷⁶ which can be completed in several steps. However, registration takes unnecessarily long due to registration authorities' inefficiency. Just over 50% of CSOs gave a good score to the registration process.⁴⁷⁷

While under the Law on Associations, informal citizens' groups without formal registration are not restricted in their work,⁴⁷⁸ they cannot access public sources of funding for CSOs. Civil society organisations are exempt from paying tax on donations, grants, membership fees and also any profits from economic activities directly related to the achievement of the organisations goals.⁴⁷⁹ There is the possibility of CSOs receiving tax-deductible donations from citizens and businesses.⁴⁸⁰ Concessions available for charitable giving are different in the two entities, with the Law on Corporate Income Tax in RS offering individuals and businesses considerably more encouragement to support charitable and non-profit organisations. In BiH, charitable donations from both individuals and registered businesses may be deducted against tax up to a limit of only 0.5% of individual earnings and corporate profit. In the case of RS, the limit is raised to 2% of earnings and profit. CSOs complain these concessions are too low to stimulate a culture of giving, and also that, as far as individual giving is concerned, as the scheme is only available to individuals who submit annual tax returns, it is far too restricted in scope to generate significant revenues for CSOs.⁴⁸¹ Finally, the number of individuals who give personal tax-deductible donations to CSOs is relatively

insignificant, as are the benefits CSOs have from these measures.

CSOs in BiH can and do undertake all activities that are in compliance with the law. This includes advocacy, watchdog activities and criticising the government.⁴⁸²

To summarise, the legal framework for the operation of CSOs is regulated to a certain extent but requires further work and improvement for it to be more conducive to CSOs.

RESOURCES (PRACTICE)

To what extent do CSOs have adequate financial and human resources to function and operate effectively?

SCORE 25

More than three quarters of CSOs in BiH are dependent on a single donor,⁴⁸³ whilst about two thirds are financed from local sources of funding,⁴⁸⁴ namely sports organisations, cultural and artistic organisations, or organisations that protect participants and victims of war, humanitarian organisations and those involved in local economic development and social service delivery.⁴⁸⁵

Organisations that obtain funding from international donor organisations are primarily those whose work focuses on civil initiatives, humanitarian, social and economic organisations, women's (gender) organisations as well as those dealing with youth.⁴⁸⁶ These organisations make up a little over 35% of all CSOs in BiH.

Despite diverse sources of funding, CSOs tend to be in a constant search for funds, which restricts their capacity to deal with social problems and reduces their overall efficiency. This state of affairs constitutes a threat to the sustainability of civil society, which follows as a logical

consequence of the shortage of qualified personnel in CSOs and lack of strategic approach in attracting funds.

Although the majority of CSOs in BiH receive funding from local sources (public funds, donations from individuals and companies, etc.), they are still highly dependent on international donors, which provide more generous funding for activities covering a wider range of social issues (including advocacy, watchdog activities, etc.).

Local sources mainly provide funding to the CSOs working in the field of social service delivery. This situation adversely affects the development of CSOs as it makes them adjust their activities in such a way as to fit the priorities of the government, which in turn uses this process as a form of influence on CSOs. Similarly, being in need of funding, CSOs also tend to adapt their work to suit the periodic priorities of international donors.

INDEPENDENCE (LAW)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?

SCORE 50

The right to freedom of association, which is guaranteed by the Constitution of BiH and Entity Constitutions, is enjoyed by individuals who join or establish associations, as well as associations themselves, without any restrictions with regard to the connection of these associations' goals with advocacy for good governance and anticorruption. The existing law on NGOs in BiH is very liberal, and *de facto* allows any three persons who do not violate the Constitution of BiH to found a CSO in any area.⁴⁸⁷ Regulations governing associations do not restrict the right of peaceful assembly, public protest and association of members of the armed forces, police and civil servants.⁴⁸⁸

The existing legal framework that defines civil society in BiH does not provide for any mechanisms to protect the work of CSOs from external interference. The existing laws on CSOs in both BiH entities as well as the state law do not provide for any presence of a governmental representative either at the meetings or in the work of the Steering Committee or any similar managerial body of CSOs. As far as mechanisms to control the work of CSOs are concerned, the laws only provide for occasional controls of whether CSOs regularly pay contributions and payroll taxes as well as taxes for various other payments to the staff of CSOs (per diems, bonuses, etc.). The same applies to the obligation to pay VAT for services and/or products delivered by CSOs to other parties if the value of revenues from these activities exceeds KM 50,000 per year.⁴⁸⁹

The CSOs that implement projects with the support from the public purse, obtained through grant support and/or on account of the status as a public benefit organisation,⁴⁹⁰ have the obligation to submit annual programmatic and financial reports for projects implemented with public funds. The percentage of institutions in BiH that require CSOs to report for allocated funds is quite high – 95.2%.⁴⁹¹ However, this obligation cannot be regarded as a potential control of the activities of CSOs by the state, because the same procedures are applied by all other donors.

In summary, the existing legal framework governing the work of CSOs does not cover the issue of privacy of work of CSOs, leaving this area unregulated. Initially, this might be good for CSOs as it gives them freedom from government's control and unwarranted interference in matters of work and management of CSOs. At the same time, however, this legal gap does not *prevent* control of CSOs by the government, and the government can possibly take advantage of this gap following the legal principle that *everything which is not forbidden is allowed*.

However, the current trends in the relationship between CSOs and the authorities in BiH do not indicate that the described negative scenario might actually happen.

INDEPENDENCE (PRACTICE)

To what extent can civil society exist and function without undue external interference?

SCORE 25

In BiH there are still cases of violence and threats against human rights advocates and civil society organisations, mostly involving activists investigating suspected corruption.⁴⁹²

There have also been several cases of public pressure on CSOs by actors associated with religious communities⁴⁹³ and the media. Although the religious communities are supposed to be part of civil society in BiH, they have been repeatedly associated with the government,⁴⁹⁴ especially in the election period, so the aforementioned cases can be viewed in that context. There are also reports of arrests of CSOs' activists⁴⁹⁵ because of their intent to publicly express and stand for their views during adoption of new policies.

Although the government did not appear as an involved party in those cases, the conspicuous absence of their outright condemnation of the attempted pressure on the work of CSOs (regardless of the source of the pressure) and restriction of their freedom of action raises suspicion as to the government's commitment to protect the integrity of CSOs and ensure their unhindered operation in accordance with the law. The same goes for the media as they suffer from an apparent lack of independence on account of their relationship with different sources of political power in BiH.⁴⁹⁶

Finally, in addition to the classic CSOs (NGOs), in BiH there are also the so-called government organised non-governmental organisations (GONGOs).⁴⁹⁷ These are mainly the associations of war veterans or returnees, but there are also other CSOs which are under a significant influence of political parties. The work of these quasi-CSOs is tightly coordinated with the authorities and the government uses them to publicly showcase its good relations with civil society in an attempt to take the edge off its negative reactions to the work of those CSOs that are independent of its influence.

In such a context, it may be argued that in BiH there are still cases of external interference in the operation of CSOs and/or pressure on them, such as media-led smear campaigns aimed at tarnishing the image and undermining the integrity of CSOs, arrests of activists, intimidation, etc. Authorities at all levels in BiH do almost nothing to protect civil society and trade union activists, human rights activists as well as nongovernmental organisations and their membership. What is sadly lacking is an adequate response by the competent ministries, Ombudsman as well as courts and the police in sanctioning threats and attacks, as nothing is done to create an environment in which it will be possible for citizens and their organisations to operate freely in the field of human rights. According to official information, none of the above cases has been prosecuted.

TRANSPARENCY (PRACTICE)

To what extent is there transparency in CSOs?

SCORE 25

Only a small number of CSOs (of an estimated about 12,000 in BiH)⁴⁹⁸ publish information about their work, i.e. annual (narrative and financial) reports as well as information on the composition and work of their steering committees or other similar governing bodies.

The main medium used by CSOs to publish information is through their websites, although these do not draw considerable attention to the contents of these reports or results of their work in a given period.

Something similar is true of financial statements, though it should be noted that one form of annual financial statement is mandated by the state (balance sheet and income statement) and CSOs are required to produce it. However, only 18% of CSOs perform financial audit of their operations, and less than 5% make information on their financial operations publicly available.⁴⁹⁹

While strengthening their media visibility in connection with their projects and activities, CSOs still lag behind when it comes to transparency in their internal operations and the publishing of annual reports.⁵⁰⁰

CSOs in BiH have a high degree of awareness of the need to strengthen transparency of their work. This is not limited merely to the preparation and publication of annual reports (although this area alone leaves much to be desired), but also entails increasing the participation of key stakeholders in programme planning and broadening CSOs' membership and activist base.

Such a state of affairs stands in stark contrast to the demands of CSOs for greater transparency and responsiveness of the governments in BiH towards the public and civil society. Lack of consistency on the part of CSOs diminishes their integrity and damages their public image. The fact that citizens are not particularly vocal in their demands that CSOs should make information about their programmatic and financial activities publicly available is not a reason for CSOs to use this as an argument to remain largely non-transparent in their work.

ACCOUNTABILITY (PRACTICE)

To what extent are CSOs answerable to their constituencies?

SCORE 25

CSOs have steering committees and there is a clear distinction of responsibilities between ordinary staff and committee members. However, a lot of CSOs suffer from a lack of transparency in the work of their steering committees.⁵⁰¹ It is common practice for members of governing bodies (Steering Committees and/or assemblies) to be only names in CSOs' registration documents, whereas in reality they do not meet on a regular basis or make strategic decisions.⁵⁰²

The role of the Steering Committees in CSOs in BiH is a topic outside CSOs' interest. More specifically, most CSOs see the existence of governing bodies (Steering Committee, assembly, etc.) as an obligation to be fulfilled during registration and these bodies have a small or virtually no actual role in managing the organisation or maintaining the organisation's relationship with its base and/or founders.

INTEGRITY (LAW)

To what extent are there mechanisms in place to ensure the integrity of CSOs?

SCORE 50

CSOs fall behind when it comes to self-regulation.⁵⁰³ A certain dynamic has been achieved through a series of consultations and seminars on the introduction of quality standards in the management of CSOs. This process involves about hundred CSOs that have expressed willingness to participate in this initiative. However, no

tangible progress has been made beyond consultations and the process has failed to create a concrete step forward or come up with proposals of a possible way to address the issue of self-regulation.

In addition, a draft Code of Conduct and an initiative for the adoption of a Code of Ethics has been drawn up by at least two CSO networks in BiH⁵⁰⁴ as a self-regulatory document for the members of these networks. This should contribute to increased openness and transparency of CSOs involved in these networks, and thus greater credibility of members and their networks.

In general however, the issue of self-regulation is marginalised by CSOs and occasional initiatives in this direction so far have not been sufficient to create considerable momentum towards introducing the code as a form of self-regulation.

INTEGRITY (PRACTICE)

To what extent is the integrity of CSOs ensured in practice?

SCORE 25

There is a practice of contributing to strengthening the integrity of CSOs in BiH, but it is largely restricted to a small elite of CSOs gathered in the "Mreža +" network, which was formed to promote the work of civil society in BiH. However, this positive example has had a limited scope in that it only produced a draft Code, whose finalisation and subsequent implementation have yet to take place.

At the same time, several other networks are in the process of drafting their codes of practice,⁵⁰⁵ but these will also have a limited impact as they only apply to the members of these networks.

So, despite several adopted codes of conduct and the ongoing code-drafting process, which could serve as a basis for greater action, there is still no concrete progress.

The overall state of affairs represents only initial efforts by CSOs to improve the integrity of staff and organisations, whereas the majority of activities in this area have yet to take place.

HOLDING GOVERNMENT ACCOUNTABLE

To what extent is civil society active and successful in holding government accountable for its actions?

SCORE 75

In the period 2009-2011 there has been a significant increase in the number of CSOs acting as *watchdogs* to enhance accountability of public authorities in BiH in performance of their duties – at least 30 of them. Employment, health care, public procurement and youth are among areas of focus of visible advocacy campaigns of CSOs which create and publicly disclose analytical information and run campaigns to correct the observed anomalies. BiH authorities have in several cases responded positively to CSOs' advocacy campaigns related to topics at a high political level. Notable successes of CSOs' advocacy include the Law on Professional Rehabilitation of Disabled Persons in FBiH,⁵⁰⁶ adoption of the BiH Employment Strategy,⁵⁰⁷ and adoption of the BiH Strategy to Reduce Corruption.⁵⁰⁸

It is also worth mentioning the activities of CSOs in the pre-election period in 2010, when CSOs were very active in analysing and informing citizens about the results of government work and pre-election plans of other political actors: During a 90-day period between

July and September 2010, there were over 1,700 media reports about CSOs' campaigns, which is an average of nearly 19 media reports per day.⁵⁰⁹

Anti-corruption work is widespread in the activities of CSOs aimed at holding government accountable for its actions. A number of CSOs have run anti-corruption campaigns in the areas of public procurement,⁵¹⁰ public spending,⁵¹¹ acting on audit reports,⁵¹² education⁵¹³ and, generally, anti-corruption efforts in society.⁵¹⁴

The range and visibility of CSOs' campaigns cover the entire BiH. The main tools used in the campaigns are the media, primarily electronic media (TV and radio), but also print media and especially the Internet. There is a clear tendency towards increased use of social networks (Facebook, Twitter, etc.) as well as Internet portals in advocacy campaigns.

Holding government accountable for its actions has been a widely discussed theme in the work of CSOs in BiH in the past two years. This is the result of CSOs' awareness of the current relevance of and the need to address this problem, but also of the donors' influence through public calls for project proposals to address these issues.

Despite a significant number of initiatives aimed at strengthening government accountability, only a small proportion of them ultimately result in changing the legal framework and government's practices. CSOs usually advocate issues that the political elites tend to avoid for various reasons and for whose solution there is rarely a political consensus. In such circumstances, any success in the form of a concrete change of the legal framework is a big improvement, and shows that CSOs have a relatively significant impact in public opinion in BiH. In addition, public education about advocacy campaigns and motivating individuals to advocate change was another important result of CSOs' work.

Undoubtedly, many CSOs' advocacy activities in BiH focus on government accountability, contribute to greater efficiency of government, and increase public pressure (indirectly through the press) on authorities to do a better job.

POLICY REFORM

To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?

SCORE 50

Since 2009 there has been a growing number of CSOs' policy reform initiatives on anti-corruption. In addition to TI BiH, several other CSOs have proposed enhanced anti-corruption policies in the areas of education, health and public procurement, and have been campaigning for the adoption of these policies (UG Tender, CCI BiH, ALDI, UZOPI, VESTA, VPI, Radio Kameleon, the Helsinki Committee for RS). Their approach is proactive and one step ahead of the intentions of government and/or management of public institutions to deal with the problem of corruption in its activities. This is something new in terms of both the CSOs' approach and the number of organisations involved, and albeit somewhat surprised by these initiatives, the government, which at the lowest levels of government is not completely unresponsive to them.

CSOs offer situation analyses and results of surveys into the state and causes of corruption, and advocate possible policy solutions and/or processes of creating them. The managerial staff in public institutions (universities, faculties, health centres) have become more open to cooperation with CSOs, and first results of CSOs' efforts are becoming visible in the form of adopted anti-corruption policies of these institutions that primarily address prevention of corruption (education of users and employees, establishment of capacities for

reporting corruption). For example, at least eight health centres across the country have adopted the Regulations for Preventing and Combating Corruption.⁵¹⁵

Adoption of these policies is a participatory process, because they were produced through a collaborative effort of the management and employees in public institutions as well as involved CSOs. However, the implementation of these mechanisms has yet to be confirmed through verification of results.

In a broader context, however, the initiatives presented above should be seen relative to the total number of CSOs in BiH, and the proportion of CSOs active in this segment is less than 1%.

It is important to note the existence of the Open Society Fund's Programme to Support Public Policy Research in BiH,⁵¹⁶ which has a potential to significantly contribute to the active engagement of CSOs in policy reform initiatives on anti-corruption. However, over the last two years this programme has primarily focused on the policies in education and the judiciary, partly due to lack of interest among CSOs.

CSOs in BiH are involved in policy reform initiatives on anti-corruption not only in the reactive sense, but also proactively as they explore and publicly raise issues that need to be addressed but are left out of the decision makers' agendas. CSOs launch initiatives to establish anticorruption mechanisms, which is a significant change that has begun to show results at lower levels of government, but also to create a certain positive pressure on the upper tiers of government – directly through the CSOs' cooperation with authorities as well as indirectly by generating pressure through the media and international organisations.

However, although the Strategy to Reduce Corruption in BiH was drawn up with the participation of

CSOs together with other stakeholders in the country, the highest level of anti-corruption policies remains impervious to a substantial impact by CSOs, despite the existing initiatives.⁵¹⁷

segments such as employment, health services, etc., by training CSOs on how to represent the second generation, maintaining priorities of international donors in the area of advocacy, and strengthening the BiH donor capacity for support to CSOs' advocacy.

RECOMMENDATIONS

- Further define the procedures for the registration of CSOs so as to prevent them from being subject to arbitrary interpretation by individuals in power and to eliminate the scope for manipulation;
- Promote local funding of CSOs and facilitate CSOs' access to funds collected under the Law on Games of Chance, as well as present and incorporate in the Law tax incentive modalities for CSOs;
- Increase the capacity of CSOs to strategically plan their fundraising activities, continue to strengthen volunteerism in BiH, and increase transparency in the allocation of local resources to CSOs;
- Regulate the issue of protection of CSOs from unwarranted external interference by improving the existing Laws on CSOs in BiH;
- Support the development of specialised CSOs (or networks) which will monitor, assess and report to the public on cases of pressure on CSOs as well as analyse and advocate the right of CSOs to freedom of work;
- Initiate and support the process of self-regulation of work quality within civil society in BiH to enhance the overall functioning of CSOs;
- Ensure that adequate training programmes are put in place for CSOs regarding the role of management structures as a way to increase transparency and strengthen the public visibility of work of CSOs' management boards;
- Support the establishment and efficient operation of sustainable BiH Foundations to support CSOs' advocacy activities through endowments and operating grants;
- Further strengthen the capacity of CSOs to effectively present their proposals to the authorities in BiH in the area of anti-corruption, as well as other important

6.14. BUSINESS SECTOR

OVERALL PILLAR SCORE: 36/100

STATUS: WEAK



SUMMARY

The economic situation in BiH has deteriorated over the last few years, mainly due to the slow progress in the field of economic freedoms. The process of starting a business is still fraught with too much bureaucracy and red tape, while the process of liquidation or termination of a company is very cumbersome and can take as long as several years.

Despite solid legislation in individual areas, the business environment is characterised by weak rule of law, unreliable contract enforcement as well as corruption, which is particularly rife in public contracting. Politics is too involved in the operations of companies, and the judiciary often comes under political pressure. Through

development banks, whose management is appointed by the executive authorities of the entities, the state spreads its influence to the private sector and enables the bolstering of the oligarchic structure.

Many facts relating to the operations of companies are unreasonably treated as trade secret and are difficult to access, even by their shareholders. Corporate governance is at a low level, as is corporate ethics, while anti-corruption initiatives of the business sector are in their infancy. Individuals or companies that disclose or report corruption are often exposed to different types of formal and informal pressures in practice.

STRUCTURE AND ORGANISATION

The percentage of state-owned capital in BiH is still high – in FBiH just over 60% of the state capital has been privatised, and in RS over 65%. The private sector's share in GDP is 60%, which is one of the lowest

values of this parameter for countries in transition. In the sectorial structure of the economy, services account for 68.4% of gross value added, industry and construction for 26.7% and agriculture for 8.4%.⁵¹⁸ The size of the informal sector, fuelled by poor implementation of the law and ineffective fight against corruption, remains a major concern. Inadequate tax policy and financial aid policy hamper the survival and development of small and medium enterprises.

The main forms of association of the business sector are chambers of commerce and employers' associations. The chamber system consists of the Foreign Chamber of Commerce at the state level and chambers of commerce at the entity level, and employers' associations follow the similar pattern of organisation (the main ones are: Employers' Association of FBiH, Union of Employers' Associations of RS, and Employers' Association of BiH with members from both entities). While some chambers of commerce are perceived as working in the interests of the authorities and business moguls associated with them, the main problem of

TABLE WITH SCORES
BUSINESS SECTOR
OVERALL PILLAR SCORE: 36/100

DIMENSION	INDICATOR	LAW	PRACTICE
CAPACITY 44/100	RESOURCES INDEPENDENCE	50	25
		50	50
GOVERNANCE 38/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY MECHANISMS	50	50
		50	25
		50	0
ROLE 25/100	AC POLICY ENGAGEMENT SUPPORT FOR/ENGAGEMENT WITH CIVIL SOCIETY	25	
		25	

the employers' associations is the fact that they do not efficiently represent the interests of their members in negotiations with government officials.⁵¹⁹

RESOURCES (LAW)

To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?

