



Analysis of the implementation level of the BiH Anti-corruption  
Strategy 2009-2014  
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## ***About the publication***

### **Authors**

**Eldan Mujanović** (Professor at the Faculty for criminalistic sciences and security studies at the University of Sarajevo. . He is an author of many academic and practical studies in the field of criminalistic. Worked, among others, on the study of the juvenile delinquency, corruption, money laundry, confiscation of illegally gained assets. Field of interest is the international cooperation in fighting crime. He is a longstanding external collaborator of Transparency International BiH)

**Darko Datzler** (Holds a Master degree from the Faculty of criminalistic sciences criminology and security studies, University of Sarajevo. He is a co-author of the monography „Frankly speaking about police and corruption“, as well as the author of many academic and scientific articles related to prevention of and fight against corruption and theoretical criminal science. Author and participant in many scientific research projects on corruption, crime prevention, juvenile delinquency. Member of the association of criminalists at home and abroad and of the European Association of Criminalists. Member of the editorial board of the magazine Criminalistic themes)

**Aleksandar Draganić** (Holds a Master degree in Economics, currently employed at the Enterprise Development Agency (EDA) Banja Luka, as a Policy Development Expert Provides expertise and support to local government and public administration reform projects, as well as other project in the area of his competences (youth, social exclusion, economic and socio-economic development). Given the additional education in public policies provided by OSI/LGI and OSF/BiH, he creates public policy documents related to the public administration reform and socio-economic development. Participated in many studies ordered by government and international organizations, as well as in creation of laws and legislation in B&H. He has been a longstanding external collaborator of Transparency International BiH and is actively involved in civil society work and their projects. Author, co-author and editor of several books and publications).



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## *Executive summary*

One year following the enactment of the Anti-corruption Strategy (2009 – 2014) and the Law on Anti-corruption Agency<sup>1</sup>, it can be stated that things are not progressing with desired dynamics envisaged in the relevant strategic documents.

Fighting corruption is not simple, especially taking into account international reports reading that corruption exists at highest levels of authority and politics<sup>2</sup>, that are at the same time responsible to initiate and realise activities in this area. This paradox is especially "complicated" in Bosnia and Herzegovina because the issue of corruptive behaviour of high officials and politicians is still often interpreted as an attack against "ethnic integrity and identity" of an entire ethnic group. Numerous authors dealing with the issue of corruption (Rose-Ackerman, Keefer and Knack)<sup>3</sup> have found corruption and ethnic division to be coupled. As a matter of fact, "competition" among different ethnic groups within the same country and fear of ostracism leads to respect for bureaucracy which abuses it for corruptive purposes. Therefore, it is not surprising that the documents including the Anti-corruption Strategy have not been used by the institutions belonging to cantonal and entity level of authority where ethnic division remains dominant.

There are numerous issues concerning the implementation of the Anti-corruption Strategy. Insufficient involvement of all relevant stakeholders in the implementation of the Strategy, lack of planning of necessary resources and improvement of operative aspects of certain components of the Strategy and their realisation are some of those issues. As for the implementation of the Strategy, some activities are implemented but beyond the overall implementation plan. They are implemented rather as *ad hoc* activities following the pressure exerted either by national or international organisations.

No awareness of the general public of the so far realisation of certain activities concerning the implementation of the Anti-corruption Strategy was not visible in the previous year except for the BiH Council of Ministers, BiH Ministry of Security, some delegates in the BiH Parliamentary Assembly, international organisations and local non-governmental organisations dealing with the issue. There are numerous reasons for this. Firstly, the Anti-corruption Strategy (2009 – 2014) has never been adequately communicated to the entity, cantonal and local level of authority. Therefore, it has never been on the agenda of the FBiH Parliament or RS National Assembly. It has not been discussed at sessions of entity governments or Brcko District Government despite the fact that the Law on Anti-corruption Agency stipulates that entities, cantons and BiHBrcko District shall adopt and develop anti-

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<sup>1</sup>The Law on Anti-corruption Agency was adopted by decisions of the upper chamber of the BiH Parliament at the 69th session and at the 40th session of the lower chamber (30 December 2009), and published in the BiH Official Gazette No. 103/09

<sup>2</sup>The 2010 BiH Progress Report, Brussels, 9 November 2010

<sup>3</sup>Rose-Ackerman, Susan, Trust, honesty and corruption: reflection on the state building process, *Archives of European Sociology*, 42, 2001, p.526-570

Keefer, Philip, Knack, Stephen, Polarization, Politics and Property Rights: Links between Inequality and Growth, The World Bank Working Paper 1173, 2000

corruption strategy and the corresponding action plan according to general principles provided in the national Anti-corruption Strategy. Therefore, it is not surprising that other stakeholders – local self-governance units, public enterprises and institutions, universities, civil sector, citizens, media and private sector are not aware of it. The analysis shows the fact that none of the levels of authority except the state level of authority takes the Anti-corruption Strategy 2009 – 2014 as a document committing them to devote to certain activities. At the same time, taking into account little achievement made, commitment of certain state-level institutions to deal with issues from the Anti-corruption Strategy also remains questionable. Failure to communicate the adopted document to all stakeholders is the major reason for the existing situation.