SCORE 50

The key legislation governing this area is adopted at the level of the entities and the Brčko District. The Company Law of RS⁵²⁰ governs incorporation of companies (partnerships and corporations). In early 2011 the new Law on Classification of Activities and Register of Businesses by Industry entered into force in RS.⁵²¹ In FBiH the Company Law⁵²² also regulates the establishment of companies. The Brčko District defines the business entity, in terms of the Framework Law on Registration of Business Entities in BiH⁵²³ and the Law on Registration of Business Entities, as a legal entity whose registration is required under this Law. However, domestic legislation is not yet entirely aligned. In both entities the registration consists of 12 procedures, but the procedures differ among each other.

Laws governing ownership and other property rights are within the competence of the Entities and the Brčko District. In RS the relevant law entered into force in 2010, in the Brčko District it was passed as the Law on Ownership and Other Property Rights in 2011,⁵²⁴ whereas in FBiH the new law has not been adopted yet.

In the first half of 2010 the Parliamentary Assembly of BiH adopted the Trademark Law, Patent Law, Industrial Design Law, Law on the Protection of Indications of Geographical Origin, Law on the Protection of Integrated Circuit Topography, as well as Law on Copyright and

Related Rights and Law on Collective Management of Copyright and Related Rights, which have been in force since early 2011.

The Institute for Intellectual Property of BiH was established by the Law on the Establishment of the Institute for Intellectual Property of BiH,⁵²⁵ and since early 2007 it has operated as an independent state administrative organisation, which reports to the Council of Ministers.

The FBiH Inspection Administration and RS Inspectorate have no jurisdiction in the laws governing the protection of intellectual property. Market inspections of both entities in such cases act as in the process of monitoring and seizure of goods of suspicious origin and treat such goods as non-originating goods or as the provision of services without a work permit.

The High Judicial and Prosecutorial Council of BiH (HJPC) appointed senior staff and 32 judges in commercial courts in RS: in Banja Luka, Bijeljina, Doboj, Istočno Sarajevo and Trebinje, which began operation on 1 May 2010. The commercial courts are competent to resolve commercial disputes, bankruptcy, liquidation and business registration.

In FBiH, amendments to the Law on Courts provided for the formation of special commercial departments, one in each canton, operating within the municipal courts of cantons. This was aimed at achieving greater efficiency in the conduct of proceedings in this area, without the formation of specialised commercial courts.

FBiH and RS have almost identical laws on bankruptcy, the only difference being which courts are in charge of conducting bankruptcy proceedings: in the first instance – district commercial courts in RS and municipal courts in FBiH; in the second instance – the Higher Commercial Court in RS and cantonal courts in FBiH. Under bankruptcy laws, bankruptcy proceed-

ings are instituted when a company has been unable to discharge its liabilities for two months. Proposal for bankruptcy is submitted to the competent court by the company's manager or creditors. Both entities have laws on liquidation proceedings, RS since 2002 and FBiH since 2003. In the event of liquidation, the trustee sells the company's assets and uses those funds to pay debts to creditors.

According to the European Commission, even though the standard of legislation is relatively high in some areas, the business environment continues to be impaired by weak rule of law, corruption and unreliable contract enforcement.⁵²⁶ According to the World Bank's report Doing Business 2012,⁵²⁷ BiH stands at 125 in the ranking of 183 economies on the efficiency of contract enforcement. Contract enforcement requires 37 procedures, 595 days, and costs amount to 40.4% of income per capita, with judicial procedure (trial and judgement) taking an average of 385 days, and the enforcement of judgement an average of 180 days.

RESOURCES (PRACTICE)

To what extent are individual businesses able in practice to form and operate effectively?

SCORE 25

On average it takes 12 steps (most in the region) and 40 days to register a company. However, this varies from city to city as well as from one entity or canton to another as BiH has a complex administrative structure and each administrative unit has its own regulations. All the following statistics relate to the World Bank's study Doing Business 2012.

Further obstacle is the minimum initial capital, which amounts to 29.4% of income per capita. The costs, excluding the initial capital, amount to an average of

about KM 400 for stipulating a founding act and having it notarised by a notary; about KM 550 for court registration and publication; additional costs for buying company stamp; an additional 200 KM on average for municipal approval of local authorities; costs of the adoption and publication of a rule book on salaries, work organisation, etc., which may require further costs, depending on whether the production of these documents is entrusted to a lawyer or an external professional. Notaries have a very prominent role: each decision of the competent authority of a company must be notarised, which makes the whole process more time-consuming and more costly. While one part of the public thinks that the notaries help lift the burden from the courts, the Foreign Investors Council in BiH believes that the participation of notaries in processing decisions of business entities is unnecessary because it comes down to copying the decision of business entities.⁵²⁸ Foreign investors also question the participation of notaries in the processing of decision on increasing the capital, where the stock company is obliged to submit to the registration court a certificate from the deposit bank that the capital has already been paid.

The Law on Foreign Investment Policy was amended in order to shorten the lengthy procedure for starting a foreign-owned business (on average 83 days in 2009, according to Doing Business). The requirement to register foreign direct investment with the Ministry of Foreign Trade and Economic Relations of BiH has been removed; only registration with local courts is now required. To obtain a construction permit requires 18 procedures, takes 181 days on average and costs 1112.9% of income per capita. The biggest share of costs goes for obtaining validation of the technical audit of the main project, about KM 28,000, as well as for requesting issuance of the building usage permit, about KM 7,800.

Registering property in BiH requires 7 procedures, takes 33 days and costs 5.3% of the property value. The

biggest costs are for notarisation of the sale-purchase agreement, KM 700. The Property Register has been unreliable since the end of the war as it leaves scope for challenging a property transfer. Efforts have been made to update the laws on the cadastre of real property, repeal previous conflicting laws and develop new entity-level registers.

The process of liquidation or winding up of a company is more complicated than establishing it and can last for up to several years. When filing a request to the competent court to institute liquidation proceedings, one should enclose documentation on registration and any amendments, certificates proving that all liabilities, tax and non-tax, have been discharged, and the founder's decision on the dissolution of the company. According to data collected by Doing Business 2012, liquidation and reorganisation take longer than the optimum time, the average recovery rate is 35.0%, and the procedure takes 3.3 years on average.

The 2012 Index of Economic Freedom ranked BiH 104th among 179 countries, with an overall score of 57.3, while, looking regionally, BiH ranked 39th out of 43 countries. The country's overall score is 0.2 point worse than the previous year, which is interpreted as a significant decline in business freedom.⁵²⁹

Also, according to the EC, the implementation of laws is often poor due to the low capacity of key implementing institutions. The judiciary is subject to obstruction by political parties and does not adequately cover commercial activities.

INDEPENDENCE (LAW)

To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?

SCORE 50

The current constitutions and laws guarantee freedom of enterprise. The preamble of the Constitution of BiH emphasises the desire to promote "the general welfare and economic growth through the protection of private property and the promotion of a market economy". Article 4 of the Constitution provides that "There shall be freedom of movement throughout Bosnia and Herzegovina. Bosnia and Herzegovina and the Entities shall not impede full freedom of movement of persons, goods, services, and capital throughout Bosnia and Herzegovina. Neither Entity shall establish controls at the boundary between the Entities".

The customs policy and indirect tax policy are regulated at the state level, while the responsibility for regulating direct taxes rests with the entities and the Brčko District. The business environment is still impeded by foreign trade regulations. Import and export restrictions, non-transparent regulations, additional import duties on agricultural products, and many other border fees further burden the cost of trade. Customs duties were abolished for 11,000 products from the EU, and the country seeks to join the World Trade Organisation.

There are no restrictions on investments, except for the military and the media, where foreign control is limited to 49%. The right to transfer and repatriation of profit and remittances is guaranteed; however, there are a few restrictions on capital transactions and foreign currency accounts. The law prohibits expropriation and nationalisation of assets, except under special circumstances and with a compulsory fee. Price controls apply

to electricity, gas, and telecommunications services.

The State Aid Law was finally adopted in 2012, but the establishment of the competent authority is still pending. According to the EC, state aid remains high and the state continues to exert significant influence on the competitiveness and economy in general, in particular through state-owned monopolies.⁵³⁰

Cooperation between the public and private sectors is most often formalised through concessions and various institutional forms of public–private partnerships (companies with full or majority public ownership which fulfil public needs, etc.). If a concession project is proposed by a private partner (and not the Contracting Authority), then during the procedure leading to the award of the contract for the project one must respect the basic principles of the Treaty Establishing the European Community (EC) and the EC Directive on Public Procurement (in case the concession agreements are in fact public procurement contracts). The Law on Public–Private Partnership exists only in RS and it governs the scope, principles, manner, forms and conditions under which public–private partnership can be established as a form of pooling resources, capital and expertise for the purpose of construction, rehabilitation and maintenance of infrastructure. The Law was adopted in June 2009.⁵³¹

INDEPENDENCE (PRACTICE)

To what extent is the business sector free from unwarranted external interference in its work in practice?

SCORE 50

The economic situation in BiH has worsened over the last few years, mainly due to the slow progress in the field of economic freedoms. Widespread corrup-

tion discourages entrepreneurial activity. Local courts are faced with a lack of funds for the prosecution of complex crimes. Huge and expensive administration and lengthy registration procedures are remnants of the former centralised planning. The process of starting a business and obtaining approval for the work is still hampered by administrative delays. Unregistered economy is still very high and accounts for about one third of the gross domestic product, half of which is informal economy.⁵³²

According to the 2011 survey “Family Businesses – Economic Development Pillar of BiH”⁵³³ conducted by the Centre for Education Educa Pro, the majority of those surveyed (81%) believe that the political interference in the operations of companies is very strong, and 61.1% of private business owners in BiH report to have met with political demands in their work.

Only 60% of the state-owned capital in FBiH and 65.7% in RS was privatised until 2011. The private sector’s share in GDP is 60%, one of the lowest values of this parameter for countries in transition, which is, due to the still high proportion of state-owned capital, managed by the executive of the country.

The business environment is affected by non-tariff barriers to trade and inefficient regulatory system. Enforcement of intellectual property rights remains a problem. Weak contract execution and poor legal environment continue to pose an obstacle to long-term lending. The Central Bank has tried to consolidate the financial control authorities at the state level, but the process has been very slow.

Through development banks (IRB in RS and RB in FBiH), whose management is appointed by the executive authorities of the entities, the state has spread its influence to the private sector and, through non-transparent procedures (or complete absence thereof), imposed a

clientelistic relationship on the economy and strengthened the oligarchic structures.

In RS for years there have been numerous examples of irregular allocations of proceeds of privatisation, which are held in escrow in a special account with the IRB. Instead of transparent procedures for lending to industry development projects, funds were granted on partisan, kinship and friendly grounds,⁵³⁴ as well as for buying social peace through various social transfers. Similar is the case with the RB in FBiH.

Also illustrative is the case of the former FBiH Minister of Energy, Mining and Industry, Vahid Hećo, during whose term (2006–2010) this Ministry distributed nearly KM 15 million in incentives to private businesses in FBiH and the Brčko District, of which at least 4 million to companies whose owners or directors were members of or donors to the ruling parties in FBiH.⁵³⁵

TRANSPARENCY (LAW)

To what extent are there provisions to ensure transparency in the activities of the business sector?

SCORE 50

Each entity Company Law defines similar forms of legal entities for the corporate sector: partnerships, limited liability companies, and joint stock companies, which can be open joint-stock companies or closed joint-stock companies. Open joint stock companies must be registered on the stock exchange.

The Laws on Accounting and Auditing of RS and FBiH were adopted in April 2009 and December 2009, respectively, and have been in force since the beginning of 2010. They have further harmonised the accounting and auditing obligations of companies in both entities. They provide that all enterprises need to file their financial

statements and, when applicable, the related audit report with the entity registry of financial statements. BiH has three financial statements registries, two in FBiH, in Sarajevo and Mostar, and one in RS, in Banja Luka. The entities' accounting and auditing laws list entities that are subject to an annual audit regardless of the size of their operations.

Both stock exchanges, the SASE and the BLSE, publish the financial statements of all listed entities in all segments of the market on their websites. The Ministries of Finance are responsible for supervising bookkeeping and accounting systems and ensuring that legal entities comply with the provisions of the entities' laws on accounting and auditing.

The 2010 World Bank Accounting and Auditing Report on the Observance of Standards and Codes (ROSC)⁵³⁶ indicates that BiH has made some progress since the publication of the previous report in 2004, noting that it should quickly implement the International Financial Reporting Standards for Small and Medium-Sized Enterprises (IFRS for SMEs) to ensure full alignment with the EU *acquis communautaire*. The 2009 Law on Accounting and Auditing of FBiH introduced the IFRS for SMEs as possible accounting standard for that sector. The RS Ministry of Finance has issued a decree allowing SMEs to use the IFRS for SMEs in 2011.

The entities' Banking Agencies require banks to prepare financial statements based on both IFRS and their prudential regulations and then to have them audited. This double requirement has produced bank financial statements that are not in compliance with IFRS. The entities' Insurance Supervisory Agencies require monthly, quarterly and annual regulatory reporting in addition to the filing of financial statements.

TRANSPARENCY (PRACTICE)

To what extent is there transparency in the business sector in practice?

SCORE 50

Current monitoring and enforcement arrangements do not ensure that the quality of financial statements published by public-interest entities meets the IFRS standard. Financial sector regulatory agencies do not monitor compliance with accounting requirements by regulated entities (e.g. banks, listed companies and insurance companies) systematically. The Securities Commissions perform *ad hoc* reviews in case of capital increase or reduction but do not review the annual financial statements of listed companies. Financial sector regulatory agencies tend to rely exclusively on statutory audits to evaluate the quality of financial statements of regulated entities.

The banking sector is the main source of information on possible money laundering, as other relevant institutions are not yet fully functional, but the number of reports on transactions above the threshold has decreased in recent years.⁵³⁷

The Insurance Agency of BiH was established in 2006 and does not yet have structured processes for reviewing financial statements prepared by insurance companies.

The overall lack of compliance with IFRS of the reviewed financial statements casts a shadow on the ability of the audit profession, including audit firms that are members of international networks, to enforce compliance of the use of IFRS for the preparation of financial statements as required by the Framework Law and the entities' accounting and auditing laws.

In addition, many facts relating to the operation of companies are unreasonably treated as trade secret and are difficult to access, even by their shareholders. There are also chronic problems of lack of internal audit or lack of its independence, as well as lack of internal rules on external auditor rotation.⁵³⁸

ACCOUNTABILITY (LAW)

To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?

SCORE 50

The system of corporate governance in companies in BiH is a two-tier one, with the classic division of the governance bodies into those that perform oversight and those that perform daily management of the company.

A series of amendments to the Company Law in FBiH,⁵³⁹ Law on Enterprises of RS, and its subsequent abolition and the adoption of the new Company Law in RS in late 2008,⁵⁴⁰ have led in part to a change in the legal status of governance bodies. The Company Law of RS provides for the existence of the management board. In closed joint-stock companies this role can be performed by the director and the executive board. The Law also provides for greater control over the work of the members of the supervisory board, i.e. non-executive directors, for the benefit of the shareholders.

Subjects charged with developing the codes were the Securities Commission of FBiH and Securities Commission of RS. Based on the entities' Company Laws, these two Commissions enacted the Rules on Corporate Governance in FBiH⁵⁴¹ and Corporate Governance Standards in RS,⁵⁴² respectively. Despite having been

adopted by the Commissions operating within state authorities, the principles of corporate governance do not have a fully binding character (they were not passed by the legislature, or in the legislative procedure) but, rather, an implementing character in the sense that they elaborate the existing legal provisions and make suggestions and recommendations on how to improve operations of companies.

ACCOUNTABILITY (PRACTICE)

To what extent is there effective corporate governance in companies in practice?

SCORE 25

According to the 2011 survey into the state of corporate governance carried out by IFC and Sarajevo-based SEE Business Solutions Ltd., conducted on a sample of 76 joint-stock companies in BiH, businesses generally adhere to the legal obligations only formally, while good corporate governance practices remain marginal.⁵⁴³ Thus, the meetings of supervisory/management boards are generally held four times a year, in compliance with the legal obligation. There is still the practice of paying fixed fees to members of the boards which do not depend on the results achieved. The membership of the management and supervisory boards is mostly made up of shareholders or persons related to them. While good corporate governance practices emphasise the importance of independent members in the board structure, there are only 11% of them in FBiH and 18% in RS.

Although the supervisory/management boards' commissions are considered a key tool for better organisation of the system for oversight and implementation of the boards' decisions, they are rarely formed in joint-stock companies in BiH. The environment in which domestic companies operate is characterised by nu-

merous risks. Often companies are not aware of these risks and do not pay enough attention to the issues of risk management and internal control of operations. Internal auditors or internal audit departments exist in only 55% of the companies surveyed.

Most of the companies (73%) reported having their own websites, mainly in local languages, while English versions were found to exist in only 45% of the websites. The contents of these websites are often very modest and contain only basic information about the company and services offered.

Annual financial statements are published by 29 companies, while the opinions of independent auditors can be found on only 17 websites.

INTEGRITY MECHANISMS (LAW)

To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

SCORE 50

Some associations (trade unions, employers' associations, branch associations) have established their own codes of ethics and courts of honour, but the public is not informed about their work or possible effects of their work. The contents of these codes are quite uneven. Some codes contain detailed provisions on the prohibition of bribery, prevention and treatment in cases of conflict of interest, some have even incorporated the principles of the United Nations Global Compact,⁵⁴⁴ while a number of codes mainly deal with the issues of relationships with customers, business partners and competitors.

Another very important issue in terms of the fight against corruption in the business sector is the protection of whistleblowers; however, that issue has been ignored for years, even though there is an international obligation for the adoption of these regulations (stemming from the ratification of the UNCAC and other international legal instruments).

The area of public procurement is perceived as one of the largest generators of corruption, which is discussed in more detail in the section dealing with this pillar.

According to the 2011–2012 Global Competitiveness Report, BiH fares worst in the areas such as the efficiency of public administration (ranked 130th), transparency of government policymaking (134th), ethical behaviour of firms (134th) and protection of minority shareholders' interests (139th).⁵⁴⁵

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of those working in the business sector ensured in practice?

SCORE 0

Although there are occasional improvements in the legal regulations, integrity mechanisms are generally underdeveloped. The level of disclosure is low, with the exception of basic financial statements. Audit reports of companies are not easily accessible.

Corporate governance is weak, even in financial institutions, because regulatory requirements are low and licensing is implemented superficially. The case of a member of the supervisory board in a bank, who was selected and licensed while under criminal proceedings for a financial criminal offence (tax evasion) before the

Court of BiH, is not an isolated practice.⁵⁴⁶

The disclosure of information on conflict of interest for board members often does not happen on an up-to-date basis, and boards do not have a sufficient number of truly independent and competent members. Open competitions for the selection of company members are virtually non-existent, and those few that do exist are only conducted to meet the formal requirement.⁵⁴⁷

The system of commerce chambers in the country consists of the Foreign Trade Chamber at the state level and entity chambers. Besides Chamber of Commerce of FBiH, with offices in Sarajevo and Mostar, in FBiH, there are 10 cantonal chambers. The chamber system in RS consists of the Chamber of Commerce of RS and five regional chambers (Banja Luka, Bijeljina, Doboj, Istočno Sarajevo and Trebinje). In the last five years there has not been a single session of the court of honour in professional associations.

In practice, rather than being offered protection and encouragement, individuals and businesses that report corruption are exposed to different types of formal and informal pressures.

AC POLICY ENGAGEMENT (LAW AND PRACTICE)

To what extent is the business sector active in engaging the domestic government on anti-corruption?

SCORE 25

The relationship between the business sector and corruption is the best illustration of the “state capture” phenomenon, which has been a characteristic feature of BiH for years. The problem of corruption is often complained about by the part of the business sector not

working hand in glove with the government. However, they rarely engage in open confrontation, avoiding to notify competent judicial authorities for fear of retribution⁵⁴⁸ (in the form of frequent inspections, tax control, inability to participate in tenders, inability to obtain funds, etc.). All this results in a clientelistic relationship, and the discord within the business community only goes to provide fertile ground for this state of affairs.

The epilogues of cases which are well known to the general public act as a strong disincentive for any further form of activism. There is almost no example of a private entrepreneur reporting corruption. The case of Jovo Vidović, who reported assistant Minister of Finance Jovo Radukić to the police in December 2008, claiming that Radukić had demanded KM 100,000 for debt rescheduling, is one of the few such examples recorded in the press.⁵⁴⁹ Another well known example is the so-called "Racket Affair", i.e. the case of the former director of ASA Holding Nihad Imamović, who filed a report to the FBiH police in May 2009 stating that the senior members of the Social Democratic Party (SDP) had demanded, through middlemen, a bribe to the tune of KM 2.2 million from him and other investors (A gradnja, Unioninvest, Unigradnja i Dalas). Imamović claims that because of this report he still faces pressures as president of the Employers' Association of BiH, and his wife has also come under pressure to resign as the Vice-Governor of the Central Bank. Furthermore, the investigators who worked on this case were either retired or removed from their positions.⁵⁵⁰ While the chambers in FBiH are based on the principle of voluntary membership, membership in the Foreign Trade Chamber of BiH and the Chamber of Commerce of RS is a legal requirement, and thus their funding is guaranteed regardless of the quality of services they provide. In the opinion of independent economists, this is the main reason why the two chambers are an extended arm of the government, rather than the economy.⁵⁵¹

The citizens' association Tender believes that the chambers are a part of the corruption chain in public procurement. Specifically, the two aforementioned chambers are responsible for issuing certificates to businesses proving the local origin of goods, services and works, on the basis of which they could get preferential treatment in public procurement procedures. In practice, however, this leads to abuse, i.e. the issuance of certificates for procurement items that do not have the local origin.⁵⁵²

The employers' associations (the main ones being: Employers' Association of FBiH, Union of Employers' Associations of RS, and Employers' Association of BiH with members from both entities) pay lip service to the fight against corruption, without undertaking any concrete initiative on their own. According to the EC, the main problem of these association is the fact that they do not efficiently represent the interests of their members in negotiations with government officials.⁵⁵³

The UN Global Compact (UN GC), which promotes corporate social responsibility, was introduced in BiH in 2005. The national GC network currently has 71 members, including leading BiH companies, small- and medium-sized enterprises, as well as civil society organisations. There are 12 participants from BiH in the global GC network.⁵⁵⁴ Since 2008 competitions have been organised in BiH for the Socially Responsible Company of the Year.

SUPPORT FOR/ENGAGEMENT WITH CIVIL SOCIETY (LAW AND PRACTICE)

To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?

SCORE 25

Joint initiatives of the business sector and non-governmental organisations are a recent phenomenon in the country. Cooperation between the public, private and civil sectors has so far been limited to mere participation. The business sector does not come out in public support of civil society in its fight against corruption.

Via its hotline for reporting corruption, TI BiH has in recent years received serious complaints by the business sector concerning irregularities in privatisation and public procurement. Particularly striking were the cases of privatisation of the RS Oil Industry, company “Aluminijum” from Mostar, and others.⁵⁵⁵ The documentation collected by TI BiH on these cases has led to investigations against top officials in both entities. However, the importance of these cases was downplayed by the national judicial authorities and they have never seen an epilogue in court.

In response to corruption in public procurement, in 2009 the managers and owners of private companies that participate as bidders in public procurement formed the citizens’ association Tender. However, due to the lack of will and capacity among relevant institutions, this NGOs fails to achieve significant results in this field.

The issue of possible financial support from the business sector to civil society, which is a common practice in the majority of economies with at least some level

of developed democracy, has not yet been brought into spotlight, in part because of the deep economic crisis, and in part due to the lack of integrity on the part of the business sector.

RECOMMENDATIONS:

- Establish *one stop shop* registration at the entity level, with more uniform procedures; avoid divisions along entity or other political lines at least when it comes to the technical issues of creating a good business environment through harmonisation of procedures and regulations. It would be helpful to bring together the data on all businesses in one place – a single business register containing basic information and financial statements;
- Harmonise the standards for goods and services throughout the country and streamline the supervisory procedures in order to facilitate and improve business operations;
- Specify the procedures for establishing public-private partnerships and concessions law, improve the legislation and monitoring of public procurement procedures.
- Remove the political structure from the management of the development banks;
- Implement the recommendations of the Accounting and Auditing ROSC Report. Both entities should clarify which companies will be permitted to use the IFRS standards for the preparation of their annual and consolidated financial statements. These provisions should be harmonised so as to contribute to a single economic space in BiH. Application of the IFRS for SMEs for the preparation of financial statements of business entities that are not in the public interest would lift the administrative burden from the business entities that are not in the public interest and enhance the quality of their financial reporting;
- It is necessary to promote good corporate governance practices through the adoption of the Code of Corporate Governance for issuers listed on the Sarajevo Stock

Exchange as well as implementation of the recommendations and suggestions from the Standards for Joint-stock Companies from RS until such time as legislation is enacted to regulate the principles of corporate governance, instead of the current advice and recommendations;

- Consider improving the existing legislation governing the protection of minority shareholders;
- Pass a law on whistleblowers to help reduce corruption in the private sector.

6.15. INTERNATIONAL INSTITUTIONS

OVERALL PILLAR SCORE: 70/100

STATUS: STRONG



SUMMARY

Since the publication of the last National Integrity System Study in 2007, the nature of international involvement in the country has changed. The changes are primarily reflected in the increasing involvement of the European Union (EU) and the diminishing role of non-European actors. The function of the EU Special Representative (EUSR) was separated from that of the High Representative (HR) on 31 August 2011, when the EUSR assumed duty in BiH, while the former “double-hatted” HR/EUSR retained only the position of the High Representative.

Although *de jure* unchanged, the role of the OHR is *de facto* greatly reduced with the majority of the High Representative's activities coming down merely to the implementation of the exit strategy from BiH. Furthermore, active involvement of the OHR has been virtually brought to a halt by the lack of consensus within the Peace Implementation Council (PIC).

Decreased international presence is also evident in the decreasing amounts of funds available to international institutions in BiH. Some donor agencies have closed offices in BiH, or are about to do so. They intend to continue their projects within the EU Instrument for Pre-Accession Assistance (IPA) and other multilateral funds, through the establishment of a donor coordination mechanism, in which coordination would be led by the EU office in BiH.

In view of the aforementioned situation, some of the problematic segments of work of international institutions in BiH, which were cited in the previous study, are no longer present to the same extent.

STRUCTURE AND ORGANISATION

The structure of international organisations present in BiH has changed in recent years. Of the “Dayton organisations”, namely organisations with a specific role under the Dayton Peace Agreement (DPA), those that are still present in the country include the Office of the High Representative (OHR), Organisation for Security and Cooperation in Europe (OSCE), International Monetary Fund (IMF), and Council of Europe (CoE). Apart from

TABLE WITH SCORES

INTERNATIONAL INSTITUTIONS

OVERALL PILLAR SCORE: 70/100

DIMENSION	INDICATOR	LAW	PRACTICE
CAPACITY 88/100	RESOURCES INDEPENDENCE	100 100	75 75
GOVERNANCE 60/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY MECHANISMS	50 75 75	50 50
ROLE 63/100	IMPLEMENTATION OF INTERNATIONAL LEGAL INSTRUMENTS COMMITMENT TO THE FIGHT AGAINST CORRUPTION REDUCE CORRUPTION RISKS BY SAFEGUARDING INTEGRITY IN INTERNATIONAL INSTITUTIONS RELATIONSHIP TO OTHER PILLARS	25 50 75 100	

the OHR, at the moment of writing, these organisations are no longer involved in areas that are related to their role under the DPA. Besides them, some UN agencies (such as UNHCR, UNDP) continue their operation in BiH. Also, there is a downward trend in the number of development agencies present in BiH. The British DfID and Austrian Development Agency (ADA) closed their offices in BiH, while some of the projects that were run by these organisations continue under the IPA for BiH. As far as the structure of international organisations is concerned, the OHR is managed by the PIC and it reports on the progress of BiH to the UN Security Council. After separation of the functions of the High Representative and EU Special Representative, EUSR function was fused with that of the Head of the EU Delegation to BiH in an attempt to consolidate EU presence in BiH.

RESOURCES (LAW)

To what extent does the mandate of international institutions allows their involvement in anticorruption and good governance activities?

SCORE 100

The unique constitutional structure of BiH,⁵⁵⁶ which implies an active and direct role of international organisations as well as limited state sovereignty, means that the involvement of international organisations is instrumental to overall political processes.

Certainly, the most important international organisation in BiH is the Office of the High Representative (hereinafter: OHR), which was established by Annex 10 of the Framework Agreement for Peace in BiH (hereinafter: Dayton Agreement).⁵⁵⁷ Initially conceived as an organisation that will oversee the civilian implementation of the Dayton Agreement, the OHR progressively expanded its scope of work as well as methodology. The responsibility for overseeing the OHR rests with the Peace Implementation Council (PIC),⁵⁵⁸ which, as of

2000, shifted from annual meetings of foreign ministers to meetings at the level of ambassadors and political directors. The said period was characterised by changes in the nature of international involvement in BiH, as reflected in the increasing involvement of the European Union (EU) and the diminishing role of non-European actors. In line with this shift was also the establishment of the function of EU Special Representative (EUSR), which was delegated to the High Representative immediately upon establishment.⁵⁵⁹ The period of merging the two functions was completed on 31 August 2011, when the EUSR assumed duty in BiH, while the former “double-hatted” HR/EUSR retained only the position of the High Representative. While the EUSR’s exact methodological framework remains unclear, the OHR retains broad executive powers,⁵⁶⁰ but the political climate is not favourable for their use.

Apart from the OHR, Dayton assigned a significant role to the Organisation for Security and Cooperation in Europe (OSCE), whose mandate was also established by the Dayton agreement, and whose portfolio has also developed and expanded in the period of post-war democratic consolidation of BiH. In addition to the fact that OSCE documents are mentioned as reference points in the Dayton Agreement,⁵⁶¹ the OSCE was assigned a major role in the early electoral process in BiH⁵⁶² as well as the important role of establishing the institutions of the Ombudsman for Human Rights and the Human Rights Chamber.⁵⁶³

The Council of Europe’s (CoE) work in BiH is based on Annex 6 (Agreement on Human Rights) of the Dayton Agreement. Early on, the CoE worked on the establishment of the Commission on Human Rights, provided support to the institution of the Ombudsman for Human Rights, and appointed foreign judges in accordance with Annexes 4 and 7 of the Dayton Agreement. The CoE’s initial task in BiH, in addition to assisting in the implementation of Annex 6 of the Dayton Agreement, is

to prepare BiH for full membership in the CoE.

Being mentioned⁵⁶⁴ as the most likely interlocutor and source of consultancy for national authorities, the Delegation of the EU to BiH with the newly-established EUSR could give a new impetus to the stalled processes.

RESOURCES (PRACTICE)

To what extent do international organisations have adequate financial and human resources to function and operate effectively?

SCORE 75

Direct involvement in the fight against corruption has significantly decreased and is now associated with projects aimed at good governance. Furthermore, a number of projects that are related to anti-corruption combat have been transferred to the local level (USAID). Since recently, U.S. Government programmes have started to show a slight increase compared to the last few years,⁵⁶⁵ and the issue of anti-corruption combat is an integral part of the projects International Criminal Investigative Training Assistance Program (ICITAP)⁵⁶⁶ and the Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT),⁵⁶⁷ which are part of the peace support and security programme.

At the height of its involvement, the OHR established the Office for the Fight against Crime and Corruption and developed a comprehensive strategy to combat corruption, which, however, has never been implemented. After the establishment of the High Judicial and Prosecutorial Council and the Court of BiH, it was considered that the need for this kind of OHR's engagement ceased to exist and that the Court of BiH would take over the cases from the OHR. This should be viewed in the light of a comprehensive transfer of powers to

national authorities, as part of capacity building of the BiH institutions and transition of BiH from the so-called "Dayton" to the "Brussels" phase.

There is a continuing downward trend in the availability of resources of international institutions in BiH. Moreover, some donor organisations such as the British Agency for International Development (DFID) and the Spanish Agency for International Cooperation and Development (AECID) have closed their offices in BiH, while the Austrian Development Agency (ADA) is planning to close its office in 2013. Their intention is to continue the projects within the EU IPA and other multilateral funds, through the establishment of a donor coordination mechanism, in which coordination would be led by the EU office in BiH.

INDEPENDENCE (LAW)

To what extent are international institutions able to act independently in the country?

SCORE 100

Protecting privacy and integrity of international organisations is defined in mutual memorandums of understanding guaranteeing freedom from unwarranted external interference and numerous other privileges to international organisations.

A large number of international organisations in BiH still enjoy the status of partners and funders, which provides them with an additional guarantee of independence and freedom from unwarranted external interference.

Actual implementation, however, remains a problem.⁵⁶⁸ Difficulties encountered by international organisations in their activities originate primarily from the sluggishness and lack of professionalism on the part of public

administration, highly fragmented and inconsistent legislative frameworks in BiH, overlapping and/or vaguely defined competences, and complex governmental structure.

Foreign NGOs are currently required to register with the Ministry of Justice at the state level, while in the past (prior to 2008) they used to register with the relevant ministries at the lower levels of government. On 7 September 2011, the Parliamentary Assembly of BiH adopted a proposal for a Framework Law on the Establishment of a Common Register of NGOs in BiH, which will contain basic information on foreign NGOs operating in the country.

INDEPENDENCE (PRACTICE)

To what extent are international institutions able to act without undue external interference in their work in practice?

SCORE 75

The role of international organisations in BiH requires a deeper elaboration, because some of the roles that were assigned to international organisations were actually services that fall within the purview of the state. Organisation of the state in the form of a semi-protectorate in the post-war period was aimed at ensuring the smooth functioning of the system with gradual transfer or return of powers to the institutions of the state. From the OSCE and the organisation of elections, to the CoE and the appointment of judges, to the OHR and imposition of laws, removal of public officials, and other practical interventions within the state purview, international organisations have become an integral part of the political and economic landscape in BiH.

As a result, the perception of the international role among the public and the political actors, as well as the

fact that post-war BiH was for long completely financially dependent on outside resources, has produced a situation in which international organisations are in a way considered an integral part of national institutions.

Changing global and regional political dynamics, and the restructuring of the international presence in BiH has led to a situation in which the roles of individual organisations are openly questioned. This is primarily the case with the OHR, as a paradigm of international action in BiH, with reaction ranging from direct opposition to the decisions of the High Representative, which is most vocal in RS,⁵⁶⁹ to calling into question the very purpose of the OHR's existence. This trend of open criticism and orchestrated attacks has spread to other organisations and NGOs, notably those that openly raise questions about the problems in society, as was the case with the campaign against Transparency International BiH.

TRANSPARENCY (LAW)

To what extent is there formal transparency in international institutions?

SCORE 50

International institutions in BiH are not subject to explicit disclosure rules nor are there mechanisms in place to ensure disclosure of information in their possession.

Most international organisations maintain multilingual websites and publish reports that are available in local languages.

As far as transparency is concerned, the OHR should be regarded as a separate entity due to the nature of its involvement in BiH as well as the changing nature of relationships in and around BiH. Since the first post-war general election in 1996, two processes have been at

work in BiH: the post-conflict process characterised by lack of democracy and transparency, and limited democratic process within which the electoral process takes place. The OHR is an institution of international presence in BiH charged with the civil implementation and overall interpretation of the Dayton Agreement. OHR's legality stems from the Dayton Agreement, and the organisation has often found itself in a position to directly influence the political processes in BiH through removals of democratically elected officials and/or imposition of legislation. At the same time, the OHR is not subject to classical forms of democratic control, and due to its nature and role, is not transparent in its decision-making.

The fundamental incompatibility of these two processes culminated in the opinion of the European Commission for Democracy through Law (better known as the Venice Commission) that the use of the Bonn powers is irreconcilable with democratic principles.⁵⁷⁰

Further, the ongoing changes in the character of international activism in BiH, as reflected in the diminishing role of the OHR and the increasing role of the EU, produce a legal vacuum in terms of who the ultimate interpreter of the Dayton Agreement is, and how the HR's decisions are to be treated, especially those concerning removals of elected officials. These decisions were made within the OHR, mostly without any consultation with national authorities and with no possibility of appeal. It is important to note, however, that the practice has been substantially reduced since the arrival of the last HR.

Annex 10 of the Dayton Agreement defines the High Representative as the final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement. To facilitate its work, at the conference in Bonn in 1997 the PIC granted the OHR the so-called Bonn powers, which are basically

an executive mechanism. These powers range from the adoption of legislation in lieu of the legislative authorities in BiH to the removal from public office of officials who are deemed by the OHR to prevent the implementation of the Agreement. This unique mechanism was introduced gradually, reaching its peak in 2002, when it was used in 153 cases. Since 2002, the Bonn powers have been used to a progressively lesser extent, and in 2011 they were exercised only ten times, six of which to abrogate the previous decisions of the High Representative issued within the same mechanism. The Bonn powers were described by the Venice Commission as "practice [that] does not correspond to democratic principles when exercised without due process and the possibility of judicial control".⁵⁷¹ The crux of the problem lies in the attempt to simultaneously use the post-conflict management model, on the one hand, and the democratic election process, on the other.

TRANSPARENCY (PRACTICE)

To what extent do international actors publicly disseminate reports, budgets, project documents and/or official decisions in the local languages in practice?

SCORE 50

International institutions in BiH are relatively transparent in terms of presentation of expenditures in projects carried out in the country. Full transparency is reserved for donors and/or governments of countries from which these institutions originate or are financed.

As far as the OHR is concerned, the public are presented rough details of the organisation's funding organisation and the source of money, while the information on expenditure is not publicly available.

Most other international institutions operate in accordance with the laws of BiH as regards financial man-

agement, but the detailed information on expenditures and projects are generally not made public. Information is mainly available on websites including in the local languages.

Greater transparency in terms of financial flows, information about the results, budgets, schedules, project descriptions and documentation, activities and sector coding, and geographic data is present in the organisations that are members of the International Aid Transparency Initiative (IATI),⁵⁷² which publish detailed reports on the use of funds in both English and the local languages. Although USAID is not a member of IATI, its detailed reports are available on its website. BiH itself is not a member of IATI.

Foreign NGOs are required to keep books and, in terms of labour issues, operate under the laws of the state. They are also obliged to specify their field of action when registering with the relevant BiH institutions.

ACCOUNTABILITY (LAW/ PRACTICE)

To what extent are international institutions accountable to their constituencies?

SCORE 75

International organisations regulate their relations with BiH in the Memorandums of Understanding. Those that have a role defined under the Dayton agreement, such as the OHR, OSCE and CoE, are practically and directly accountable to external stakeholders in terms of their performance, and there exists a certain level of mutual coordination among them. The coordination has functioned with varying success owing to the ambiguous hierarchical delineation among international organisations in BiH, as well as the need of certain organisa-

tions to expand their portfolio beyond what is defined in the Dayton Agreement. The most recent effort to better organise the international presence in BiH was the initiative to establish a Committee of Heads of Leading International Organisations with the participation of the OHR, EUFOR, NATO HQ Sarajevo, OSCE, UNHCR, EUPM, European Commission, World Bank, IMF and UNDP. The Committee was established in 2002 and although the last press releases was issued in 2004, the Committee continues to meet on a weekly basis to address mutual disagreements.

The OHR directly and practically reports on its work to the UN Security Council, the Council of Ministers of the EU – the Commission for the Western Balkans and the EU Political and Security Committee, and AFET of the European Parliament. As an organisation that was established by the peace agreement, when preparing reports, the OHR positions itself as an objective observer of the situation in BiH and does not consult or inform the governments in BiH about the contents of these reports. Bearing in mind the aforementioned change in the political dynamics and role of the OHR in BiH, since several years ago the RS authorities have been sending to the UN Secretary General their own reports, which represent their view of the situation in BiH and which, as a rule, are contrary to the reports of the High Representative. Help in giving importance to the RS reports in the UN Security Council is given by the Russian Federation.

Other Dayton organisations, namely the OSCE and the CoE, in practice report to their parent organisations based on their internal rules.

As far as donor and development organisations are concerned, in accordance with the Paris Declaration, concrete steps have been made to ensure greater coordination, and national authorities are involved, at least nominally, in the planning and programming

processes. In accordance with the conclusions of the Paris Declaration on Aid Effectiveness,⁵⁷³ which places a special emphasis on coordination between development agencies and harmonisation with the needs of the recipient countries, in 2005 seventeen development and donor agencies in BiH established the Donor Coordination Forum (DCF). In January 2009 the role of the secretariat for the DCF was taken on by the Ministry of Finance and Treasury of BiH/Sector for Coordination of International Economic Aid.

As far as foreign NGOs are concerned, they create programmes according to their own internal procedures and with varying levels of involvement of local actors.