Another concern related to current and future implementation of the Strategy has to do with the "ownership of the Strategy". Speaking of strategies, one tends to discuss planning documents of broad consensus relating to all stakeholders that are numerous. Analysing programme documents of political parties participating at general elections in 2010, it has been found that no political party indicated importance of implementation of the existing 2009 – 2014 Anti-corruption Strategy, including its objectives and activities. Instead, they spoke of fighting corruption as of something yet to start. Finally, work of the most responsible ones should be addressed concerning the so far implementation of the Strategy and the Law on Anti-corruption Agency. They are the members of the special commission that was formed *ad hoc*<sup>4</sup> and in charge of establishment of the list of candidates for the position of the director of the Agency. The Law stipulates that the Agency is an independent and self-governing administrative organisation responsible to the Bosnia and Herzegovina Parliamentary Assembly, while the Bosnia and Herzegovina Parliamentary Assembly shall nominate the Director of the Agency following the proposal by the special Commission for selection and monitoring of the functioning of the Agency through the procedure of open competition pursuant to Law on nomination of ministers, Council of Ministers, and other nominations of Bosnia and Herzegovina, following the examination performed when nominating the members of the Bosnia and Herzegovina Council of Ministers. The nomination of the director was the major activity of the special Commission of the BiH Parliamentary Assembly in the previous year. Only at its 5th session, the Commission managed to establish the list of candidates for this position. As the Anti-corruption Agency lacked its formal managerial staff in 2010, that is, the management was done by the acting director whose mandate was renewed on more than one occasion; it is not surprising that no achievement was made in its operation. Actually, as the director shall enact the Rulebook on systematisation of positions and code of conduct of the employees, there is no wonder that the said documents are missing and that many Strategy activities have not been implemented. Taking into account the position of the Anti-corruption Agency, the funds for its operation and Strategy implementation are consequently missing, which hampers the implementation of the foreseen activities. Analysis of the draft 2011 – 2013 BiH framework budget indicates that the BiH Council of Ministers does not plan to allocate funds for implementation of the

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<sup>4</sup>Provisional common Commission for selection and monitoring of operations of the Anti-corruption Agency (*Members: BerizBelkić, IlijaFilipović, NikoLozančić, DušankaMajkić, SulejmanTihic andMilorad Živković*)

Anti-corruption Strategy and proper operation of the Anti-corruption Agency. Actually, there is no item of the Anti-corruption Agency in the 2011 – 2013 BiH framework budget. The Strategy can be implemented only if funds are ensured based on which activities could be carried out. Thus, the Action Plan must specify expenditure for group activities as well as the source of funding (budget, international donors, etc.). Unfortunately, neither the Strategy nor the Action Plan specifies expenditures – which additionally slows down further implementation and development of the implementation capacities.

Given the recognized need for establishing institutionalized cooperation with the authorities, as well as efficient mechanisms for the monitoring and evaluation of the implementation of the activities foreseen by the Strategy, which would enable a continuous, active and sustainable involvement of the civil society organisations in the policy development and implementation, Transparency International BiH has initiated the signing of the Memorandum of Understanding with the Ministry of security BiH and the Agency for the prevention and coordination of the fight against corruption. This activity aims at promoting the participation of civil society and non-governmental organisations in the prevention and fight against corruption, as well as strengthening transparency and ensuring efficient mechanisms in accessing information for the successful implementation of the Strategy in the context of the reforms required by BiH in the European integration process.

Within Monitoring of implementation of the 2009 – 2014 Anti-corruption Strategy, Transparency International BiH monitors implementation of the Strategy and the corresponding Action Plan concerning the following areas: capacity building of the Anti-corruption Agency, prevention of corruption, education, training and public awareness, implementation of the law and coordination and implementation of the Strategy.

### *Analysis of implementation of the Strategy through components*

**Component 1: Capacity building of the Anti-corruption Agency.** A general assessment concerning implementation of measures of this component is that this strategic objective/measure fails to meet time limits foreseen in the Strategy. As majority of activities in this component are related to the Anti-corruption Agency, this should not be taken as surprise as the Agency should become operative only in the second half of 2011. The Agency has not started performing its tasks thus creating gaps in supervision and coordination of the implementation of the Anti-corruption Strategy and its corresponding Action Plan. Taking into account statutory requirements and the Action Plan, it is obvious that major problem lies in lack of commitment to establish capacities in the BiH Parliament, that is, Commission for selection and monitoring of operations of the Agency. The Agency has remained understaffed (director and deputy director have not been nominated). No internal acts of the Agency have been enacted either.

**Component 2: Prevention of corruption.** The Strategy identifies three major areas through which it is necessary to undertake preventive anti-corruption activities (reform of public sector, transparency and accountability; anti-corruption/integrity plans and simplification of

business environment), by undertaking short-term, medium-term and long-term activities. As stated in the previous report, the Anti-corruption Agency has not become operative, which hampers the implementation of the anti-corruption preventive tasks. This institution is actually an initiator and coordinator of almost all preventive activities. Therefore, the lack of its functioning is a serious obstacle for any attempt to fight corruption. Thus, it can be stated that activities foreseen by the Action Plan and undertaken within this component of the Strategy were not carried out or they were partially carried out and they are not the result of the systematic activities of implementation of the Strategy but rather the result of efforts made for the overall public administration reform or individual efforts of the relevant institutions.

**Component 3: Education, training and public awareness.** Implementation of this Strategy component was supposed to commence in the second half of 2010 according to the time limits provided for in the Action Plan of the Strategy. This component is an important strategic objective within the Strategy itself as it aims at building broad coalition for fighting corruption. Namely, it has been envisaged in the Strategy and its Action Plan from the time of the enactment of the Strategy until the time when this report is written, to develop the curricula, pedagogical material and tools and trainers' training for the purpose of future providing of training in the field of integrity/fighting corruption/ethics for civil servants. However, it should be noted that for the achievement of objectives, a fully staffed Agency needs to be in place. This is due to insufficient capacity and the secondary legislation governing the functioning of the Anti-corruption Agency. Implementation of activities related to education, training and public awareness requires a lot of resources and attentive approach to relevant ministries with the aim to start implementing activities and to avoid the interference of politics.