INTEGRITY (LAW)

To what extent are there mechanisms in place to ensure the integrity of international institutions?

SCORE 75

All “Dayton” international organisations present in BiH have codes of conduct in place for their employees. The OSCE’s code of conduct, available on their website, requires, among other things, that OSCE officials, notwithstanding their diplomatic status, respect the laws and regulations of the host country, as well as its local customs and traditions.

The above code of conduct was defined solely by the organisation, and mostly includes clarifications as to conflict of interest, as well as rules on gifts and behaviour in the host country.

Most of the memorandums signed between the national authorities and international organisations include a provision exempting international organisations staff, including local staff, from criminal liability in the performance of duties within the organisation’s

mission. Similar to OSCE’s code of conduct, employees are expected to act in accordance with the laws of the host country. There are no known post-employment restrictions in international organisations. Also, it is understood that all the materials that are created in the course of employment belong to the organisation, not the individual or individuals who were involved in making them.

As regards the protection of whistleblowers, if there are regulations governing this matter, they come from the headquarters of international organisations, as BiH does not have its law on this issue.

INTEGRITY (PRACTICE)

To what extent is the integrity of international institutions ensured in practice?

SCORE 50

According to available information, there have been no serious breaches of code of conduct by foreign employees in bilateral organisations.

In the years after the signing of the peace agreement, during the period of extensive international presence in BiH, there were a few cases of whistleblowers bringing to light illegal and unethical behaviour by international employees, the most notable of which was made into the feature film “Whistleblower” in 2010. It was the case of Kathryn Bolkovac, an American police officer who, following a discovery of extensive evidence, openly accused some of her colleagues in the international police task force, who were hired to work in BiH by the private contractor DynCorp, of human trafficking and the organisation of and participation in prostitution. Among those who supported her in her efforts to help bring those responsible to justice was the then Commissioner of the UN International Police Task Force

– UNIPF, Richard Monk. As far back as August 2001, TI BiH published a report summarising the lack of transparency in the work of international institutions during the period of early establishment of the institutions of BiH and peacebuilding titled “International Community Is not Immune to Corruption Plague”.⁵⁷⁴

As the focus and scope of international involvement in BiH shifted over time from humanitarian to developmental issues, cases of direct corruption which was mainly related to procurement activities, have become a thing of the past.

IMPLEMENTATION OF INTERNATIONAL LEGAL INSTRUMENTS

To what extent are international legal instruments relevant for the country implemented and enforced?

SCORE 25

Annex 6 of the Dayton Agreement incorporates a large number of international conventions and agreements into the legal heritage of BiH. Particular attention is given to the European Convention on Human Rights, which is an integral part of the Constitution (Article II.2). The judgment of the European Court of Human Rights in the case *Sejdić and Finci v. BiH* found that the provisions of the Election Law regarding elections for the Presidency of BiH were in violation of Protocol XII of the European Convention on Human Rights. Since the Election Law of BiH is based on the provisions of the Constitution of BiH, which attributes the fundamental rights in the Dayton BiH to three constituent peoples, passive right to vote is reserved only for members of these three peoples: Bosniaks, Serbs and Croats. Dervo Sejdić and Jakob Finci, who are Roma and Jewish respectively, handed the case to the European Court of Human Rights

in Strasbourg. After a three-year process the Court rendered a judgement in 2009 finding BiH guilty of violating the provisions of Protocol XII pertaining to the prohibition of discrimination. BiH thus became the first country in the history of the Court found in violation of the said Protocol. The judgement, however, has never been complied with.

The strategy of international actors in BiH implies that national actors must be the owners of the process, which leads to the ignoring of the judgment of the Court in Strasbourg being justified by the complex political situation in the country and the difficulties associated with the process of starting a dialogue on the issue. Given the diametrically opposite positions of political actors in BiH with respect to the depth of constitutional reform, the process of reform is impossible to start. As a reminder, the Venice Commission has given its opinion as to the manner and scope of possible constitutional reform⁵⁷⁵ with a view to making the country more functional and more democratic.

In addition to the case *Sejdić and Finci v. BiH*, currently pending at the European Court of Human Rights is the case *Pilav v. BiH*, which discusses the ineligibility of Bosniaks from RS to stand for election as a candidate for the RS seat of the Presidency of BiH, and which will, if the court rules in favour of the applicant, add a whole new dimension to the reform of the constitutional setup of BiH.

Given the fact that the issue of compliance with the European Convention on Human Rights is explicitly mentioned in Title I, General Principles, Article 2 of the Stabilisation and Association Agreement (SAA), the European future of BiH will remain open to question until such time as the judgment is complied with, i.e. when the discriminatory provisions are removed from the Constitution and the Election Law of BiH. Given that the SAA with BiH was ratified by all EU countries, its entry into force is deliberately delayed because otherwise BiH

would be in direct violation of the Agreement.

COMMITMENT TO THE FIGHT AGAINST CORRUPTION

To what extent are international actors committed to a long-term agenda (3-5) years to build transparency and good governance in the country?

SCORE 50

A distinct feature characterising the post-2005 period is a commitment to longer-term programmes on the part of international organisations: projects such as GAP (Governance and Accountability Project), which is currently going through the second phase, and public administration reform projects (implemented by the EU Delegation, the UK Department for International Development (DfID), Swedish International Development Cooperation Agency (Sida), Embassy of the Kingdom of the Netherlands, USAID, UNDP, SIGMA, World Bank, OSCE, and others). What is notable is the improved donor coordination and cooperation in projects, as well as an orientation towards measurable criteria of performance in accordance with the Paris Agenda. Periodic monitoring and evaluation of programmes is a generally accepted norm by most international organisations. Since 2009 coordination of donors has been provided by the Donor Coordination Forum, organised by the Ministry of Finance and Treasury/Sector for Coordination of International Economic Aid with the support of UNDP. One of the outstanding issues identified in coordination meetings is the question of the establishment of mechanisms for transparent management and administration of funds by national authorities, especially as regards public procurement.

The lack of high-quality anti-corruption strategy and its actual implementation could partly be due to changes

in the structure of the international presence in BiH, with the EU taking over the helm from the OHR, where national actors are expected to take responsibility for the processes in the country with a view to European integration. What proved to be a successful strategy for the countries included in the last wave of enlargement and for the Republic of Croatia, however, does not seem to be a suitable strategy for BiH.

REDUCE CORRUPTION RISKS BY SAFEGUARDING INTEGRITY IN INTERNATIONAL INSTITUTIONS

To what extent is there an effective framework in place to safeguard integrity in international institutions, including meaningful sanctions for improper conduct by international institutions staff, and review and complaint mechanisms?

SCORE 75

In the last five years there have been no cases of international organisations staff being investigated or accused in cases relating to corruption. The same is not the case for the period between the end of the war activities and establishment of full national and international infrastructure in the country. The public in BiH remains unaware of the outcomes of any investigative or court actions that may have been taken against the perpetrators of illegal and inhumane acts during that period, who are all protected by diplomatic immunity.

RELATIONSHIP TO OTHER PILLARS

To what extent are international institutions a key part of this country's NIS?

SCORE 100

Despite the obvious changes in the nature of the presence of international actors in BiH, and the partial withdrawal of major donors from BiH, the role of international actors in BiH remains significant. With the increased role of national actors and the EU, whether through the presence of the EUSR or through IPA funds and Aid Coordination, BiH is making a genuine transition from a post-conflict country to one that is on the path to EU membership. It seems that the transition from the "Dayton" to the "Brussels" phase has only now started to be a reality.

International organisations work closely with almost all pillars of NIS, although the emphasis is on state pillars as part of the overall transfer of responsibilities to national actors. At the same time, there is a noticeable lack of activities, particularly in the area of support to independent media.

After a period of strong political actions of the OHR, which carried all the attributes of a semi-protectorate, the consolidated presence of the EU, based on democratic foundations of its member countries, should provide guidance and encouragement to political elites in the country. The key is to continue building the society through the support of the media, fighting corruption, strengthening the accountability of politicians, and the construction of efficient and effective justice system. The international community has been actively involved in the organisation of each of the pillars of the NIS, e.g.

from the judicial reform where it integrated international judges and prosecutors in the national judiciary and invested very large financial resources, just as is the case with the media where the funds were provided directly to users, to the anti-corruption strategy, which was originally developed by the OHR and organised by a number of different institutions, such as the CEC (with the participation of international representatives), supreme audit offices, law enforcement agencies, etc. However, despite billions in international aid pumped into BiH, the country still shows the characteristics of a failed state, with no vision of how to successfully develop democratic institutions, economy, etc. Indicators such as the continuing brain drain, political apathy and the like testify to the failure of the international approach to building a stable society.

RECOMMENDATIONS

- It is necessary to change the nature of international involvement in BiH, by reducing the active leadership and participation in processes and focusing more on European integration and coordinated and effective fight against corruption;
- It is necessary to exert institutional pressure on the authorities of BiH, which are now largely governing the country, and clearly link the further progress towards EU integration with measurable indicators of systemic fight against corruption;
- International actors in BiH should devote special attention to a strong and efficient operation of the judicial authorities in the country, namely the prosecutor's offices and courts, whose performance in the past was weak. Performance indicators should include successfully completed trials in cases of corruption and abuse of power by high-ranking individuals in the business and political milieus;
- Due to the decreasing international involvement in BiH, it would be necessary to harmonise activities of different international actors involved in anti-corruption projects in order to maximise the effects through the use of a methodology that is based on measurable performance indicators.

7. CONCLUSIONS

BiH today can be characterised as a predominantly failed state. Without consolidated democratic framework and with institutions that lack adequate capacities for formulating and implementing policies in the interest of citizens, led by kleptocratic political elites that have dominant control over public resources and institutions, and crisscrossed by constitutional/administrative, ethnic and political divisions, BiH fails to fulfil basic functions of a state based on the rule of law.

The ruling political elites, whose legitimacy is itself questionable due to illegal use of dominant positions in the electoral process and numerous irregularities in the conduct of elections, show no interest in establishing a harmonised legal framework on all four decentralised levels of government in the country. Formation of government, distribution of functions or the adoption of the budget can take years after elections. Vast, illegally acquired personal wealth and privileges make the political elite uninterested in the implementation of reforms that would lead to themselves potentially becoming the subject of judicial proceedings.

Arbitrary and inconsistent implementation of the law by the state administration is a result of insufficient and irrationally built institutional capacity and total subordination of institutions to political parties.

On the other hand, judicial institutions, suffering from unclear division of responsibilities, huge backlog of cases and subordination to political power centres, fail to provide citizens with access to justice within a reasonable period, while acting protectively towards public officials by ignoring cases of high-profile political corruption.

After two decades of privatisation, which was implemented amid a chaotic legal framework (with the process being regulated by a total of 13 laws at various administrative levels) and with systematic disregard for the laws, the role of the state in economy flows remains dominant. Taking advantage of their position, the ruling political parties use public companies solely for buying social peace, or for non-transparent procurement, and keep subsidising losses from public budgets. This method is used to indirectly subsidise party cronies who are appointed to senior positions in public and state-owned companies. It is therefore not surprising that any major foreign investment has generally bypassed BiH.

Most social, political and economic relations are founded on corruption. This mainly includes the making of laws according to the narrow interests of the ruling oligarchy, direct distribution of public funds from budgets or through rigged public procurement processes to the same groups, as well as the widespread administrative corruption which benefits the bureaucrats, who are, also, in most cases appointed to their positions through intra-party selection.

The consequences for the social system as a whole are devastating and provide fertile ground for further conflicts. Increasing rates of social inequality and poverty, along with the systematic violations of human rights, render BiH a highly unstable country.

The National Integrity System in BiH, with its completely

dysfunctional individual pillars, is just one step away from collapsing, having no adequate social foundations and values to be based upon.

It can therefore be concluded that the almost two-decade-long state and institution building after the armed conflict, managed and financially supported by the international community, has not resulted in the establishment of a self-sustaining and functional state based on democratic principles and the rule of law. The withdrawal of the international community from its robust mission of ensuring operational governance in the country – which in itself has fuelled a lot of debate, mainly revolving around the question of whether it is possible and sustainable to introduce democracy and the rule of law by using non-democratic means and acting in violation of human rights – had all reform processes grind to a complete halt and marked the beginning of many years of severe political crisis that is far from over. Encumbered with the difficult economic and social situation resulting from the war and wrong and harmful policies pursued in the post-war period, BiH is faced with enormous challenges arising from the changed circumstances in which the country found itself after the period of direct control from the outside, when Croatia is set to accede to the EU in 2013 and other countries in the region have received EU candidate status.

The solid legal framework modelled on the best practices of Western democracies, which was imposed or adopted under strong pressure from the international community, has remained largely unimplemented. The state-level institutions established by the international community are left without real power and capacity to enforce the laws.

Actual and practically unlimited power is concentrated in the hands of the leaders of political parties and their oligarchies, who have used the vacuum created after

the withdrawal of the international community to gain control over the institutions of the system. By means of nepotistic and clientelistic appointments in public institutions, they have ensured a continuous illegal flow of funds from budgets and public companies, while protecting themselves from prosecution by law enforcement agencies and the judiciary.

The lack of political will and the reluctance of political elites to give up their wealth and privileges acquired under suspicious circumstances will pose the greatest obstacle. The lack of consensus on fundamental issues, as well as a dramatic degree of systemic corruption, is certainly an issue on whose resolution the success of all reforms in the country will depend.

The 2013 BiH National Integrity System Study shows that the most critical areas of concern are political parties, the judiciary, public sector, public procurement and the executive, at all administrative levels in the country. The study thus indicates that the primary focus should be on the reform of the entire system, but also within each individual pillar.

The areas of least concern, although not without their own weaknesses, are the international community, supreme audit institutions and civil society. This calls for their greater involvement in the reform processes. The national integrity system is set up in such a way that all pillars of society must be developed and built in parallel.

Getting out of the current situation will not be an easy or short process. It requires a broad consensus of the entire society, primarily through a change and redefinition of priorities. The priorities today are focused on the protection of ethnic groups and their rather vaguely defined national interests from each other. A radical paradigm shift and change of discourse towards implementation of the reforms necessary for making

progress in the EU integration process, primarily aimed at strengthening the rule of law and institutions, is a step that needs to be taken without delay.

In this regard, the support of the international community and civil society can empower independent agencies (fourth pillar of government) to become a healthy core for further reforms in the social integrity system. The EU accession process constitutes the framework in which the existing legal framework needs to be upgraded and institutions enabled to ensure proper implementation. Approach to the EU accession process will be very important for the success of reforms. The use of conditionality by the EU, which proved a relatively successful model in the previous rounds of accession, has not proved successful enough in the case of BiH. The reason for this is the lack of interest among the political elites in the country to take responsibility for the reform and abandon the populist style of governance aimed at ensuring maintenance of power and benefits for narrow oligarchies. Even when the strategies and legislation that were part of the reform agenda were formally adopted under considerable pressure from the international community, they largely remain a dead letter, with political elites using systemic obstructions to effectively prevent their implementation in practice. Therefore, however, it remains an undisputed fact that the national consensus in BiH on reforming the entire system cannot be substituted by external support.

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- ¹²⁶ http://www.zurnal.info/home/index.php?option=com_content&view=article&id=14505:vlada-rs-troi-est-miliona-maraka-godine-za-smjetaj-institucija&catid=45:interview&Itemid=31, [accessed on 10 July 2012]
- ¹²⁷ <http://ti-bih.org/4639/novi-pokusaj-vlade-rs-da-oslabi-nadzor-nad-svojim-troskovima/> [accessed on 10 July 2012]
- ¹²⁸ <http://gcb.transparency.org/gcb201011/results/>, [accessed on 18 April 2012]
- ¹²⁹ Article 68 of the Law on Courts of RS, *Official Gazette of RS*, Nos. 111/04, 109/05, 37/05 and 119/08)
- ¹³⁰ <http://www.hjpc.ba/intro/gizvjestaj/?cid=5066,2,1>
- ¹³¹ Law on Salaries and other Compensations for Judges and Prosecutors – integral text), *Official Gazette RS* 30/07 and 118/07
- ¹³² <http://www.hjpc.ba/intro/gizvjestaj/?cid=5066,2,1>
- ¹³³ http://www.bhas.ba/saopštenja/2012/NPL_2000_2011_bh.pdf
- ¹³⁴ Law on Salaries and other Compensations for Judges and Prosecutors, *Official Gazette RS* 30/07 and *Official Gazette RS* 118/07
- ¹³⁵ For FBiH: <http://www.fbih.cest.gov.ba/>, for RS <http://www.rs.cest.gov.ba/>
- ¹³⁶ Law on High Judicial and Prosecutorial Council of BiH, Article 21, *Official Gazette of BiH*, No. 25/04
- ¹³⁷ Law on High Judicial and Prosecutorial Council of BiH, Article 22, *Official Gazette of BiH*, No. 25/04
- ¹³⁸ Glas Srpske [Glas Srpske Daily], 11 April 2011, <http://www.glassrpske.com/vijest/2/novosti/56119/lat/Sud-BiH-osudio-Srbe-na-1067-a-Bosnjake-na-124-godine-zatvora.html>
- ¹³⁹ Izvještaj o radu Visokog sudskog i tužilačkog savjeta BiH za 2010.g. [Annual Report of the High Judicial and Prosecutorial Council for 2010], p 52 <http://www.hjpc.ba/intro/gizvjestaj/?cid=5066,2,1>
- ¹⁴⁰ <http://www.hjpc.ba/intro/gizvjestaj/?cid=5066,2,1>
- ¹⁴¹ <http://www.hjpc.ba/intro/gizvjestaj/?cid=5066,2,1>
- ¹⁴² “Razmatranje prijedloga zakona za ukidanje Suda BiH” [Review of Proposed Laws to Abolish the Court BiH], www.vijesti.ba/vijesti/bih/82555-Razmatranje-Prijedloga-zakona-ukidanju-Suda-Tuzilastva-BiH.html
- ¹⁴³ http://sudbih.gov.ba/files/docs/PRAVILNIK_o_ostvarivanju_pris-tupa_informacijama_pod_kontrolom_suda_i_saradnji_sa_zajedni-com.pdf
- ¹⁴⁴ <http://www.hjpc.ba/intro/gizvjestaj/?cid=2439,2,1> (Report for 2010)
- ¹⁴⁵ <http://oss.ba/?jezik=bos&n=613>
- ¹⁴⁶ http://www.okruznisud-bl.com/index.php?option=com_content&view=section&id=15&Itemid=77
- ¹⁴⁷ Godišnji izvještaj Centra za pravnu pomoć TI BiH 2011 [ALAC 2011 Annual Report, TI BiH], http://ti-bih.org/wp-content/uploads/2012/03/ALAC-Godisnji-Izvjestaj-2011_final.pdf
- ¹⁴⁸ <http://www.hjpc.ba/dc/izvjestaji/pdf/UDT2010zawebVSTV.pdf>
- ¹⁴⁹ Law on High Judicial and Prosecutorial Council, Article 86, *Official Gazette BiH* 25/04
- ¹⁵⁰ <http://www.hjpc.ba/coe/?cid=2158,2,1>
- ¹⁵¹ Bosnia and Herzegovina 2011 Progress Report by the European Commission
- ¹⁵² <http://ti-bih.org/4525/korak-u-nazad-u-borbi-protiv-korupcije-za-bih/>
- ¹⁵³ http://ti-bih.org/wp-content/uploads/2011/02/Korupcija_u_BiH.pdf, p.7
- ¹⁵⁴ Ekstra profiti za od(a)brane po službenoj dužnosti [Extra Profit for a Group of Privileged Court-Appointed Defence Lawyers], Centar za istraživačko novinarstvo, 01.07.2011.g., http://www.cin.ba/Stories/P27_Justice/?cid=1016,2,1
- ¹⁵⁵ Ruling of the District Court in Banja Luka, No. 11 0 U 00 26 45 10 U of 27 September 2010
- ¹⁵⁶ However, the Ministry of Finance of RS informed the prosecutor and the District Court in Banja Luka that it would not comply with the binding court order for the following reasons: “If the court characterised the reminder as an appeal, then this notification is an act by which we have complied with the plaintiff’s request”. The lawsuit was filed on 2 October 2010, and a new lawsuit was filed by TI BiH on 27 October 2010. At the time of writing this report, the Banja Luka District Court has not yet issued a new ruling in the new lawsuit. So, the plaintiff was unable to access the requested information for almost two years, and even if the second lawsuit is ruled in his favour by issuing a binding order, he cannot be sure whether the defendant, Ministry of Finance of RS, would comply with it or not, and even if it does, the requested information will no longer be relevant to the purposes for which the plaintiff asked for it in its request for access

to information of 13 November 2009.

¹⁵⁷ Bosnia and Herzegovina 2011 Progress Report by the European Commission, 12 October 2011, <http://pravosudje.ba/vstv/faces/vijesti.jsp?id=32950>

¹⁵⁸ Banja Luka: Oslobođeni u slučaju Medicinska elektronika [*Acquitted in Medicinska Electronica Case*], Nezavisne novine, online edition, 11 October 2011

¹⁵⁹ <http://ti-bih.org/wp-content/uploads/2011/06/Procesuiranje-korupcije-pred-tuzilastvima-i-sudovima-u-BiH-2011-3.pdf>

¹⁶⁰ <http://ti-bih.org/wp-content/uploads/2011/06/Procesuiranje-korupcije-pred-tuzilastvima-i-sudovima-u-BiH-2011-3.pdf>

¹⁶¹ Lagumdžija reketirao ASA Holding [*Lagumdžija Racketeering ASA Holding*], naslovi.net, 14 January 2011, <http://www.naslovi.net/2011-01-14/mondo/lagumdžija-reketirao-asa-holding/2259345>

¹⁶² Banjaluka in magazin, 07 June 2011, <http://www.banjalukain.com/front/obustavljena-istraga-protiv-lagumdžije-i-hadžica-u-slučaju-reket-sdp-a>

¹⁶³ Law on Public Procurement BiH, *Official Gazette of BiH* 49/04, *Official Gazette of BiH* 19/05, *Official Gazette of BiH* 52/05, *Official Gazette of BiH* 8/06, *Official Gazette of BiH* 24/06, *Official Gazette of BiH* 70/06, *Official Gazette of BiH* 12/09 and *Official Gazette of BiH* 60/10.

¹⁶⁴ Public Procurement Statistics for 2009 (Public Procurement Agency of BiH) available at <http://www.javnenabavke.ba/index.php?id=11izv&izv=6&jezik=bs>

¹⁶⁵ Over the last 15 years the Office of the High Representative (OHR) has been an integral part of the structures with a key decision making role.

¹⁶⁶ Law on Local Self-government in the Republic of Srpska, *Official Gazette of RS* 101/04 and Law on the Principles of Local Self-government in the Federation of BiH, *Official Gazette of FBiH* 49/06

¹⁶⁷ According to the estimates of the IMF for the year 2011, public expenditure in BiH amounted to 50.4% of GDP (IMF Article IV, 3 December 2010, available at <http://www.imf.org/external/pubs/ft/scr/2010/cr10348.pdf>

¹⁶⁸ <http://doingbusiness.org/reports/global-reports/doing-business-2012>

¹⁶⁹ The Law on Civil Service in the institutions of BiH, *Official Gazette of BiH* 19/02; 08/03; 35/03; 04/04; 17/04; 26/04; 37/04; 48/05; 02/06

¹⁷⁰ *Official Gazette of RS* 62/02; 38/03; 42/04; 49/06

¹⁷¹ *Official Gazette of FBiH* 29/03; 23/04; 39/04; 54/04; 67/05; 08/06

¹⁷² *Official Gazette of Brčko District* 28/06; 29/06; 19/07

¹⁷³ "Dnevni Avaz" daily newspaper, 6 August 2011, article "Unconstitutional and Unlawful Dismissals of Management and Supervisory Boards"

¹⁷⁴ OECD SIGMA, 2010 Report for BiH, available at <http://www.oecd.org>

[org/site/sigma/publicationsdocuments/46401690.pdf](http://www.oecd.org/site/sigma/publicationsdocuments/46401690.pdf)

¹⁷⁵ Zdravko Zlokapa [et al], Mayor and Local Government – Leadership, Democracy, Development, Centres for Civic Initiatives, Tuzla 2009

¹⁷⁶ http://www.acips.ba/bos/uploads/istrazivanja/RJU_istrazivanje_bos.pdf

¹⁷⁷ In mid 2010 the Internet employment portal posao.ba announced disastrous survey results and warned that giving bribes in exchange for a job was an everyday occurrence in BiH. The portal conducted a survey on a sample of 882 respondents from all over BiH. The survey showed that almost half of the respondents (46 percent) would agree to pay a bribe in exchange for employment. Also, 37 percent of the respondents reported that their future employers or superiors had demanded a bribe for the job. Some of the survey findings indicate that the amount given in exchange for getting a job is usually larger than KM 3,000 (Source: www.posao.ba)

¹⁷⁸ *Official Gazette of BiH*, No. 103/09

¹⁷⁹ <http://ti-bih.org/4101/analiza-stepena-implementacije-strategije-za-borbu-protiv-korupcije-2009-2014-drugi-periodicni-izvjestaj-transparency-international-bih/>

¹⁸⁰ <http://ti-bih.org/3964/monitoring-provođenja-antikorupcionih-reformi-u-bih-drugi-periodicni-izvjestaj/>

¹⁸¹ Reports by the nongovernmental organisation Tender, www.tender.ba

¹⁸² TI BiH, Prosecution of Corruption Cases by Courts and Public Prosecutor's Offices in BiH (2009-2010), report, June 2011m page 24

¹⁸³ See TI BiH Corruption perceptions reports, www.ti-bih.org/publikacije

¹⁸⁴ Law on Conflict of Interest in Governmental Institutions of BiH (*Official Gazette of BiH*, No. 16/02, 14/03, 12/04, 63/08), Law on Conflict of Interests in the Governmental Institutions of Federation of BiH (*Official Gazette of the Federation of BiH*, No. 70/08), Law on Prevention of Conflict of Interests in Governmental Institutions of RS (*Official Gazette of RS*, No. 73/08), Law on Conflict of Interests in the Institutions of the Brčko District (*Official Gazette of the Brčko District of BiH*, No. 43/08, 47/08)

¹⁸⁵ European Commission, Bosnia and Herzegovina 2010 Progress Report, Brussels, 9 November 2010, p.15

¹⁸⁶ TI BiH, Analysis of the Implementation Level of the BiH Anti-corruption Strategy – first and second periodic reports, December 2010/March 2011

¹⁸⁷ 'Public Procurement Law of BiH', *Official Gazette of BiH*, No. 49/04, *Official Gazette of BiH*, No. 19/05, *Official Gazette of BiH*, No. 52/05, *Official Gazette of BiH*, No. 8/06, *Official Gazette of BiH*, No. 24/06, *Official Gazette of BiH*, No. 70/06, *Official Gazette of BiH*, No. 12/09 and *Official Gazette of BiH*, No. 60/10. Implementation of the PPL in FBiH and Brčko District started on 11 January 2005, and in RS on 1

May 2005.

¹⁸⁸ 'Public Procurement Law of BiH', *Official Gazette of BiH*, No. 49/04, *Official Gazette of BiH*, No. 19/05, *Official Gazette of BiH*, No. 52/05, *Official Gazette of BiH*, No. 8/06, *Official Gazette of BiH*, No. 24/06, *Official Gazette of BiH*, No. 70/06, *Official Gazette of BiH*, No. 12/09 and *Official Gazette of BiH*, No. 60/10.

¹⁸⁹ Public Procurement Agency, Draft Annual Report on Contracts in Public Procurement in 2011

¹⁹⁰ SIGMA, Assessment Report 2010-2011 – Consolidated version, <http://www.oecd.org/site/sigma/publicationsdocuments/48971635.pdf>

¹⁹¹ 'Guidelines on the Application of the Public Procurement Law of BiH', *Official Gazette of BiH*, No. 3/05 and *Official Gazette of BiH*, No. 24/09

¹⁹² Public Procurement Agency, Strategy for the Development of the Public Procurement System in BiH for the Period 2010–2015, available at: http://www.javnenabavke.ba/vijesti/2010/Strategija_razvoja.pdf [accessed on 19 July 2012]

¹⁹³ According to the 2011 Report on the Financial Audit of the Public Procurement Agency of BiH, conducted by the Audit Office of the Institutions of BiH, the envisaged number of employees in the Agency, according to the internal regulation on job classification, was 32, while the average number of staff (employed on a fixed or non-fixed basis) in 2011 was 20.

¹⁹⁴ This is a state-of-the-art, fully electronic public procurement procedure for most commonly used procurements, with elements similar to the restricted procedure. All economic operators that file the so-called indicative offer in accordance with the specifications and meet the selection criteria (the so-called eligible economic operators) should be allowed to join the dynamic purchasing system. In carrying out the procedures, contracting authorities should also prepare a short-term invitation for prequalification of potential new bidders. After some time, the contracting authorities can, over a short time period, conduct the procedure with all eligible economic operators and conclude all contracts.

¹⁹⁵ 'Guidelines on the Application of the Public Procurement Law of BiH', *Official Gazette of BiH*, No. 3/05 and *Official Gazette of BiH*, No. 24/09

¹⁹⁶ http://www.javnenabavke.ba/vijesti/2010/Strategija_razvoja.pdf [accessed on 19 July 2012]

¹⁹⁷ PPA and PRB are not sufficiently proactive in disseminating information on the public procurement system and in providing contracting authorities and economic operators with practical assistance. SIGMA, Assessment Report 2010-2011 – Consolidated version <http://www.oecd.org/site/sigma/publicationsdocuments/48971635.pdf>; European Commission, Bosnia and Herzegovina 2011 Progress Report, Commission Staff Working Paper (Brussels: European Commission, 2011); citizens' association "Tender", Conference on Corruption in Public

Procurement, 3 October 2011.

¹⁹⁸ All types of regulations are publicly available at: www.javnenabavke.gov.ba

¹⁹⁹ The cost of publication of contract notices remains very high for contracting authorities. SIGMA, Assessment Report 2010-2011 – Consolidated version, <http://www.oecd.org/site/sigma/publicationsdocuments/48971635.pdf>

²⁰⁰ 'Public Procurement Law of BiH', *Official Gazette of BiH*, No. 49/04, *Official Gazette of BiH*, No. 19/05, *Official Gazette of BiH*, No. 52/05, *Official Gazette of BiH*, No. 8/06, *Official Gazette of BiH*, No. 24/06, *Official Gazette of BiH*, No. 70/06, *Official Gazette of BiH*, No. 12/09 and *Official Gazette of BiH*, No. 60/10.

²⁰¹ *Official Gazette of BiH*, No. 12/09.

²⁰² Transparency International BiH, Monitoring of Implementation of the Public Procurement Law of BiH, 2012

²⁰³ Public Procurement Agency, Annual Report on Contracts in Public Procurement in 2009, available at: http://www.javnenabavke.ba/izvjestaji/godisnji%20izvjestaj/Godisnji_izvjestaj_2009_bs.pdf [accessed on 21 July 2012]

²⁰⁴ The electronic system does not allow further processing unless all the required fields in the notice are filled in.

²⁰⁵ www.tender.ba Conclusions of the Conference on Corruption in Public Procurement, 3 October 2011

²⁰⁶ SIGMA Assessment Bosnia and Herzegovina, May 2011, <http://www.oecd.org/site/sigma/publicationsdocuments/48971635.pdf>

²⁰⁷ Public Procurement Agency, Draft / Annual Report on Contracts in Public Procurement in 2011

²⁰⁸ 2011 Report on the Work of the Procurement Review Body

²⁰⁹ Contracts often lack provisions to protect contracting authorities against unprofessional and untimely execution of contracts (procurement of supplies, service or works).

²¹⁰ 'Rules on the Monitoring of Public Procurement Procedures', *Official Gazette of BiH*, No. 48/08.

²¹¹ Audit Office of the Institutions BiH, Audit Office of the Institution of FBiH, Audit office of the institution of RS

²¹² Such as the Performance Audit Report (01/02-09-16-1-651/10), Purchase of Computer Equipment in the Institutions of BiH, Audit Office of the Institutions of BiH, February 2010.

²¹³ www.tender.ba

²¹⁴ 'Public Procurement Law of BiH', *Official Gazette of BiH*, No. 49/04, *Official Gazette of BiH*, No. 19/05, *Official Gazette of BiH*, No. 52/05, *Official Gazette of BiH*, No. 8/06, *Official Gazette of BiH*, No. 24/06, *Official Gazette of BiH*, No. 70/06, *Official Gazette of BiH*, No. 12/09 and *Official Gazette of BiH*, No. 60/10.

²¹⁵ SIGMA, Assessment Report 2010-2011 – Consolidated version, chapter on Appeal System, <http://www.oecd.org/site/sigma/publica->

tionsdocuments/48971635.pdf

²¹⁶ https://www.parlament.ba/sadrzaj/ostali_akti/izvjestaji/default.aspx?id=29407&langTag=bs-BA&pril=b [accessed on 14 June 2012]

²¹⁷ For example, of the 63 municipalities in RS, internal audits have been formed in only 10 municipalities

²¹⁸ http://www.javnenabavke.ba/vijesti/2010/Strategija_razvoja.pdf [accessed on 19 July 2012]

²¹⁹ SIGMA, Assessment Report 2010-2011 – Consolidated version, chapter on Public Procurement Agency, <http://www.oecd.org/site/sigma/publicationsdocuments/48971635.pdf>

²²⁰ Public Procurement Law of BiH, *Official Gazette of BiH*, No. 49/04, *Official Gazette of BiH*, No. 19/05, *Official Gazette of BiH*, No. 52/05, *Official Gazette of BiH*, No. 8/06, *Official Gazette of BiH*, No. 24/06, *Official Gazette of BiH*, No. 70/06, *Official Gazette of BiH*, No. 12/09 and *Official Gazette of BiH*, No. 60/10

²²¹ 'Guidelines on the Application of the Public Procurement Law of BiH', *Official Gazette of BiH*, No. 3/05 and *Official Gazette of BiH*, No. 24/09

²²² For example, the Police Code of Ethics of the Sarajevo Canton Police Administration, available at: <http://mup.ks.gov.ba/sites/mup.ks.gov.ba/files/Policijski%20eticki%20kodeks.pdf> [accessed on 18 June 2012]

²²³ Quality, price, technical ability, functional, and environmental characteristics, cost-effectiveness, operating costs, after-sales service and technical assistance, delivery period, etc. Contracting authorities reserve discretion to determine other sub-criteria as well.

²²⁴ Under Article 12 of the Public Procurement Law (*Official Gazette of BiH*, No. 49/04, *Official Gazette of BiH*, No. 19/05, *Official Gazette of BiH*, No. 52/05, *Official Gazette of BiH*, No. 8/06, *Official Gazette of BiH*, No. 24/06, *Official Gazette of BiH*, No. 70/06, *Official Gazette of BiH*, No. 12/09 and *Official Gazette of BiH*, No. 60/10), these are situations when: no tenders are submitted within the specified final time limit or none of the received tenders are compliant; all compliant tenders contain prices which substantially exceed the contracting authority's budget; the number of the received compliant tenders or qualified candidates is less than three and does not ensure a genuine competition on the contract concerned; as well as in cases of other demonstrable reasons beyond the contracting authority's control.

²²⁵ In 2010, with the total amount of KM 1,343,821,679.59 the open procedure accounted for 38.73% of all implemented procedures, a decrease of 10.85% compared to 2009. In 2011, this percentage dropped further and amounted to 37.38% (KM 1,169,515,441.01).

²²⁶ In 2010, the total value of negotiated procedures was KM 1,235,715,915.88 – an increase of 549.12% compared to 2009

²²⁷ Transparency International BiH, Monitoring of Implementation of the Public Procurement Law of BiH, 2012

²²⁸ Information for RS available at: <http://www.zurnal.info/home/>

index.php?option=com_content&view=article&id=8383:andrigrad-dobija-status-dravne-tajne&catid=23:pod-okupacijom&Itemid=38 [accessed on 4 June 2012]; information for FBiH available at: http://www.bhdani.com/default.asp?kat=txt&broj_id=790&tekst_rb=9 [accessed on 4 June 2012]

²²⁹ Under Article 52 of the Law, the level of damages is limited to the costs of tender preparation, or 10% of the bidder's price, whichever is the greater. The PRB may order the contracting authority to pay compensation to the complainant for the cost of bringing the complaint. 'Public Procurement Law of BiH', *Official Gazette of BiH*, No. 49/04, *Official Gazette of BiH*, No. 19/05, *Official Gazette of BiH*, No. 52/05, *Official Gazette of BiH*, No. 8/06, *Official Gazette of BiH*, No. 24/06, *Official Gazette of BiH*, No. 70/06, *Official Gazette of BiH*, No. 12/09 and *Official Gazette of BiH*, No. 60/10.

²³⁰ In 2011, the PRB received a total of 1760 complaints, resolved over 1000, and imposed only one fine in the amount of KM 4,000, instituted two misdemeanour proceedings before the competent court (against contracting authorities and against responsible persons in these authorities), and filed 12 criminal charges against contracting authorities.

²³¹ European Commission, 2011

²³² 2011 Report on the Work of the Procurement Review Body

²³³ European Commission, 2011

²³⁴ SIGMA, Assessment Report 2010-2011 – Consolidated version, <http://www.oecd.org/site/sigma/publicationsdocuments/48971635.pdf>

²³⁵ Conclusions of the Conference on Corruption in Public Procurement, 3 October 2011, www.tender.ba

²³⁶ (*Official Gazette of BiH*, No. 3/03, and amendments 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09)

²³⁷ Although the Law on Police Officials of BiH (*Official Gazette of BiH*, Nos. 27/04, 63/04, 5/06, 33/06, 58/06, 15/08 and 63/08) applies to police officers in the State Investigation and Protection Agency (SIPA), BiH Border Police and the Directorate for Coordination of Police Bodies of BiH, the text of the Law will not apply to the work of the Directorate for Coordination because the Directorate does not deal directly with the prevention, detection and investigation of criminal offences. For the same reason, the Law will not apply to other organisational units with operational autonomy that are located within the Ministry of Security of BiH.

²³⁸ For three consecutive years (until 2011) the State Investigation and Protection Agency (SIPA) had a reduced budget, with budget cuts affecting the level of equipment and capital investments.

²³⁹ Interview with the members of the Prosecutor's Office of BiH and SIPA, Sarajevo, 22 November 2011 and 2 December 2011

²⁴⁰ <http://www.business-anti-corruption.com/country-profiles/>

europa-central-asia/bosnia-and-herzegovina/initiatives/public-anti-corruption-initiatives/[accessed on 28.2.2012]

²⁴¹ The outflow of personnel was caused by the departure of a number of inspectors/investigators and middle-level management who got employed in the Directorate for Coordination of Police Bodies upon its establishment, and the vacant posts of these officers have remained unfilled ever since.

²⁴² Law on Police Officials, Law on Civil Service and other laws regulating the operation of these agencies, do not contain provisions allowing this kind of engagement.

²⁴³ Official Gazette of BiH, No. 90/05

²⁴⁴ Law on Police Officials of BiH, *Official Gazette of BiH*, No. 27/04

²⁴⁵ Prosecutor's Office of BiH, *Communication on the Work of the Prosecutor's Office for 2010* (Sarajevo, Prosecutor's Office of BiH, 2011), p.26

²⁴⁶ In charge of detection and investigation of these criminal acts in SIPA is the Financial-Intelligence Department (FIP), which is located in the SIPA headquarters. Regional offices also have their own anti-corruption teams. It is also the main law enforcement agency at the state level, which is directly responsible for the fight against corruption. The Police Administration of FBiH has a Department for Combating Organised Crime operating within its Criminal Police Sector. The Department is composed of specialised investigators for financial investigations, corruption and money laundering. In the Police Administration of RS these tasks are performed by the specialised Unit for Combating Organised Crime and Corruption. In Brčko District, these problems are within the remit of the Department for Organised Crime which operates within the Criminal Police Units of BD. Cantonal MIs and PSCs in RS have organisational units of criminal police that can prosecute such cases if they discover them in course of their work. In charge of the prosecution of these crimes in the Prosecutor's Office of BiH is the Special Department II for Organised Crime, Economic Crime and Corruption (Regulation on the Internal Organisation of the Prosecutor's Office of BiH – *Official Gazette of BiH*, No. 31/10, Article 30).

²⁴⁷ *Official Gazette of BiH*, No. 49/09

²⁴⁸ Law on High Judicial and Prosecutorial Council of BiH (*Official Gazette of BiH*, No. 25/04), Law on Amendments to the Law on High Judicial and Prosecutorial Council of BiH (*Official Gazette of BiH*, No. 93/05), and Law on Amendments to the Law on High Judicial and Prosecutorial Council of BiH (*Official Gazette of BiH*, No. 15/08) enacted by the Decision of the High Representative of 15 June 2007 (*Official Gazette of BiH*, No. 48/07), which entered into force on 3 July 2007.