**Component 4: Implementation of the Law.** Analysis of certain strategic objectives or efficiency of implementation of measures from this strategic area has been considerably determined by former findings presented in the interim report published at the end of 2010. The said report contains statements concerning the level of implementation of certain specific programme activities from the domain of implementation of the Law, drawbacks of their implementation and finally recommendations regarding what the responsible institutions should or could do in order to entirely achieve the objectives of this strategic area. Also, the first phase of the monitoring in this strategies area indicated several general tendencies in the so far implementation of certain programme measures. In short, they relate to the fact that the undertaking of envisaged measures largely depends on: (a) general level of awareness of the relevant institutions of their tasks in implementation of the said legal-strategic documents, (b) set priorities of the institutions that mainly include some other objectives different from efficient fight against corruption (it was actually about the meeting of requirements of the so called Road Map for visa liberalisation for BiH citizens), (c) mainly promise-based support to the objectives of the 2009 – 2014 Anti-corruption Strategy, and (d) other factors that prevented more successful achievement of objectives in this area (the fact that the Anti-corruption Agency has not *de facto* become operative was indicated as a major drawback).

Such status in the strategic area of the implementation of the Law affected the level of involvement of the relevant institutions in undertaking certain programme activities, level of implementation of the specific strategic objectives and general impression concerning the relatively low success in achieving strategic objectives in this area.

**Component 5: Coordination and implementation of the Strategy.** An important part of the implementation of the 2009 – 2014 Anti-corruption Strategy concerns the harmonisation of activities of all relevant institutions in the implementation of the set legal-strategic objectives in this area. In light of that it was necessary to ensure appropriate normative, institutional and other preconditions for effective coordination and comprehensive implementation of the strategic activities. So far, partial progress has been made concerning the said preconditions and it mainly relates to normative aspects of coordination of the Strategy and the Action Plan. As a matter of fact, the Law on Anti-corruption Agency stipulates that this authority shall be empowered to coordinate and supervise the implementation of the Anti-corruption Strategy and the corresponding Action Plan and shall have advisory and instructive role regarding the implementation of these documents in practice. Content-wise, coordination should be realised through several, in nature different but compatible measures, consisting of: (a) mediation in policy making for suppression of corruption in all BiH institutions, (b) coordination and supervision of application of the measures, (c) development of the coordination system, (d) cooperation with non-governmental sector, (e) better communication and cooperation between stakeholders, and (f) preconditions for creation of future legal-strategic documents for continuous struggle against this phenomenon. Anyway, a holder of these activities should be the Anti-corruption Agency that should start operating activities within its competence, including the coordination of implementation of the Anti-corruption Strategy.

### ***Component 1: Capacity building of the Anti-corruption Agency.***

This is probably the most important component, that is, strategic objective of the Strategy itself. Namely, the strategic document in its programme objective provides 3 of 4 general objectives that directly relate to further sub-objectives and activities that need to be carried out within this component:

1. Establish the efficient system of coordination of activities of authorities in BiH aimed at fighting corruption in order to ensure consistency and sustainable results of the activities carried out within the Strategy
2. Establish the system for prevention of corruption in all structures of public institutions in BiH in order to reduce risk of corruption.
3. Build capacity of bodies in charge of fighting corruption at all levels of government in order to efficiently manage programmes for prevention of corruption, detect and check cases of corruption and instigate appropriate procedures against the offenders.

General assessment of implementation of the activities, that will be later elaborated in detail, is that this strategic objective/component fails to meet time limits foreseen in the Strategy. As most of the activities in this component relate to the Anti-corruption Agency, this outcome should not be taken as a surprise as the Agency is expected to become operative only in the second half of 2011. The Agency has not started performing statutory functions thus creating gap in supervision and coordination of implementation of the Anti-corruption Strategy and its Action Plan. Based on Action Plan and responsibilities provided for in law, major problem evidently lies in the lack of commitment on the part of the BiH Parliament when it comes to establishment of capacities and on the part of the Commission for selection and monitoring of the operations of the Agency.

#### **Commission for selection and monitoring of the operations of the Agency is not efficient in building of the capacity of the Agency**

Pursuant to Law, the Commission for selection and monitoring of the functioning of the Agency has nine members: three representatives from the upper chamber of the Bosnia and Herzegovina Parliamentary Assembly, three representatives of the lower chamber of the Bosnia and Herzegovina Parliamentary Assembly, two representatives of the academic community and one representative of the non-governmental sector. The Parliamentary Assembly of Bosnia and Herzegovina shall nominate the Commission with the 4-year mandate. The Commission shall issue the rules of procedure. Three months before the mandate of the nominated members of the Commission expires, the responsible institutions shall open the procedure of nomination of the new members. As the Commission was nominated in the period immediately before the General elections in 2010, their delayed activities are not any surprise as the mandate of some of the members expired automatically after the new upper chamber and lower chamber were established. Taking all this into account, it can be expected that capacity building of the Agency at best may commence in few months following the constituting of the new government.

**Within the programme area 1.1. of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

1.1. Development and adoption of the legal framework for the operation of the Anti-corruption Agency; for coordination of implementation of the Anti-corruption Strategy, for prevention and education programmes of the Agency.