²⁴⁹ Law on Independent and Supervisory Bodies of Police Structure of BiH, *Official Gazette of BiH*, No. 36/08.

²⁵⁰ Members of the Independent Board shall be selected from amongst the representatives of judicial institutions, retired police officials, retired and active civil servants and prominent experts from other areas of public life, field of law, criminology and police affairs.

(Article 4, paragraph 2 of the Law on Independent and Supervisory Bodies of Police Structure of BiH)

²⁵¹ Law on Police Officials of BiH, *Official Gazette* 27/04, 63/04, 5/06, 33/06, 58/06, 15/08, 63/08, 35/09

²⁵² Law on SIPA, *Official Gazette* 27/04, 63/04, 35/05 and 49/09

²⁵³ "Večernji list" daily, newspaper article "SDP Wants Control over FBiH Police", 10 October 2011; <http://www.vecernji.ba/vijesti/sdp-zeli-kontrolu-nad-federalnom-policijom-clanak-334449>; <http://bihlink.com/vijesti/60643/sda-vs-sdp-zeleno-crvena-koalicija-sve-vise-upada-u-zamke/>

²⁵⁴ <http://www.dnevnik.ba/novosti/bih/usvojen-novi-zakon-on-unutarnjim-poslovima-f-bih-unato%C4%BD-protivljenju-zastupnika-sda-hdz-i>

²⁵⁵ Commission Staff Working Document – Bosnia and Herzegovina 2012 Progress Report – Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and main Challenges 2012-2013, p.55

²⁵⁶ <http://www.federalna.ba/bhs/vijest/1515/ide-iz-greske-u-gresku> [accessed on 21 November 2011]

²⁵⁷ <http://www.vijesti.ba/intervju/55965-Smetam-politicarima-jer-njih-branim-policiju.html> [accessed on 30 November 2011]

²⁵⁸ After it was announced that Goran Lujčić was running for head of SIPA, FTV [Public Broadcast Service of FBiH] featured in its Central News a report entitled "How SNSD Is Toppling the Most Notorious Candidate for Director of SIPA Goran Lujčić: All Forces Deployed against Lujčić, including the Judiciary", 9 December 2011

²⁵⁹ <http://www.business-anti-corruption.com/country-profiles/europe-central-asia/bosnia-and-herzegovina/initiatives/public-anti-corruption-initiatives/#top> [accessed on 1 March 2012]

²⁶⁰ <http://www.business-anti-corruption.com/country-profiles/europe-central-asia/bosnia-and-herzegovina/initiatives/public-anti-corruption-initiatives/#top> [accessed on 9 December 2011]

²⁶¹ Law on Police Officials of BiH, Article 38 (3), *Official Gazette of BiH*, No. 27/04

²⁶² Law on Internal Affairs of FBiH, Article 36, *Official Gazette of FBiH*, No. 49/05, and Law on Internal Affairs of RS, Article 20.(3), *Official Gazette of RS*, No. 4/12

²⁶³ Following the submission of these forms, SIPA and OSA perform checks in accordance with the Law on Access to Classified Information. If an official is found to have reported his/her data incorrectly, additional checks are conducted, and if necessary sanctions are imposed.

²⁶⁴ *Official Gazette of BiH*, No. 57/00

²⁶⁵ Transparency International BiH, Form for Reporting Violation of the Law on Freedom of Access to Information, available at <http://www.ti-bih.org/> [accessed on 7 December 2011]

²⁶⁶ See e.g. <http://www.tuzilastvobih.gov.ba>, <http://www.sipa.gov.ba/bs/index.php>, <http://www.granpol.gov.ba/Home.aspx>

²⁶⁷ Instruction of the Council of Ministers of BiH on the Development and Maintenance of Official Websites of BiH Institutions, *Official Gazette of BiH*, No. 21/09.

²⁶⁸ A letter to HJPC asking for a meeting with the author for the purposes of the NIS study was sent in November 2011. On 28 November 2011 the author sent another letter with a repeated query, as well as an explanation and request for information. Furthermore, on 13 March 2012 the author sent a query to the Prosecutor's Office of BiH asking for an explanation, for the purposes of the NIS study, of how it was possible that, after the Prosecutor's Office of BiH ordered an investigation against Milorad Dodik and others, the Special Prosecutor's Office of RS issued a decision terminating the investigation. No responses have been received to any of these queries.

²⁶⁹ Law on SIPA, Article 8, paragraph 2, sub-paragraphs (f) and (g), Law on the Border Police, Article 17, paragraph 2, sub-paragraphs (h) and (i)

²⁷⁰ Law on the Prosecutor's Office of BiH, Article 10

²⁷¹ According to Article 15 (1) of the Law on Independent and Supervisory Bodies of Police Structure of BiH, the Board is competent for receiving, registering, assessing and forwarding complaints against conduct of police officials of BiH as well as referring the complaints to the competent police bodies, for continuous monitoring of status of the case, and for initiation of the relevant procedure against the complainant in case of false or tendentious complaint.

²⁷² Between 1 March and 31 December 2010, the Board received 49 public complaints against conduct of police officers of the BiH Border Police and State Investigation and Protection Agency. Of those, 31 complaints were filed against conduct of the Border Police, and 13 against conduct of the State Investigation and Protection Agency. The Public Complaints Board declared itself incompetent for five complaints submitted directly to it by citizens. The complaints mainly concerned the misconduct of members of police agencies. Five complaints were specifically related to giving and taking bribes, one was related to defamation, and one to participation in organised crime. Most complaints related to the conduct of police officers at the international border crossing Doljani.

²⁷³ Of these, 21 requests were to look into the legality of the use of force. Only three cases were transferred to the status of disciplinary cases and sent to the disciplinary committee, of which two were related to a serious and one to a minor violation of the official duty. Severe sanctions were imposed in two cases, and one police officer was acquitted. In 62 cases no violations of official duty were found to exist, as those were mostly complaints related to the violation of data confidentiality, and six cases were forwarded to other authorities (inspectorates, centres for social work).

²⁷⁴ <http://www.ti-bih.org>

²⁷⁵ The Law on Protection of Secret Data (*Official Gazette of BiH*, No. 54/05 and amendments No. 12/09) provides that persons holding office or working within the body, as well as persons applying to the position within the body that produces, manages or keeps secret data and/or works on intelligence or defence and security issues are subject to basic security checks in line with the procedure for the issuance of an authorisation to access secret data classified as CONFIDENTIAL, and these checks are carried out by the Intelligence and Security Agency of BiH (OSA). Under the same law, exempt from this provision are police officials and civil servants and employees in the police and other security agencies in BiH, whose security checks are carried out by SIPA.

²⁷⁶ There is an internal prioritisation plan for handling cases related to crimes of corruption that is followed by prosecutors, who are individually responsible for acting on cases. Generally, prosecutorial priority is given to cases that were opened earlier and the so-called detention cases in which one or more persons were placed in custody. In applying the law, prosecutors act in accordance with the provisions of the CPC.

²⁷⁷ <http://www.kurir-info.rs> newspaper article "60 People Arrested in BiH, 22 Are Police Officers" of 22 September 2010 and <http://www.tuzilastvobih.gov.ba/index.php?id=756&jezik=b> [accessed on 10 January 2012]

²⁷⁸ <http://www.tuzilastvobih.gov.ba> text "Indictment Issued against 29 Persons for Conspiracy to Commit Criminal Offences"

²⁷⁹ *Official Gazette of BiH*, No. 16/02, Correction to the Translation of the Text of the Decision of the High Representative Enacting the Law on Conflict of Interest in Governmental Institutions of BiH (*Official Gazette of BiH*, No. 14/03), Law on Amendments to the Law on Conflict of Interest in Governmental Institutions of BiH (*Official Gazette of BiH*, No. 12/04), and Law on Amendments to the Law on Conflict of Interest in Governmental Institutions of BiH (*Official Gazette of BiH*, No. 63/08).

²⁸⁰ <http://www.oslobodjenje.ba/vijesti/bih/milorad-brasin-vraca-se-u-tuzilastvo-bih> [accessed on 10 June 2012]

²⁸¹ Report of the Disciplinary Counsel of the HJPC for 2010 [accessed on 18 January 2012]

²⁸² Commission Staff Working Document – Bosnia and Herzegovina 2012 Progress Report – Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and main Challenges 2012–2013, p.15

²⁸³ For more information, see paper by assistant professor Eldan Mušanović PhD "Posebne istražne radnje u suzbijanju korupcije u BiH-između strateških ciljeva i pravnog okvira uređenja" [*Special Investigative Actions in Combating Corruption in BiH – between Strategic Objectives and Legal Regulation*], Transparency International BiH, March, 2011.

²⁸⁴ For example, in the first 9 months of 2011 SIPA alone submitted to

the Prosecutor's Office of BiH 36 reports for financial crimes and corruption, encompassing a total of 53 legal entities. In addition, another 7 reports were submitted against 17 persons for money laundering and predicate offences. Furthermore, during this period SIPA submitted to the Prosecutor's Office of BiH 48 new reports for war crimes. Apart from SIPA, reports are also submitted by the Police Administration of FBiH and other police agencies, which significantly increases the caseload in the Prosecutor's Office.

²⁸⁵ Communication on the Work of the Prosecutor's Office for 2010, 2.2.1. Structure of Criminal Offences in Cases Handled by the Special Department II, p.23

²⁸⁶ (Law on Suppression of Organised Crime and Most Serious Forms of Corporate Crime, Consolidated text, "Official Gazette of RS", No. 111/07)

²⁸⁷ <http://www.nezavisne.com/novosti/bih/Obustavljen-istraga-protiv-Dodika-i-sest-osoba-121492.html>

²⁸⁸ Retrieved from: <http://spectuz-banjaluka.pravosudje.ba> Report on Activities in 2010 [accessed on 12 February 2012]

²⁸⁹ <http://report.globalintegrity.org/Bosnia%20and%20Herzegovina/2009/> [accessed on 4 March 2012]; <http://www.business-anti-corruption.com/country-profiles/europe-central-asia/bosnia-and-herzegovina/initiatives/public-anti-corruption-initiatives/>

²⁹⁰ Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (*Official Gazette of BiH*, No. 103/09), Article 12, Paragraph 3.

²⁹¹ Law on the Financing of Institutions of BiH (*Official Gazette of BiH*, No. 61/04) as well as the Law Amending the Law on the Financing of Institutions of BiH (*Official Gazette of BiH*, No. 49/09)

²⁹² This issue is governed by another piece of legislation, namely the BiH Law on Execution of Criminal Sanctions, Detention and Other Measures (consolidated version), *Official Gazette of BiH*, No. 12/10. Generally speaking, the material gain acquired through perpetration of a criminal offence (regardless of which government body has found of this gain) is confiscated by the Court and credited towards the budget of BiH institutions.

²⁹³ Law on Ministerial, Council of Ministers and other Appointments of BiH (*Official Gazette of BiH*, No. 37/03)

²⁹⁴ Interview with an employee from the Anticorruption Agency, Sarajevo, held on 8 September 2011.

²⁹⁵ Law on Civil Service in the Institutions of BiH, (*Official Gazette of BiH*, Nos. 12/02, 19/02, 08/03, 35/03, 4/04, 17/4, 26/04, 37/04, 48/05, 2/06, 32/07, 43/09), as well as the provision contained in Article 21, Paragraph 2 of the Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption.

²⁹⁶ Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, Article 6, Paragraph 1.

²⁹⁷ Law on the Agency for the Prevention of Corruption and Coordina-

tion of the Fight against Corruption, Article 18, Paragraph 2.

²⁹⁸ Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, Article 13, Paragraph 2.

²⁹⁹ Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, Article 15, Paragraph 1.

³⁰⁰ Interview with respondent 1. Interview with an employee of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, held on 8 September 2011.

³⁰¹ Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, Article 8, Paragraph 1, Sub-paragraph b.

³⁰² Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, Article 25, Paragraph 2.

³⁰³ Law on Freedom of Access to Information in BiH (*Official Gazette of BiH*, No. 28/00).

³⁰⁴ Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, Article 18, Paragraph 1, Sub-paragraph b.

³⁰⁵ Law on Freedom of Access to Information in BiH (*Official Gazette of BiH*, No. 28/00).

³⁰⁶ Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, Article 18, Paragraph 2.

³⁰⁷ Interview with an employee from the Anticorruption Agency, Sarajevo held on 8 September 2011.

³⁰⁸ Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, Article 7, Paragraph 1, Sub-paragraph d.

³⁰⁹ Law on Audit of the Institutions of BiH (*Official Gazette of BiH*, No. 12/06) as well as the Law on Internal Audit of the Institutions of BiH (*Official Gazette of BiH*, No. 27/08) which establish the mechanisms for risk management, performance of internal audits and management of each budget institution.

³¹⁰ <http://ti-bih.org/5487/cetvrti-monitoring-provodenja-strategije-za-borbu-protiv-korupcije/>

³¹¹ Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, Article 10.

³¹² Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, Article 10.

³¹³ Transparency International BiH, Kyodo

³¹⁴ General Framework Agreement for Peace in BiH, downloaded from: http://www.oscebih.org/dejtonski_mirovni_sporazum/HR/home.htm [accessed on 7 November 2011]

³¹⁵ http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282010%295_BiH_Two_EN.pdf [accessed on 27 November 2011]

- ³¹⁶ Interview with Maksida Pirić, spokeswoman of the Central Election Commission of BiH, Sarajevo, 7 September 2011
- ³¹⁷ Transparency International BiH, CRINIS study – Study of the Transparency of Political Party Financing in BiH (Banja Luka: Transparency International BiH, 2010), p.41
- ³¹⁸ 'Election Law of BiH', *Official Gazette of BiH*, No. 23/01, *Official Gazette of BiH*, No. 7/02, *Official Gazette of BiH*, No. 9/02, *Official Gazette of BiH*, No. 20/02, *Official Gazette of BiH*, No. 25/02, *Official Gazette of BiH*, No. 4/04, *Official Gazette of BiH*, No. 20/04, *Official Gazette of BiH*, No. 25/05, *Official Gazette of BiH*, No. 52/05, *Official Gazette of BiH*, No. 65/05, *Official Gazette of BiH*, No. 77/05, *Official Gazette of BiH*, No. 11/06, *Official Gazette of BiH*, No. 24/06, *Official Gazette of BiH*, No. 32/07, *Official Gazette of BiH*, No. 33/08, *Official Gazette of BiH*, No. 37/08, and *Official Gazette of BiH*, No. 32/10.
- ³¹⁹ Law on Civil Service in the Institutions of BiH, *Official Gazette of BiH*, No. 19/02, *Official Gazette of BiH*, No.35/03, *Official Gazette of BiH*, No. 4/04, *Official Gazette of BiH*, No.17/04, *Official Gazette of BiH*, No. 26/04, *Official Gazette of BiH*, No. 37/04, *Official Gazette of BiH*, No. 48/05, *Official Gazette of BiH*, No. 02/06, *Official Gazette of BiH*, No. 32/07, and *Official Gazette of BiH*, No. 43/09.
- ³²⁰ Transparency International BiH, *Political Party Financing in BiH* (Banja Luka: Transparency International BiH, 2010), p.46
- ³²¹ GRECO, 2011:22
- ³²² Interview with Maksida Pirić, spokeswoman of the Central Election Commission of BiH, Sarajevo, 7 September 2011
- ³²³ Interview with Tanja Topić, political analyst, Banja Luka, 12 September 2011
- ³²⁴ <http://www.vecernji.ba/vijesti/ustavni-sud-nije-nadlezan-vlasti-clanak-355885> [accessed on 17 December 2011]
- ³²⁵ <http://www.dan.co.me/?nivo=3&rubrika=Republika%20Srpska&clanak=315740&najdatum=2012-01-16&datum=2012-01-17> [accessed on 20 January 2012]
- ³²⁶ <http://www.globalintegrity.org/report/Bosnia-and-Herzegovina/2011/scorecard> [accessed on 24 April 2012]
- ³²⁷ Rules on Pre-election and Post-election Financial Reports of Political Entities, *Official Gazette of BiH*, No. 61/06
- ³²⁸ http://www.slobodnaevropa.org/content/gradjani_uskra-ceni_zuvid_u_imovinu_politicara_nvo_razocarane/24285780.html [accessed on 10 October 2011]
- ³²⁹ Rules on Annual Financial Reports of Political Parties, *Official Gazette of BiH*, No. 61/06
- ³³⁰ Interview with Maksida Pirić, spokeswoman of the Central Election Commission of BiH, Sarajevo, 7 September 2011
- ³³¹ Central Election Commission of BiH, *2010 Report on the Implementation of the Laws within the Remit of the Central Election Commission of BiH* (Sarajevo: Central Election Commission of BiH, 2011), p. 64
- ³³² Interview with Maksida Pirić, spokeswoman of the Central Election Commission of BiH, Sarajevo, 7 September 2011
- ³³³ Central Election Commission of BiH, *Forms for the Financial Reports of Political Parties*, available at: <http://izbori.ba/Documents/documents/MAP/podakt4/Zbirnifinancijskiobrasci-BOS.pdf> [accessed on 27 April 2012]
- ³³⁴ Rules on the Financial Reporting of the Institutions of BiH, *Official Gazette of BiH*, No. 33/07
- ³³⁵ Audit Office of the Institutions of BiH, *2010 Report on the Financial Audit of the Central Election Commission of BiH* (Sarajevo: Audit Office of the Institutions of BiH, 2011), p.6, and *2011 Report on the Financial Audit of the Central Election Commission of BiH* (Sarajevo: Audit Office of the Institutions of BiH, 2012), p. 6
- ³³⁶ 'Law on Conflict of Interest in the Institutions of BiH', *Official Gazette of BiH*, No. 16/02, *Official Gazette of BiH*, No. 14/03, *Official Gazette of BiH*, No. 12/04, and *Official Gazette of BiH*, No. 63/08.
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- ³⁴⁰ 'Law on the Financing of Political Parties from the Budget of the Republic, City and Municipality of RS', *Official Gazette of RS*, No. 65/08
- ³⁴¹ GRECO, 2011: 18–20
- ³⁴² <http://www.globalintegrity.org/report/Bosnia-and-Herzegovina/2011/scorecard> [accessed on 24 April 2012]
- ³⁴³ OSCE/ODIHR, *Bosnia and Herzegovina: General Elections 3 October 2010*. OSCE/ODIHR Election Observation Mission Final Report (Warsaw: OSCE/ODIHR, 2010), p. 5
- ³⁴⁴ OSCE/ODIHR, 2010: 22.
- ³⁴⁵ OSCE/ODIHR, 2010: 24
- ³⁴⁶ http://www.enovosti.info/lat/index.php?option=btg_novosti&idnovost=15162#.UCvdBE0gfpU [accessed on 14 May 2012]
- ³⁴⁷ OSCE/ODIHR, 2010: 19
- ³⁴⁸ *Official Gazette of BiH*, No. 32/06
- ³⁴⁹ 'Law on the Human Rights Ombudsman of BiH', *Official Gazette of BiH*, No. 09/02; and 'Law on Amendments to the Law on the Human

Rights Ombudsman of BiH', *Official Gazette of BiH*, No. 284/06

³⁵⁰ Website of the Institution, www.ombudsman.gov.ba

³⁵¹ *Report of the Helsinki Committee for Human Rights in BiH in 2009*, *Report of the Helsinki Committee for Human Rights in BiH in 2010*, *Shadow report by the Coalition of Non-Governmental Organisations on Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination in BiH*, available on <http://www.bh-hchr.org/izvjestaji.htm> [accessed in June 2011]; interviews conducted for the purposes of this study with Fedra Idžaković and Vesna Vukmanić, Sarajevo, July 2011

³⁵² 'Law on Prohibition of Discrimination', *Official Gazette of BiH*, No. 59/09

³⁵³ Annual Report on Results of the Activities of the Institution of Human Rights Ombudsman of BiH for 2009, p 96

³⁵⁴ Annex 6 of the Dayton Peace Agreement

³⁵⁵ 'Law on Amendments to the Law on the Human Rights Ombudsman of BiH', *Official Gazette of BiH*, No. 32/06

³⁵⁶ "Experiences of the Ombudsmen in Sweden and Norway", scholarly paper by Radoje Zečević, published in July 2006 on <http://www.doiserbia.nb.rs/img/doi/0025-8555/2006/0025-85550603306Z.pdf>, and Master's thesis "Institution of Ombudsman in Bosnia and Herzegovina" by Nada Grahovac at Pan-European University "Apeiron" Banja Luka, published in January 2008 on www.apeiron-uni.eu/

³⁵⁷ Ivan Bizjak, former ombudsman of Slovenia – "The Role and Experience of an Ombudsman in a New Democracy", presentation at a seminar in Strasbourg, available on www.varuh-rs.si

³⁵⁸ Interview with Jasminka Džumhur, Ombudsperson for Human Rights of BiH, Sarajevo 2011

³⁵⁹ *Work Strategy of Human Rights Ombudsman of BiH for the Period 2010–2014*, available on http://www.ombudsmen.gov.ba/materijali/Strategija_2010-2014hr.pdf

³⁶⁰ Annual reports on the activities of the Ombudsman of FBiH in 2008 and 2009 (in the Archives of FBiH)

³⁶¹ Guidance for Social Responsibility – ISO 26000 – Section 7; http://www.bas.gov.ba/pdf/publikacije/discovering_iso_26000_BAS.pdf

³⁶² Interview with Vesna Vukmanić, member of the NGO "ICVA"

³⁶³ 'Law on Prohibition of Discrimination', *Official Gazette of BiH*, No. 59/09

³⁶⁴ Interview with Fedra Idžaković, member of NGO "Prava za sve" [*Rights for All*]

³⁶⁵ Interview with Jasminka Džumhur, Ombudsperson for Human Rights of BiH, Sarajevo 2011

³⁶⁶ 'Election Law of BiH', *Official Gazette of BiH*, No. 23/01

³⁶⁷ Unofficial consolidated text of the Law on Conflict of Interest in Governmental Institutions of BiH, available on <http://www.izbori.ba/>

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³⁶⁹ *Official Gazette of BiH*, No. 104/11

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³⁷⁴ USAID PSP in BiH, Financial audit, audit reports and procedures of parliamentary debate on audit reports, brochure (Sarajevo USAID PSP in BiH, 2010)

³⁷⁵ Decision on taking over the Framework of international standards of supreme audit institutions. ISSAI framework in BiH, *Official Gazette* 38/11, <http://www.sllist.ba/glasnik/2011/broj38/Broj038.pdf>

³⁷⁶ http://www.revizija.gov.ba/zakoni_i_akti/Default.aspx (accessed on 12 March 2012)

³⁷⁷ Law on Audit Institutions BiH, *Official Gazette* 12/06

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³⁷⁹ <http://www.sllist.ba/glasnik/2011/broj38/Broj038.pdf>

³⁸⁰ Interview with the Auditor General of the Audit Office of the Institutions of BiH, Mr Milenko Šego (conducted on 8 September 2011)

³⁸¹ <http://www.vesti-online.com/Stampano-izdanje/15-12-2009/Dnevnik/14687/DODIK-Revizor-je-lopov/print> (accessed on 10 September 2012)

³⁸² *Official Gazette of BiH*, No. 38/11

³⁸³ Financial audit, audit reports and procedures of parliamentary debate on audit reports, brochure, Sarajevo 2010

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³⁸⁹ Interview with the Auditor General of the Audit Office of the Institutions of BiH, Mr Milenko Šego (conducted on 8 September 2011)

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³⁹³ Interview with the Auditor General of the Audit Office of the Institutions of BiH, Mr Milenko Šego (conducted on 8 September 2011)

³⁹⁴ 'Law on the Financing of Political Parties from the Budget of the Republic, City and Municipality of RS', *Official Gazette of RS*, No. 65/08

³⁹⁵ 'Law on the Financing of Political Parties from the Budget of the Brčko District of BiH', *Official Gazette of the BDBiH*, No. 29/04, *Official Gazette of the BDBiH*, No. 14/07, and *Official Gazette of the BDBiH*, No. 19/07

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³⁹⁷ 'Law on Political Organisations of FBiH', *Official Gazette of the Socialist Republic of BiH*, No. 27/91; 'Law on Political Organisations of RS', *Official Gazette of RS*, No. 15/96 and *Official Gazette of RS*, No. 17/02; 'Law on Political Organisations of the Brčko District', *Official Gazette of BDBiH*, No. 12/02 and *Official Gazette of BDBiH*, No. 19/07.

³⁹⁸ GRECO, 2011: 4.

³⁹⁹ GRECO, 2011: 4.

⁴⁰⁰ *Official Gazette of the Socialist Republic of BiH*, No. 27/91; *Official Gazette of RS*, No. 15/96 and *Official Gazette of RS*, No. 17/02; *Official Gazette of BDBiH*, No. 12/02 and *Official Gazette of BDBiH*, No. 19/07

⁴⁰¹ GRECO, 2011: 5.

⁴⁰² Election Law of BiH, *Official Gazette of BiH*, No. 23/01; Decision on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 7/02; Decision on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 9/02; Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 20/02; Correction of the Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 25/02; Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 4/04; Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 20/04; Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 25/05; Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 52/05; Correction of the Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 65/05; Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 77/05; Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 11/06; Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 24/06; Law on Adoption of the Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*,

No. 32/07; Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 33/08; Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 37/08; and Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 32/10

⁴⁰³ *Official Gazette of RS*, No. 65/08

⁴⁰⁴ *Official Gazette of the BDBiH*, No. 29/04, *Official Gazette of the BDBiH*, No. 14/07, and *Official Gazette of the BDBiH*, No. 19/07

⁴⁰⁵ Central Election Commission of BiH, *Information on Funds Paid to Political Parties in 2009 from Budgets at All Levels of Government in Bosnia and Herzegovina* (Sarajevo: Central Election Commission of BiH, 2010), Annex 1.1.

⁴⁰⁶ According to the CEC BiH's reports, in 2010 alone a total of KM 21,829,752.77, or 73.4% of total revenues of parties, were spent from budgets at various levels of government for the operation of political parties.

⁴⁰⁷ Interview with Nikola Kužet, Democratic Party, Banja Luka, 7 September 2011

⁴⁰⁸ OSCE/ODIHR, Bosnia and Herzegovina: *General Elections 3 October 2010. OSCE/ODIHR Election Observation Mission Final Report* (Warsaw: OSCE/ODIHR, 2010), p.2

⁴⁰⁹ Election Law of BiH, *Official Gazette of BiH*, No. 23/01; Decision on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 7/02; Decision on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 9/02; Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 20/02; Correction of the Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 25/02; Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 4/04; Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 20/04; Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 25/05; Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 52/05; Correction of the Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 65/05; Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 77/05; Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 11/06; Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 24/06; Law on Adoption of the Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 32/07; Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 33/08; Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 37/08; and Law on Changes and Amendments to the Election Law of BiH, *Official Gazette of BiH*, No. 32/10

⁴¹⁰ Transparency International BiH, *Political Party Financing in BiH* (Banja Luka: Transparency International BiH, 2010), p 54

- ⁴¹¹ Interview with Tanja Topić, political analyst, Banja Luka, 12 September 2011
- ⁴¹² <http://www.mojevijesti.ba/novost/120907/Inicijativa-za-sankcionisanje-SNSD-ovog-poslanika-zbog-otrice-Branislava-Boskovica> [accessed on 21 April 2012]
- ⁴¹³ GRECO, 2011: 22–23
- ⁴¹⁴ The most important ones are the 'Rules on Annual Financial Reports of Political Parties' and 'Rules on Pre-election and Post-election Financial Reports of Political Entities', both published in the *Official Gazette of BiH*, No. 61/06
- ⁴¹⁵ <http://ti-bih.org/4068/pregled-budzetskih-izdvajanja-za-politicke-partije-u-bih/> [accessed on 27 March 2012]
- ⁴¹⁶ Transparency International BiH, *CRINIS study – Study of the Transparency of Political Party Financing in BiH* (Banja Luka: Transparency International BiH, 2010), p.63
- ⁴¹⁷ Access was sought to reports on the expenditures of the caucuses in 2009 and a spending plan for 2010.
- ⁴¹⁸ Upon the recommendation of the Audit Office of BiH, the Administrative Committee of the PA BiH issued a conclusion requiring the caucuses to submit annual reports on all expenses.
- ⁴¹⁹ Transparency International BiH, *CRINIS study – Study of the Transparency of Political Party Financing in BiH* (Banja Luka: Transparency International BiH, 2010), pp 35–36
- ⁴²⁰ OSCE/ODIHR, 2010: 14
- ⁴²¹ Transparency International BiH, *Monitoring the Financing of Political Parties in BiH (2010–2011)* (Banja Luka: Transparency International, 2012), p.4
- ⁴²² http://www.dnevniavaz.ba/vijesti/teme/89500-sud-bih-odlucio-da-se-treba-ukinuti-dosadasnja-praksa-imovinski-kartoni-vise-nece-bit-objavljivani.html?TB_iframe=true&height=350&width=700 [accessed on 15 April 2012]
- ⁴²³ Transparency International BiH, *Political Party Financing in BiH* (Banja Luka: Transparency International BiH, 2010), p.74
- ⁴²⁴ Central Election Commission of BiH, *2010 Report on the Implementation of the Laws within the Remit of the Central Election Commission of BiH* (Sarajevo: Central Election Commission of BiH, 2011), p.158
- ⁴²⁵ Transparency International BiH, *Political Party Financing in BiH* (Banja Luka: Transparency International BiH, 2010), p 43
- ⁴²⁶ Transparency International BiH, *Monitoring of the Election Campaign: General Elections 2010*, (Banja Luka: Transparency International BiH, 2011), p.44
- ⁴²⁷ Transparency International BiH, *Monitoring of the Election Campaign: General Elections 2010*, (Banja Luka: Transparency International BiH, 2011), p.17
- ⁴²⁸ Statute of the Social Democratic Party of BiH, available at: http://www.sdp.ba/dokumenti/dokumenti/STATUT_SDP_BiH.pdf [accessed on 10 March 2012]; Statute of the Serb Democratic Party, available at: http://www.sdsrs.com/sajt/dokumenti/Statut_SDS.pdf [accessed on 10 March 2012]; Statute of the Party of Democratic Action, available at: <http://www.sda.ba/dokumentaSDA/STATUT%20SDA.pdf> [accessed on 10 March 2012]; Statute of the Alliance of Independent Social Democrats, available at: <http://www.snsd.org/dnn/Portals/0/Dokumenti/statut.pdf> [accessed on 10 March 2012]
- ⁴²⁹ Interview with Tanja Topić, political analyst, Banja Luka, 12 September 2011
- ⁴³⁰ Interviews with Srđan Mazalica, Alliance of Independent Social Democrats, Banja Luka, 8 September 2011, and Tanja Topić, political analyst, Banja Luka, 12 September 2011
- ⁴³¹ Transparency International BiH, *Political Party Financing in BiH* (Banja Luka: Transparency International BiH, 2010), p 32
- ⁴³² In the interview a representative of a political party gave an example of a delay in the construction of the southern wing of the Clinical Centre in Banja Luka caused by the dispute between the competent Minister and the Head of the Clinical Centre, both of whom are members of the same ruling political party, over who should hire construction workers and through them achieve financial gain.
- ⁴³³ European Commission, *Bosnia and Herzegovina 2010 Progress Report*. Commission Staff Working Document (Brussels: European Commission 2010), p.11; http://www.delbih.ec.europa.eu/reports/2010progress_bs.pdf
- ⁴³⁴ Interview with Tanja Topić, political analyst, Banja Luka, 12 September 2011
- ⁴³⁵ European Commission 2010: 18
- ⁴³⁶ Partnerstvo za društveni razvoj [Partnership for Social Development], *Nacionalni izvještaj o sukobu interesa – Bosna i Hercegovina [National Report on Conflict of Interest – Bosnia and Herzegovina]*, Balkan Anti-corruption Civic Initiative BACCI (Zagreb: Partnerstvo za društveni razvoj, 2012), p.49
- ⁴³⁷ OSCE/ODIHR, 2010: 12
- ⁴³⁸ http://www.cin.ba/Stories/P27_Justice/?cid=1006,2,1 [accessed on 20 April 2012]
- ⁴³⁹ <http://ti-bih.org/4991/korupcija-u-zaposljavanju-jos-uvijek-najzastupljenija/> [accessed on 21 March 2012]
- ⁴⁴⁰ <http://ti-bih.org/5284/ustavnopravna-komisija-doma-naroda-uvela-institucije-bih-u-pravnu-anarhiju/> [accessed on 17 June 2012]
- ⁴⁴¹ <http://ti-bih.org/wp-content/uploads/2012/01/Press-rls-13-01-2012-.doc> [accessed on 10 March 2012]
- ⁴⁴² Law on Communications, *Official Gazette of BiH*, No. 31/03: *Official Gazette*, No. 75/06.
- ⁴⁴³ *Official Gazette of BiH*, Nos. 75/05 and 35/09
- ⁴⁴⁴ <http://www.fes.ba/publikacije/2012/BMB/FES%20-%20BMB%20>

- BiH%202011_book%20BHS%2010_2_2012.pdf [accessed on 11 July 2012]
- ⁴⁴⁵ http://www.fes.ba/publikacije/2012/BMB/FES%20-%20BMB%20BiH%202011_book%20BHS%2010_2_2012.pdf [accessed on 11 July 2012]
- ⁴⁴⁶ <http://www.rak.ba/bih/aktuelnost.php?uid=1306152185> [accessed on 14 June 2012]
- ⁴⁴⁷ Helsinki Committee for Human Rights in BiH, *2011 Report on the Status of Human Rights in BiH* (Sarajevo: Helsinki Committee, 2012), p.14
- ⁴⁴⁸ Interview with Borka Rudić, secretary general of the association “BiH Journalists”, Banja Luka, June 2012
- ⁴⁴⁹ http://www.slobodnaevropa.org/content/bih_mediji_novi-nari/2312690.html [accessed on 20 February 2012]
- ⁴⁵⁰ <http://www.globalintegrity.org/report/Bosnia-and-Herzegovina/2011>; <http://www.freedomhouse.org/report/freedom-press/2011/bosnia-and-herzegovina> [accessed on 28 May 2012]
- ⁴⁵¹ <http://www.idonline.info/digitalarchive/public/index.cfm?fuseaction=serve&ElementId=837161> [accessed on 20 February 2012]
- ⁴⁵² Helsinki Committee for Human Rights in BiH, *2011 Report on the Status of Human Rights in BiH* (Sarajevo: Helsinki Committee, 2012), p.14
- ⁴⁵³ <http://bosnian.sarajevo.usembassy.gov/ljudska-prava-2011.html> (access on 10 September 2012)
- ⁴⁵⁴ <http://www.federalna.ba/bhs/vijest/28787/udruzenje-novinara-srbije-osudilo-verbalni-napad-na-novinarku-bete> [accessed on 20 June 2012]
- ⁴⁵⁵ <http://www.klix.ba/vijesti/bih/kako-zlatko-lagumdzija-uredjuje-dnevnik-ftv-a/120304013>
- ⁴⁵⁶ http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186336#wrapper [accessed on 14 June 2012]
- ⁴⁵⁷ <http://balkans.aljazeera.net/makale/vlada-rs-ulaze-milione-u-privatne-medije> [accessed on 20 June 2012]
- ⁴⁵⁸ Speech by U.S. Ambassador to BiH, Patrick S. Moon, at the session of the Association Of Independent Intellectuals “Circle 99”: http://sarajevo.usembassy.gov/speech_20110605.html [accessed on 20 June 2012]
- ⁴⁵⁹ Helsinki Committee for Human Rights in BiH, *2011 Report on the Status of Human Rights in BiH* (Sarajevo: Helsinki Committee, 2012)
- ⁴⁶⁰ Slobodna Bosna weekly, 519, 20 October 2011, Sarajevo, p.21
- ⁴⁶¹ The highly publicised case of the former editor in the Public Service Broadcaster of FBiH, who, even after winning her claim for unfair dismissal, was not allowed by the PBS management to return to work in accordance with the final court ruling.
- ⁴⁶² <http://www.bhrt.ba/lat/default.wbsp?p=51> [accessed on 18 June 2012]
- ⁴⁶³ www.rak.ba/bih/index.php?uid=1273787399 [accessed on 20 June 2012]
- ⁴⁶⁴ <http://ti-bih.org/5037/monitoring-izborne-kampanje-opsti-izbora-2010/> [accessed on 20 June 2012]
- ⁴⁶⁵ <http://www.irex.org/resource/bosnia-and-herzegovina-media-sustainability-index-msi> [accessed on 18 June 2012]
- ⁴⁶⁶ Law on Protection against Defamation of BiH, *Official Gazette of BiH*, No. 37/01; *Official Gazette of FBiH*, No. 31/01.
- ⁴⁶⁷ <http://www.freedomhouse.org/report/nations-transit/2011/bosnia-and-herzegovina>; http://www.irex.org/sites/default/files/u105/MSI_2011_EE_Full.pdf; http://www.fes.ba/publikacije/2012/BMB/FES%20-%20BMB%20BiH%202011_book%20BHS%2010_2_2012.pdf [accessed on 18 June 2012]
- ⁴⁶⁸ A striking example of such a behaviour on the part of the government was the intrusion of special police forces armed with big guns in the premises of the BN TV in Bijeljina, for suspected tax evasion. This behaviour of the police structures was condemned by NGOs as well as national and international journalists' associations, because it was recognised as the most severe form of pressure on the said media outlet because of its critical reporting on the work of the RS Government.
- ⁴⁶⁹ At a press conference in June 2012, the President of RS Milorad Dodik publicly insulted a journalist of the news agency BETA, because a few years earlier she had published the news that the SIPA submitted a criminal report against him (at that time, the Prime Minister of RS).
- ⁴⁷⁰ Transparency International BiH, *Bosna i Hercegovina 2008: Uloga i stanje medija* [Bosnia and Herzegovina 2008: The Role and State of the Media] (Banja Luka: Transparency International BiH, 2008), p.61
- ⁴⁷¹ Freedom of association and peaceful assembly is guaranteed by Article II/3.i) of the Constitution of Bosnia and Herzegovina, Article II/2.1 of the Constitution of the Federation of BiH, and Articles 30, 31 and 41 of the Constitution of the Republic of Srpska, which guarantee the right to freedom of peaceful assembly and freedom of association with others, freedom of political organisation and activities, and freedom of trade union organisation and activities. In the Statute of the Brčko District of BiH, freedom of association and peaceful assembly is guaranteed by Article 14. Freedom of association is further regulated by the Law on Associations and Foundations of Bosnia and Herzegovina, and the same laws in BiH's two entities – Republic of Srpska and Federation of BiH.
- ⁴⁷² USAID, *The 2009 NGO Sustainability Index*, available at: http://transition.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/reports/2011/2009complete_document.pdf [accessed on 18 March 2012]
- ⁴⁷³ <http://www.parlament.ba/Search/Default.aspx?q=zakon+o+fondacijama&fromPublishedDate=30.11.2010&thruPublishedDate=1.1.2014>

&langTag=bs-BA&template_id=5&pril=b&pageIndex=1

⁴⁷⁴ Article II, paragraph 2 of the Constitution of Bosnia and Herzegovina, [accessed on 18 March 2012]

⁴⁷⁵ Article II, paragraph 2 of the Constitution of Bosnia and Herzegovina, [accessed on 18 March 2012]

⁴⁷⁶ Three persons of age with a total of four registration documents and having paid the relevant fee can register a CSO in BiH within 30 days – UNDP BiH – www.sutra.undp.ba/download, [accessed on 18 March 2012]

⁴⁷⁷ Stepen razvijenosti CD [*Degree of Development of Civil Society*] http://www.civilnodrustvo.ba/files/docs/civilno/Index_Stepen_razvijenosti_CD_BiH.pdf, [accessed on 18 March 2012]

⁴⁷⁸ (R)evolucija civilnog društva u BiH – CIN BiH [(*R*)evolution of Civil Society in BiH]: <http://www.cin.ba/Stories/AdHoc/?cid=926,2,1>, [accessed on 11 April 2012]

⁴⁷⁹ Technical Assistance to Civil Society Organisations in the IPA Countries (TACSO), 2010 Needs Assessment Report, available at http://www.tacso.org/documents/reports/Archive.aspx?template_id=73&langTag=en-US&pageIndex=1 [accessed on 18 March 2012]

⁴⁸⁰ USAID 2009 NGO Sustainability Index, available at: http://transition.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/reports/2011/2009complete_document.pdf [accessed on 18 March 2012]

⁴⁸¹ http://www.tacso.org/documents/reports/Archive.aspx?template_id=73&langTag=en-US&pageIndex=1 [accessed on 18 March 2012]; USAID, *The 2009 NGO Sustainability Index*, available at: http://transition.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/reports/2011/2009complete_document.pdf [accessed on 18 March 2012]

⁴⁸² See “Zašto ne” – razglasaj [“Why Not” – Spread the Message]; http://www.zastone.ba/?page_id=639; DOSTA [ENOUGH] – <http://protest.ba/v2/>; CCI BiH – <http://ccibh.org/acampaigns/1/5/3.html>

⁴⁸³ About 80% of the CSOs interviewed are implementing at least one project, and 24.48% are implementing more than three projects – HTSPE / Kronauer Consulting Civil Society, Contributions to the Development of the Strategy for Establishing an Enabling Environment of Civil Society in Bosnia and Herzegovina; (Sarajevo: HTSPE / Kronauer Consulting Civil Society, 2009)

⁴⁸⁴ HTSPE / Kronauer Consulting Civil Society, 2009.