Time limit for implementation: January 2010 (for adoption of the Law), remaining activities June 2010

Responsible institutions: BiH Council of Ministers, BiH Parliamentary Assembly, Anti-corruption Agency

Analysis of the level of implementation of the specific measure: The BiH Parliamentary Assembly lower chamber adopted the Law on Anti-corruption Agency in December 2009 and raised its expectations then. Exactly this activity was foreseen in the Strategy while other activities remained to be mere expectations. Since no functional Agency with managerial staff has been established since the enactment of the Law, it is not any surprise that no applicable rulebooks, systematisation of jobs with job descriptions and programme activities for coordination of implementation of the Strategy and Action Plan have been enacted to regulate the operations of the Agency. In the concerned period, there have been certain activities of the BiH Ministry of Security in this area. However, no specific results were achieved. In the 2010 BiH Progress Report, European Commission indicates that the draft rulebook of the Anti-corruption Agency is in place, that space for the Agency premises has been ensured within the SIPA premises in Lukavica and that the Agency is still understaffed.

Analyses indicate that major problem is the lack of commitment on the part of the BiH Parliament to build capacity. Namely, the procedure for selection of managerial staff has been dragging since April 2010, that is, since the time when the acting director of the Agency was to be nominated. At its 75<sup>th</sup> session in April 2010, the BiH Parliamentary Assembly provided its response concerning the conclusion that stipulates that “the upper chamber is obliged to nominate at the next session the acting Director of the Anti-corruption Agency, who is to perform the function until the director has been nominated.” The nomination of the acting director of the Anti-corruption Agency (following the conclusion of the upper chamber at its 75<sup>th</sup> session held on 7 April 2010) was continued at the next session of the BiH Parliamentary Assembly when the BiH Deputy Minister of Security, Mijo Krešić assumed the responsibility of the acting director of the Anti-corruption Agency pursuant to Law on Anti-corruption Agency (BiH Official Gazette, No. 103/09) not later than 1 August 2010.

At the 82<sup>nd</sup> session, the conclusion of the upper chamber from the 76<sup>th</sup> session held on 21 April 2010 was amended following the incumbency of the Security Deputy Minister, Mijo Krešić as the director of the Anti-corruption Agency. Thereupon, the time limit of 1 August 2010 was deleted, which ensured the opportunity to act in an irresponsive manner and

cause delay in the selection of the director of the Agency and establishment of its normal functioning.

Only on 28 December 2010, at the fifth session of the Commission for selection and monitoring of operations of the Anti-corruption Agency, a list of 13 candidates<sup>5</sup> for the position of the Agency director and deputy director was established. The most successful candidate is Ramiz Huremagić with 692 points, followed by Damir Vejo with 585 points, Sead Lisak with 573 points, Milan Krulj with 565 points, Blanka Benković with 560 points. Following the procedure of ethnic quotas, the functions of the director and deputy director should be performed by the following three candidates: Ramiz Huremagić as a Bosniak, Milan Krulj as a Serb, and Blanka Benković as a Croat<sup>6</sup>.

Since the Agency managerial staff has not been nominated, it is not any surprise that implementing regulations concerning the operations of the Agency, its role in prevention and coordination of fight against corruption and awareness raising programmes have not been enacted. The cause for delay is insufficient readiness of the stakeholders, in part, due to General elections activities that took place in October 2010.

Recommendations: As for this specific measure, the most urgent action is the nomination of the managerial staff of the Anti-corruption Agency in order to start performing functions envisaged by law and in accordance with the Anti-corruption Strategy. It should be propped by the soon enactment of all implementing regulations concerning the operations of the Agency and its coordination and prevention related role in fighting corruption. The BiH Council of Ministers should ensure adequate working conditions, including the necessary resources and staff, which is a potential obstacle for the operation of the Agency. Actually, the analysis of the 2011 – 2013 draft framework budget and operation of the BiH Civil Service Agency indicates that no tangible resources or staff has been envisaged by 2010 in order for the Anti-corruption Agency to adequately perform its tasks.

**Within the programme area 1.2. of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

1.2. Ensuring material conditions for the operation of the Agency, including but not restricting to the following: office, budget allocated.

Time limit for implementation: December 2010

Responsible institutions: BiH Council of Ministers

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<sup>5</sup>Candidates verified by the BiH Election Commission were: Izet Nizam, Zoran Đerić, Milanko Renovica, Sead Lisak, Radoje Badnjar, Jasmin Jaganjac, Sreto Pekić, Ramiz Huremagić, Blanka Benković, Dragan Slipac, Vukašin Crnjak, Ismail Sarić and Milan Krulj.

<sup>6</sup>Statement of Milorad Živković, member of provisional commission, dated 28 December 2010

Analysis of the level of implementation of the specific measure: Although the Agency has been formally situated on the premises of the State Investigation and Protection Agency (SIPA) in the territory of the Istočno Novo Sarajevo municipality, working conditions remain unsatisfactory. A major concern is the sustainability of this solution. Namely, as the rulebook on systematisation of jobs and job descriptions is not in place, it does not make any sense to analyse the adequateness of the existing office for the purpose of the Agency. Also, the Anti-corruption Agency is an independent administrative organisation that is now largely dependent on the BiH Ministry of Security and State Investigation and Protection Agency (SIPA). Also, the Law stipulates that the Anti-corruption Agency shall be focused on responsibility rather towards legislative authority and not executive authority, which is not the case. The fact confirming that is the lack of budget allocated for the Agency. The analysis of the 2011 – 2013 framework budget indicates that the BiH Council of Ministers did not plan any resources for the operation of this Agency. In addition, there is not a single reference to the Anti-corruption Agency in the decision of the BiH Council of Ministers No. 316/10 on provisional financing of the institutions of Bosnia and Herzegovina and international obligations of Bosnia and Herzegovina for the period from January to March 2011. At the same time, on the basis of the Decision on takeover of tasks, objects, resources and employees between the BiH Ministry of Security, State Investigation and Protection Agency and BiH Agency for coordination of police bodies (BiH Official Gazette, No. 94/10), 6,300,000.000 KM was allocated for provisional financing of the BiH Agency for coordination of police bodies in the period from January to March 2011. Despite the fact that the BiH Agency for coordination of police bodies came into existence at the same time like the Anti-corruption Agency, executive authority in this case demonstrated seriousness when it comes to its establishment.

The lack of allocated budget of the Agency and its permanent office space definitely affects future staff related solutions. By browsing vacancies<sup>7</sup> announced on the web-site of the Civil Service Agency in 2010, no vacancy can be found for the Anti-corruption Agency. This is an obvious concern and it cannot be expected that the Agency would become operative in its full capacity by mid next year as the Agency acting director Mijo Krešić said.<sup>8</sup>

Recommendations: The BiH Council of Ministers should get more involved in order to realise this specific measure. There should be budget allocated for the Anti-corruption Agency in the strategic documents. That means that the institution must include the Agency in the list of budget beneficiaries with the allocation of funds and budget projection for the next three years. At the same time, it is necessary for the Agency to regulate its operations by the by-laws and to enact rules of procedure, systematisation of jobs and job descriptions and programme activities. This specific measure is directly related to building of full capacity of the Anti-corruption Agency.

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<sup>7</sup>Open vacancies, vacancies in procedure and closed vacancies ([www.ads.gov.ba](http://www.ads.gov.ba))

<sup>8</sup>Hayat Television, statement of Mijo Krešić of 1 October 2010

**Within the programme area 1.3.of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

1.3. Recruitment of the Agency staff to ensure efficient operations

Time limit for implementation: June 2010

Responsible institutions:BiH Council of Ministers, BiH Parliamentary Assembly, Anti-corruption Agency

Analysis of the level of implementation of the specific measure: It was impossible to conclude by the analysis of the relevant reports and sources whether the Anti-corruption Agency has carried out envisaged activities. Namely, the nomination of the director and deputy director and the recruitment of officers and technical staff, which was not performed, are suggested as key indicators for the implementation of this measure. Like in the case of the previous measure, a basis for the implementation of this measure is the Anti-corruption Agency, that is, its managers who have not been nominated yet.<sup>9</sup> The Agency has the acting director. However, it remains unclear who manages the Agency as the acting director became the delegate in the government of Tuzla Canton following the local elections in 2010.

Recommendations: Like in the case of material working conditions, recruitment of necessary staff of the Agency for the purpose of efficient operations requires the nomination of the director, enactment of the rules of procedure, rulebook on systematisation of jobs and job descriptions. At the same time, it is necessary to institutionalise the allocated budget of the Agency and announce vacancies for officers and technical staff. As the nomination of the Agency director is not expected to happen before February 2011, it is difficult to say when this measure will be implemented. That means that a one-year delay of the implementation is expected.

**Within the programme area 1.4.of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

1.4. Establish efficient training programmes in order to improve Agency staff's skill so they perform their tasks in efficient and professional manner.

Time limit for implementation: December 2010

Responsible institutions: Anti-corruption Agency

Analysis of the level of implementation of the specific measure: By analysis of the 2009 – 2014 Anti-corruption Strategy in the period by the end of 2010, it can be concluded that this

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<sup>9</sup>In December 2010, representatives of NGO sector had a meeting with the acting director of the Anti-corruption Agency, Mr. Mijo Krešić. Mr. Krešić then indicated that funds were available for the recruitment of 10 persons, and that he had recruited 2 persons (a Bosniak and a Serb) to assist him in the Agency. As no open competition procedure was conducted, it remains unclear how the positions were filled and the positions were most likely envisaged for political appointees.

specific measure was not implemented within the envisaged time limit. Since the managerial staff was not nominated in the Anti-corruption Agency and officers and technical staff were not recruited, it by no means made sense to plan and develop training programmes. Namely, only after the Agency has become fully staffed and their general and specific knowledge and skills screened, it will be possible to develop certain training programmes.

Recommendations: After the Agency becomes established and fully staffed (managerial staff, officers and technical staff), training programmes should be developed in order to improve staff's skills for efficient and professional performing of tasks. Therefore, it is necessary to screen knowledge and skills of the employees, assess their interests, set organisational objectives and define programme areas. Since it was donations that were mainly used for activities related to fighting corruption, this source should also be taken into consideration when it comes to training needs. Also, there already exists training regularly provided by civil service agencies. Actually, in 2008 the RS Civil Service Agency organised training for 33 officers concerning the deontological principles and anti-corruption policies. Also, as many as 348 persons in the F BiH received training concerning these issues organised by the F BiH Civil Service Agency.

**Within the programme area 1.5. of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

1.5. Adopt the code of conduct of the Agency and the code of conduct of the Agency staff

Time limit for implementation: December 2010

Responsible institutions: Anti-corruption Agency

Analysis of the level of implementation of the specific measure: Like in the case of the previous measure, this measure has not been implemented by the envisaged time limit due to failure to establish the functional Anti-corruption Agency. As a matter of fact, adoption of the code of conduct of civil servants in the state-level institutions is a major recommendation of the Council of Europe consultative body related to the Group of states against corruption (GRECO) from 2009. In its recommendation<sup>10</sup>, GRECO indicates that the code of conduct must include explicit definitions of ethical behaviour and risk of corruptive behaviour and emphasizes training at all levels of government and practical issues including the receiving of gifts, conflict of interests, etc.