⁴⁸⁵ HTSPE / Kronauer Consulting Civil Society, 2009.

⁴⁸⁶ HTSPE / Kronauer Consulting Civil Society, 2009.

⁴⁸⁷ Statement by a representative of the Ministry of Justice of BiH, Sarajevo, July 2011.

⁴⁸⁸ The Law on Service in the Armed Forces of Bosnia and Herzegovina (*Official Gazette of BiH*, nos. 88/05, 53/07 and 17/08) stipulates that professional military personnel are forbidden from organising

in trade unions and political organisations, or professional military personnel may engage in activities of associations and non-governmental organisations only if these activities are in compliance with this Law.

⁴⁸⁹ Technical Assistance to Civil Society Organisations in the IPA Countries (TACSO), *Needs assessment report Bosnia and Herzegovina. Updated 2011*, available at http://www.tacso.org/doc/BA_NA_Report.pdf [accessed on 21 March 2012]

⁴⁹⁰ Organisations can acquire the status of a Public Benefit organisation if their activities are in the public interest and do not serve only the purposes of their membership, e.g. health, education, science, social protection etc.

⁴⁹¹ http://www.sif.ba/publikacije/118_miliona_koraka.pdf (accessed in June 2011)

⁴⁹² European Commission, Bosnia and Herzegovina 2010 Progress Report. Commission Staff Working Document (Brussels, European Commission, 2010) available at http://www.delbih.ec.europa.eu/documents/delegacijaEU_2011121405320217bos.pdf [accessed on 20 March 2011]

⁴⁹³ <http://www.depo.ba/front/norveski-helsinki-komit-et-brani-verujovanovic-od-necivilizovanih-napada-reisa-cerica> [accessed on 20 March 2012]

⁴⁹⁴ http://www.danas.org/content/most_religija_i_politika_mar-kovic_dautovic/1853985.html [accessed on 20 March 2012]

⁴⁹⁵ <http://www.akcijagradjana.org/saop%C5%A1tenja/saop%C5%A1tenje-za-javnost-povodom-pritvaranja-aktivista-u-butmiru> [accessed on 14 September 2011]

⁴⁹⁶ http://transition.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/reports/2011/2009complete_document.pdf [accessed on 20 March 2012]

⁴⁹⁷ http://www.ibhi.ba/cms/index.php?option=com_docman&task=cat_view&gid=27&Itemid=3&lang=hr [accessed on 20 March 2012]

⁴⁹⁸ http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2009/ [accessed on 20 March 2012]

⁴⁹⁹ http://www.cidi.ba/upload/file/Ka%20ucinkovitom%20civil-nom%20dijalogu_materijal.pdf [accessed on 20 March 2012]

⁵⁰⁰ http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2009/ [accessed on 20 March 2012]

⁵⁰¹ http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2009/complete_document.pdf [accessed on 20 March 2012]

⁵⁰² Source – interview with a TACSO representative in BiH

⁵⁰³ http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2009/ [accessed on 20 March 2012]

⁵⁰⁴ “Mreža+” [*Network+*] and “Mreža pravde u BiH” [*Network for Justice in BiH*]; more information can be found at <http://www.cpcd>.

ba/v2/bs/vijesti/serija_uvodnih_radionica_o_uvo_enju_sistema_kvaliteta_u_radu_nvo-a_i_javna_rasprava_o_mobilisanju_sivh_kapaciteta_na_rjesavanju_brojnih_problema_gra_ana_u_7_gradova_sirom_bih_.html [accessed on 21 March 2012] and www.mrezapravde.ba (minutes of the 5th meeting of the "Mreža pravde u BiH" – Sarajevo, 2 November 2011) [accessed on 21 March 2012]

⁵⁰⁵ "Mreža RING" [RING Network] (a network of CSOs advocating fight against human trafficking), "Ženska mreža" BiH [BiH Women's Network] (http://www.fondacijacure.org/Platforma_Zenska_mreza_BiH_2009.pdf), as well as "Mreža pravde u BiH" [Network for Justice in BiH] www.mrezapravde.ba

⁵⁰⁶ Centar za razvoj i podršku Tuzla [Centre for Development and Support Tuzla] – see <http://ljudskaprava.crp.org.ba/index.php?limitstart=20&lang=ba>, [accessed on 18 April 2012]

⁵⁰⁷ http://transition.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/reports/2011/2009complete_document.pdf [accessed on 20 March 2012]; <http://www.sarajevo-x.com/bih/sarajevo/clanak/090128135> [accessed on 18 April 2012] i <http://www.kosda-tk.ba/bs/vijest.php?id=501> [accessed on 18 April 2012.]

⁵⁰⁸ Transparency International BiH www.ti-bih.org [accessed on 18 April 2012]

⁵⁰⁹ Source: interview given by a CCI member of staff working on the project "Civic Advocacy Partnership Programme II (CAPP II)" http://transition.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/reports/2011/2009complete_document.pdf [accessed on 20 March 2012] and additionally – see USAID 2009 NGO Sustainability Index

⁵¹⁰ See www.tender.ba

⁵¹¹ See Centar za zastupanje javnih interesa [Public Interest Advocacy Centre] – www.cpi.ba and ALDI – www.aldi.ba

⁵¹² See Centar za humanu politiku [Centre for Humane Politics] – www.chpngo.org

⁵¹³ Transparency International BiH: www.ti-bih.org and Helsinki Committee for human Rights in RS: www.znanjebezkorupcije.org

⁵¹⁴ See Radio Kameleon – <http://mitolovac.ba>

⁵¹⁵ One of the examples is available at <http://domzdravljabanjaluka.com/usvojen-pravilnik-o-prevenaciji-i-borbi-protiv-korupcije,123.html> and more information is available at www.ccibh.org

⁵¹⁶ http://www.soros.org.ba/index.php?option=com_content&view=article&id=75%3Aprogram-podrke-istraivanjima-u-oblasti-javnih-politika-u-bih-2009-2010&catid=37&Itemid=79&lang=ba

⁵¹⁷ http://transition.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/reports/2011/2009complete_document.pdf [accessed on 20 March 2012]

⁵¹⁸ European Commission, 2012: 30

⁵¹⁹ European Commission, 2011

⁵²⁰ 'Company Law of RS', *Official Gazette of RS*, No. 127/08 and *Of-*

ficial Gazette of RS, No. 58/09.

⁵²¹ 'Law on Classification of Activities and Register of Businesses by Industry in RS', *Official Gazette of RS*, No. 74/10.

⁵²² 'Company Law of FBiH', *Official Gazette of FBiH*, No. 23/99, *Official Gazette of FBiH*, No. 45/00, *Official Gazette of FBiH*, No. 2/02, *Official Gazette of FBiH*, No. 6/02, *Official Gazette of FBiH*, No. 29/03, *Official Gazette of FBiH*, No. 68/05, *Official Gazette of FBiH*, No. 91/07 and *Official Gazette of FBiH*, No. 84/08.

⁵²³ 'Framework Law on Registration of Business Entities in BiH', *Official Gazette of BiH*, No. 42/04.

⁵²⁴ 'Law on Ownership and Other Property Rights', *Official Gazette of BDBiH*, No. 11/01, *Official Gazette of BDBiH*, No. 8/03, *Official Gazette of BDBiH*, No. 40/04 and *Official Gazette of BDBiH*, No. 19/07.

⁵²⁵ 'Law on the Establishment of the Institute for Intellectual Property of BiH', *Official Gazette of BiH*, No. 43/04.

⁵²⁶ European Commission, 2012: 28

⁵²⁷ <http://www.doingbusiness.org/reports/global-reports/doing-business-2012> [accessed on 24 April 2012]

⁵²⁸ "Najunosnija profesija na udaru investitora: Učešće notara u obradi odluka nepotrebno" [*Most Lucrative Profession under Attack from Investors: Notarisation of Decisions Unwarranted*], available at: <http://www.ekapija.ba/website/bih/page/453434>

⁵²⁹ The Heritage Foundation in cooperation with The Wall Street Journal, 2012 Index of Economic Freedom, available at: <http://www.heritage.org/index/country/bosniaherzegovina> [accessed on 24 April 2012]

⁵³⁰ European Commission, 2012: 30

⁵³¹ 'Law on Public–Private Partnership in RS', *Official Gazette of RS*, No. 59/09 and *Official Gazette of RS*, No. 63/11.

⁵³² Council of Ministers of BiH – Directorate for Economic Planning, *Pregled socijalno-ekonomskih kretanja u BiH decembar/prosinac 2011: Mogućnosti zapošljavanja u BiH* [Review of Socio-Economic Trends in BiH December 2011: Employment Opportunities in BiH], available at: http://www.dep.gov.ba/dep_publikacije/pregledsocioekonkretanja/?id=1460 [accessed on 14 April 2012]

⁵³³ The survey was conducted from 15 November 2010 to 20 February 2011, on a sample of 152 private businesses employing between 5 and 650 employees in construction jobs, wholesale and retail trade, services, manufacturing handicrafts and food industry. <http://www.proeduca.net/porodicnefirme.pdf> [accessed on 14 April 2012]

⁵³⁴ <http://slobodanvaskovic.blogspot.com/2012/03/sumrak-saga-dodikovi-krokodili-zderu.html> [accessed on 18 May 2012]

⁵³⁵ Incentives were received by 129 private businesses. At least 33 were under the control of members and donors of the Party for BiH, the Democratic Action Party, the Croatian Democratic Union, HDZ 1990 and the People's Party Work for Betterment. The money was

also given to businesses owned by members of other parties. Centar za istraživačko novinarstvo, *Poticaji za privatne firme političara* [Incentives for Politicians' Private Firms], available at: <http://www.cin.ba/Stories/AdHoc/?cid=1088,2,1> [accessed on 18 May 2012]

⁵³⁶ <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/BOSNIAHERZEXTN/0,,contentMDK:22949609~menuPK:362032~pagePK:2865066~piPK:2865079~theSitePK:362026,00.html> [accessed on 21 May 2012]

⁵³⁷ European Commission, 2011: 52

⁵³⁸ International Finance Corporation and SEE Business Solutions, Corporate Governance in BiH, Sarajevo 2011

⁵³⁹ 'Company Law of FBiH', *Official Gazette of FBiH*, No. 23/99, *Official Gazette of FBiH*, No. 45/00, *Official Gazette of FBiH*, No. 2/02, *Official Gazette of FBiH*, No. 6/02, *Official Gazette of FBiH*, No. 29/03, *Official Gazette of FBiH*, No. 68/05, *Official Gazette of FBiH*, No. 91/07, *Official Gazette of FBiH*, No. 88/08 and *Official Gazette of FBiH*, No. 63/10.

⁵⁴⁰ 'Company Law of RS', *Official Gazette of RS*, No. 127/08 and *Official Gazette of RS*, No. 58/09.

⁵⁴¹ 'Rules on Corporate Governance', *Official Gazette of FBiH*, No. 19/10.

⁵⁴² 'Corporate Governance Standards in RS', *Official Gazette of RS*, No. 117/11.

⁵⁴³ International Finance Corporation and SEE Business Solutions, Corporate Governance in BiH, Sarajevo 2011

⁵⁴⁴ Employers' Association of BiH, *Code of Ethics for Employers*, available at: <http://www.apbih.ba/images/dokumenti/ETICKI%20KODEKS%20APBIH.pdf> [accessed on 26 May 2012]

⁵⁴⁵ World Economic Forum, The Global Competitiveness Report 2011-2012, available at: http://www3.weforum.org/docs/WEF_GCR_Report_2011-12.pdf [accessed on 26 May 2012]

⁵⁴⁶ Interview with Slaviša Raković, former director of the International Operations Department in Nova banka, Banja Luka, 2011.

⁵⁴⁷ Nebojša Vuković, Banja Luka Stock Exchange, Surveys into the Achieved Level of Corporate Governance in RS, 6 June 2012.

⁵⁴⁸ <http://slobodanvaskovic.blogspot.com/2011/09/stankovic-pro-tjerao-zorana-tadica-iz.html> [accessed on 26 May 2012]

⁵⁴⁹ <http://www.naslovi.net/2008-12-25/press/radukic-reketirao-vidovica/972782> [accessed on 26 May 2012]

⁵⁵⁰ http://www.slobodnaevropa.org/content/uzbunjivaci_u_bih_smjene_i_pritisci_zbog_prijave_korupcije/24464412.html [accessed on 28 May 2012]

⁵⁵¹ Interview with Damir Miljević, business analyst, Banja Luka, 2012.

⁵⁵² According to a member of this association interviewed in August 2012, Tender even filed criminal charges against the executive director of the Chamber of Commerce of RS for issuing false certificates of origin. However, in this case, too, the judiciary failed to act in favour

of independent businesspersons (Banja Luka, 2012).

⁵⁵³ European Commission, 2011

⁵⁵⁴ http://www.unglobalcompact.org/participants/search?commit=Search&keyword=&country%5B%5D=12&joined_after=&joined_before=&business_type=all§or_id=all&listing_status_id=all&cop_status=all&organization_type_id=&commit=Search [accessed on 12 May 2012]

⁵⁵⁵ More examples and data can be found in TI BiH's publication *Privatizacija državnog kapitala u BiH* [*Privatisation of State-Owned Capital in BiH*], available at: http://ti-bih.org/wp-content/uploads/2011/03/PRIVATIZACIJA_DRZAVNOG_KAPITALA_U_BIH1.pdf [accessed on 11 July 2012]

⁵⁵⁶ BiH is organised as a semi-protectorate in which international institutions actively participate in the political life of the country. The level of their involvement has been changing since 1995, depending on their assessment of the progress achieved.

⁵⁵⁷ Article II of Annex 10 of the Dayton Peace Agreement gives the High Representative the following roles: Monitoring the implementation of the peace settlement; Maintaining close contact with the Parties to promote their full compliance with all civilian aspects of the peace settlement; Coordinating the activities of the civilian organisations and agencies in BiH to ensure the efficient implementation of the civilian aspects of the peace settlement – the High Representative shall respect their autonomy within their spheres of operation while as necessary giving general guidance to them about the impact of their activities on the implementation of the peace settlement; Facilitating, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation; Participate in meetings of donor organisations; Reporting periodically to the United Nations, European Union, United States, Russian Federation, and other interested governments, parties, and organisations.

⁵⁵⁸ The PIC was established in 1995 at an implementation conference held in London and has since come together at the highest ministerial level another six times. The last PIC meeting was held in Brussels in 2007. The London Conference also established the PIC Steering Board, which meets once a week at the ambassadorial level, and once every three months at the level of political directors. The main purpose of the PIC is to provide the High Representative with clarifications as to the political direction of his actions.

⁵⁵⁹ In February 2002, the European Union's General Affairs Council (GAC) appointed the High Representative as the EU Special Representative (EUSR) to BiH. The new "double-hatted" HR/EUSR maintained supervision of all activities in the field of rule of law, including the EUPM, acting as an advisory body to the Secretary General/High Representative and the EU Commission.

⁵⁶⁰ *The Bonn Powers* were adopted by the PIC at its December 1997 meeting in Bonn. Expanding Annex 10 of the Dayton Agreement, the Council granted further powers to the HR, namely to remove from

office public officials who violate legal commitments or act contrary to the Dayton Agreement, and to enforce such laws as it deems necessary if the legislative bodies in BiH are not in a position to do so.

⁵⁶¹ Article 1 and Annex 1B of the Dayton Agreement http://www.ohr.int/dpa/default.asp?content_id=369 [accessed on 2 June 2012].

⁵⁶² Annex III of the Dayton Agreement http://www.ohr.int/dpa/default.asp?content_id=371 [accessed on 2 June 2012].

⁵⁶³ Annex VI of the Dayton Agreement http://www.ohr.int/dpa/default.asp?content_id=372 [accessed on 2 June 2012].

⁵⁶⁴ Council Decision 2011/426/CFSP of 18 July 2011 appointing the EUSR in BiH, : <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:188:0030:0033:en:PDF> [accessed on 2 June 2012]

⁵⁶⁵ USAID and Country Budget 1995 to 2010, <http://transition.usaid.gov/ba/about/budget.htm> [accessed on 31 August 2012]

⁵⁶⁶ "Beginning in 1996, ICITAP's mission in BiH has focused on improving law enforcement capabilities, from the state level to the municipal-precinct level. ICITAP collaborates with BiH's law enforcement to help develop their institutional capacity to combat terrorism and organized crime, and to develop modern information management systems and specialized units to improve police response and immigration and border control. ICITAP introduced the task force concept, which has helped law enforcement combat terrorism and other criminal activities, including narcotics smuggling, human trafficking, money laundering, public corruption, and organized crime. ICITAP has trained over 26,000 enforcement officials in modern, democratic policing techniques with an emphasis on human dignity." Source: <http://www.justice.gov/criminal/icitap/>

⁵⁶⁷ "Organized crime and corruption are among the most significant obstacles that threaten the fragile, fledgling democracies throughout CEE. Combating these twin viruses constitutes the common denominator for all OPDAT CEE assistance programs." : <http://www.justice.gov/criminal/opdat/>

⁵⁶⁸ Global Integrity Index for BiH rated the legislative framework in BiH with a score 90/100 and its actual implementation with 39/100, indicating the so-called implementation gap which is rated as huge by the Global Integrity Index. <http://report.globalintegrity.org/Bosnia%20and%20Herzegovina/2009>

⁵⁶⁹ "Foreign Factors Interfere Strongly in Internal Affairs", (Milorad Dodik, President of RS, 18 March 2010, Agency Fonet); "The Peace Implementation Council, of which there is no mention in the Dayton Agreement, has created a situation in which the High Representative can impose unconstitutional laws and activities" (Milorad Dodik, President of RS, 18 March 2010, agency Fonet); "All deviations, all that is a disaster in BiH, was created by the OHR, and this was definitely done by interpreting the "spirit of Dayton", rather than applying the "letter of Dayton" (Milorad Dodik, President of RS, 18 December 2011, Bijeljina); The OHR "is not a collocator for internal political affairs. The OHR and the remaining third-rate political analysts working in the OHR do

not deserve any attention whatsoever" (Milorad Dodik, President of RS, 18 December 2011, Bijeljina); The activities of RS officials aimed at playing down the role of the OHR and having it ultimately closed down culminated in an initiative to call a referendum in which the citizens of RS would answer the question that reads "Do you support the laws imposed by the High Representative in BiH, notably the laws on the Court of BiH and BiH Prosecutor's Office, as well as their unconstitutional verification in the Parliamentary Assembly of BiH?" The initiative was seen by the U.S., EU and Western countries as a direct threat to the Dayton agreement, but was on the other hand supported by Russia. This split between the international actors undoubtedly contributes to the complexity of the political situation in BiH.

⁵⁷⁰ European Commission for Democracy through Law, Venice Commission, Opinion on the Constitutional Situation in BiH and the Powers of the High Representative, <http://www.coe.ba/pdf/CDL-AD2004004-bs.pdf>

⁵⁷¹ Ibid.

⁵⁷² <http://www.aidtransparency.net/about/whos-involved>

⁵⁷³ Paris Declaration on Aid Effectiveness., OECD High Level Forum on Aid Effectiveness, Paris, February 2005

⁵⁷⁴ http://ti-bih.org/wp-content/uploads/2011/03/mz_corruption.pdf

⁵⁷⁵ Opinion 375/2006, Strasbourg, 12 June 2006, CDL-AD(2006)01, European Commission for Democracy through Law (Venice Commission), Opinion on the Draft Amendments to the Constitution of BiH: "A central element of the first stage of constitutional reform has to be a transfer of responsibilities from the Entities to BiH by means of amendments to the BiH Constitution. This is an indispensable step if any progress is to be achieved in the process of European integration of BiH. This step will be difficult since, as with other constitutional amendments in BiH, it will have to be based on consensus among the representatives of the three constituent peoples. Constitutional reform cannot be imposed. Another element of the first stage should be a streamlining of decision-making procedures within BiH, especially with respect to the vital interest veto, and a reform of the provisions on the composition and election of the Presidency and the House of Peoples which seem either now or following the entry into force of Protocol No. 12 on 1 April 2005 incompatible with the ECHR. The reform of the vital interest veto at the State level could best be carried out in parallel with similar reforms in both Entities.", <http://www.venice.coe.int/docs/2006/CDL-AD%282006%29019-e.asp>

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