Recommendations: Following the recruitment of the necessary staff (managerial staff, officers and technical staff), it is necessary to adopt the code of conduct of the Agency and to define standards of behaviour of the Agency staff. This code of conduct should definitely

<sup>10</sup>Compliance report on Bosnia and Herzegovina, Second Evaluation Round, 41st plenary meeting, Strasbourg, 16-19 February 2009

be adjusted to the latest amendments of the Law on Civil Service in the BiH institutions<sup>11</sup>, and the envisaged state-level code of conduct. As indicated in the GRECO recommendations, the code of conduct must include explicit definitions of ethical behaviour and risk of corruptive behaviour, with emphasis on training at all levels of government and practical issues including the receiving of gifts, conflict of interests, etc. As the staffing of the Agency is slow, the time limit for the implementation of this measure should be prolonged by at least 6 months. Also, it is important that the secondary legislation of the Agency be in compliance with the code of conduct that is based on amendments to the Law on Civil Service in the BiH institutions.

**Within the programme area 1.6.of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

1.6. Develop and adopt all relevant guidelines, standard rules of procedures and instructions for the Agency staff.

Time limit for implementation: December 2010

Responsible institutions: Anti-corruption Agency

Analysis of the level of implementation of the specific measure: Like in the case of the previous measures, inadequate functioning of the Anti-corruption Agency caused delay of the implementation of this specific measure. Taking into account the indications of the implementation (development and upload on the Agency web-page of certain relevant guidelines, standard procedures and instructions for staff), this can be confirmed with certainty. Taking into account the purpose and activities of the Agency, some of the key guidelines and procedures will relate to communication and relations with citizens, business sector and civil society with respect to the application of the Law on Freedom of Access to information and coordination of activities of the Agency with other bodies of public and state administration.

Recommendations: Following the establishment of the full capacity of the Agency and enactment of the rulebook on systematisation of jobs and job descriptions, it is necessary to enact internal guidelines, rules of procedure and instructions for staff as soon as possible. This is extremely important because building of an organisational culture within an institution takes years, and the lack of it causes non-professional and unethical behaviour in the institution. Therefore, it is crucial to enact internal implementing regulations following the recruitment of staff in order to facilitate performance of staff. Taking into account the purpose and activities of the Agency, it is necessary to enact guidelines and procedures respecting good governance principles, user oriented principles, transparency, accountability, openness for cooperation and publicity in work.

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<sup>11</sup>Law on amendments to the Law on civil service in the BiH institutions (BiH Official Gazette, No. 43/09)

**Within the programme area 1.7.of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

1.7. Reinforcement of the training process within the Agency with the purpose of ensuring a strong organisational culture based on the code of conduct

Time limit for implementation: December 2011

Responsible institutions: Anti-corruption Agency

Analysis of the level of implementation of the specific measure: This measure directly refers to the measures under 1.4. and 1.5. (training programme and code of conduct). Taking into account the status of the measures under 1.4.and 1.5., the implementation of this measure depends on conditions related to organisation, material and human resources.

Recommendations: Since the time limit for the implementation of this specific measure is open, it depends on the aforementioned steps and measures. Taking into account the purpose of these activities, it would be crucial for the Anti-corruption Agency to establish cooperation with the relevant institutions in the Region (e.g. Serbian Anti-corruption Agency or Croatian Anti-corruption Office) or in the EU, in order to exchange experience and practice related to the said measure and necessary activities. In addition to funds ensured within the national budget, IPA funding may be relied upon for these activities.

**Within the programme area 1.8.of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

1.8. Assessment and monitoring of the implementation of the Strategy; Recommendation of the necessary amendments in consultation with all stakeholders

Time limit for implementation: December 2011

Responsible institutions: Anti-corruption Agency

Analysis of the level of implementation of the specific measure: This measure also depends on the dynamics of capacity building within the Agency and on implementation of other activities related to specific measures. Taking into account the period of two years from the beginning of the implementation of the Strategy, this measure is planned in accordance with the rules on strategic planning. However, taking into account the so far dynamics of implementation of the activities and measures from the Action Plan, there emerges the issue of purposefulness of these activities, especially from the aspect of operations of the Anti-corruption Agency.

Recommendations: Taking into account that activities from the present report may serve as an initial input for the assessment and monitoring of implementation of the Strategy, it can be concluded that the implementation of the Strategy has been quite delayed. It should be noted that with this dynamics few activities from the original strategy will be implemented and it is

recommended that the envisaged time limit (December 2011) for proposal of necessary amendments with consultations with all stakeholders should be postponed by at least six months. Namely, the consultation process itself concerning the Strategy is not a simple task. Therefore, it is necessary to identify key stakeholders (formally and in practice), determine their role and interest in further implementation and create potential alternatives for the elimination of possible resistance. Broad consultation process with the stakeholders in the implementation of the Strategy should take several months. It should not be a mere delivery of the report and plan for approval or comment. The Agency's role here is crucial as well as that of the BiH council of Ministers, BiH Parliamentary Assembly and entity and cantonal governments and parliaments.

**Within the programme area 1.9.of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

1.9. Development and implementation of anti-corruption action plans across various fields

Time limit for implementation: June 2011

Responsible institutions: Relevant authorities at state and entity level of government and BiHBrcko District

Analysis of the level of implementation of the specific measure: This is one of the most important elements of the Strategy and is directly related to the activities of the Ministry and other public institutions concerning the development of the anti-corruption action plans (Measure 2.6). The time limit for this activity should be harmonised with the time limits and capacities within the ministries and other public institutions. However, the situation is that no information is available concerning any institution at state or entity level or in BiHBrcko District that potentially enacted any anti-corruption plan. It is indicated by the implementation indicators and by the lack of action plans or reports to be provided to the Anti-corruption Agency. There are numerous reasons for that, including in particular "lack of ownership" and insufficient coordination of administrative framework for decision making. Speaking of the "lack of ownership", we address the state-level institutions (ministries and agencies) that have not been aware of their obligations in this area since the beginning of the implementation of the Strategy. The likely reason for that is the lack of implementing regulations that should specify the format, structure and content of the concerned plans, which misleads the institutions about their obligations in this area. Speaking of insufficiently coordinated administrative framework for decision making, we mean that based on decisions of executive and legislative authorities entities and Brcko District have not adopted the existing Strategy according to the Law on Anti-corruption Agency. Therefore, behaviour of the relevant entity and Brcko District authorities is not any surprise. It cannot be realistically expected to get this measure implemented by the envisaged time limit (June 2011).

Recommendations: In order to implement this measure or to develop and implement anti-corruption action plans across the fields (public health, police, judiciary, education, inspections, construction land, etc.), it is first necessary to communicate the present Strategy and Action Plan to all stakeholders. That means meetings between the Agency with all responsible institutions at state level, providing assistance for defining format, structure and content of the plans (possibly by implementing regulation of the Council of Ministers), establishment of the communication channel, definition of time limits, etc. Given the dynamics so far, these activities are not expected to be implemented by the end of 2011. As for the entity level and BiH Brčko District institutions, the most important initial activity of the Anti-corruption Agency should be comprehensive communication with the executive and legislative authorities aiming at adoption of the Strategy and commitments resulting from it. Despite the fact that the Law stipulates this, no improvement in this area can be expected without the involvement of the Agency. Only after the executive and legislative authorities of the entities and Brčko District adopt the Strategy and the corresponding Action Plan, it can be expected that their relevant authorities (with or without implementing regulations) will gradually develop and implement anti-corruption action plans. The fact that the RS Government in 2009 enacted the Anti-corruption Strategy should be emphasized in a sense that it hampers the adoption of the national Strategy and the corresponding Action Plan. Implementation of this measure in the relevant entity and Brčko District authorities can be expected only at the beginning of 2012.

**Within the programme area 1.10. of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

1.10. Ensure that the highest trust be placed in the Agency as the anti-corruption body

Time limit for implementation: December 2012

Responsible institutions: Anti-corruption Agency

Analysis of the level of implementation of the specific measure: If all said activities related to capacity strengthening are realised, the Agency may implement the envisaged measure in the envisaged time limit (December 2012). This primarily encompasses its so far results and the possibility for the public to control the performance and activities of the Agency in a transparent and timely manner. That means that it is necessary for the Anti-corruption Agency to have professional staff, relevant internal documents, organisational culture and major functions. The main obstacle to this may be obstruction related to corruption affairs of the political elite in the country that the Agency may touch upon. Also, the integrity of the director and his attitude and that of staff towards the statutory obligations related to the operation of the Agency are crucial. However, even in this phase certain facts have been identified as potential trouble in future implementation of this measure – interference of the politics with decision making by managers, lack of commitment of the existing managers for the implementation of the Strategy and untimely issuing of certain decision, etc.

Recommendations: In order to ensure the highest trust placed in the Agency as the anti-corruption body, it is crucial to transparently appoint managers as soon as possible. Following that, the Agency should immediately perform preparations related to organisation, material and human resources and to start performing its tasks including prevention of corruption and coordination of fighting corruption. That for sure is not an easy and simple task but it is possible to achieve it with respect to envisaged time limit. The result of the activities should be the best reputation of the Agency when it comes to public opinion of fighting corruption. There should be more qualitative reports on offences involving corruption. There should not be any objections to the operations of the Anti-corruption Agency itself.

**Within the programme area 1.11. of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

1.11. The Agency coordinates the implementation of action plans for the purpose of more efficient fighting corruption and prevention of corruption in various fields

Time limit for implementation: June 2011

Responsible institutions: Anti-corruption Agency, relevant state-level, entity and Brcko District ministries

Analysis of the level of implementation of the specific measure: This measure, envisaged for June 2011, is non-realistic taking into account that the new BiH and entity governments have not been established until 2011 following the October General elections. Given the fact that since the moment of the approval of the Strategy to date no formal decision exists by the entities and Brcko District to adopt the 2009 – 2014 Anti-corruption Strategy and the Action Plan, the implementation of the measure is seriously hampered. Also, it should be reiterated that the Agency is currently unable to perform adequate operations not to mention coordination of institutions at state and entity level concerning the implementation of action plans.

Recommendations: As recommended for measure 1.9. the Anti-corruption Agency should establish communication with entity executive and legislative authorities for the purpose of adoption of the Strategy and commitments resulting from it. Only after that, entity Anti-corruption Strategy action plans can be developed. They should be in vertical and horizontal compliance and have time limits in accordance with the national Strategy. As for the state level, in addition to improvement of communication between the Agency and relevant state-level ministries, it is recommended to ensure certain advisory assistance with adjustment and development of action plans for each ministry. The time limit for this activity should be the end of 2011.

**Within the programme area 1.12. of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

1.12. The Agency is able to conceive and implement the modern anti-corruption programmes and corruption awareness raising programmes

Time limit for implementation: December 2012

Responsible institutions: Anti-corruption Agency, BiH Council of Ministers

Analysis of the level of implementation of the specific measure: Taking into account the time limit for this measure (December 2012), the measure seems to be realistic and should perhaps take into consideration the status of the existing civil society that is active in this field. As a matter of fact, all countries agreed on the common approach of the public and civil sector concerning the anti-corruption programmes and corruption awareness raising programmes. If this measure stipulates that the Agency should have staff available for all segments, there may emerge the risk of over sizing and cumbersome administration within the Agency itself. Anyway, the realisation of the proposed measure depends on the future capacity of the Agency.

Recommendations: Development and implementation of the modern anti-corruption programmes and corruption awareness raising programmes does not necessarily mean that this is an exclusive task of the Agency. Namely, taking into account the importance and role of the civil society in this area, their involvement is crucial in the anti-corruption activities and corruption awareness raising programmes. The role of the Agency in this area should rely on programmes developed on the basis of analyses conducted, organisation of public calls for NGOs to propose projects (together with the Agency or on their own) in this area and funds raised for this purpose in cooperation with the BiH Council of Ministers. It should be borne in mind that public calls may be based on tenders announced by the Agency or by means of the existing mechanisms in the BiH Ministry of Civil Affairs. This definitely requires allocation of additional funds. Finally, the interest of the EU in the issues of corruption should not be neglected. Therefore, certain projects for this purpose may be proposed within IPA funds.



## ***Component 2: Prevention of Corruption***

A distinction is made between two forms of corruption: situational and social corruption. Situational corruption tend to eliminate situations that may lead to corruptive behaviour, and social corruption is focused on social and economic factors that may lead to or affect behaviour with elements of corruption. The *2009 - 2014 Anti-corruption Strategy* in Bosnia and Herzegovina includes integrated approach to preventive anti-corruption activities: almost equal attention was devoted to prevention of situational and social corruption. Thus, typical situational preventive activities presented in the *UN Manual for anti-corruption policies* are also presented in the relevant BiH *Anti-corruption Strategy* (including discretion of officers, simplification of procedures, improvement of transparency, etc.) as well as typical social preventive activities (raising public awareness and participation of the public in anti-corruption activities). Taking into account that the author of the *Strategy* divided them into two parts, this chapter is devoted only to situational preventive activities addressed in the III chapter of the *Strategy* as follows.

The first element of the anti-corruption preventive activities refers to responsibility. Responsibility in the context of situational anti-corruption preventive activities refers to the relationship between a holder of a right (a principal) and an agent or agencies (institutions) implementing the right; assigned duties are to be performed duly and with *bona fide* attitude towards the principal. Responsibility includes systems of internal and external monitoring and control within the administrative apparatus, responsibility of public institutions and civil servants to provide explanations to the public and interested parties as well as implementation of regulations (Meagher, 2008). Transparency is taken as an important element of responsibility: it is a quality of clear, sincere and open acting on the part of decision makers both in private and public sector. Transparency is a principle implying predictable and rational acting, while sufficient information must be available in order to establish whether a certain procedure was respected when decision was made. Therefore, transparency is a key element of a responsible governance that is necessarily related to better allocation of resources, better efficiency and prospect for (economic) success (Anti-Corruption Resource Centre, 2011). Meagher states that transparency includes two types of openness: essential openness indicating the level in which the content of state policies and procedures is familiar to all interested parties, and procedural openness indicating the level in which official decisions are made publicly, that is, when the public may follow procedures and express their positions. The concept of transparency and responsibility in the *Strategy* and the corresponding *2009 - 2014 Anti-corruption Strategy Action Plan* has become operational by a number of measures with a following common characteristic – reform and establishment of a more efficient administration.

Integrity is considered to be practical implementation of principles of professional and personal ethics. It is a major condition of a legitimate relation of an authority with the public: it links the administration to the legal system and regulates its relation with the society

making it predictable and accountable. Thus, integrity establishes a criterion of trust, competency and professionalism. In the domain of prevention of corruption, in adequate relation towards officers, etc., in addition to raising awareness of harmfulness of corruption, integrity is determined and improved by clear norms governing office management where general or specific legal acts are applied and by internal or external control of the quality of office management. *The 2009 – 2014 Anti-corruption Strategy* in Bosnia and Herzegovina elaborates the concept of integrity as an element of preventive anti-corruption activities by development of integrity plans, assessment of risk across the fields prone to corruption and by testing of integrity across sectors of public administration and individual positions where corruption was found.

As stated in the former *Monitoring*, notorious is the fact that systems with complicated rules concerning the market business activities, in particular those with considerable discretion rights, are more sensitive to corruption than those with clear and transparent rules. Simple, clear and transparent rules reduce the possibility for inadequate acting of public servants. These rules actually increase the possibility that offenders will be held legally and politically liable. They also improve efficiency of administration. Several administrative levels with complex procedures and unclear reporting rules, responsibilities and obligations hamper the possibility to make difference between the legal and illegal action. Such instruments also protect corruption against formal and informal control even in situations when existence of corruption is beyond doubt. They hamper efficiency of establishment of individual responsibility (United Nations Office on Drugs and Crime, 2003). Simplification of business environment has become operational in the *Strategy* by means of three short-term and two mid-term measures that are aimed at identifying of complex procedures and their elimination or simplification and supervision on the part of parliament.

In addition to a statement that the *Action Plan* and *Strategy* are not in mutual compliance content-wise and time limit-wise,<sup>12</sup> given the fact that some measures from the *Action Plan* refer to different time periods in 2010, and some of the measures refer to the period until the beginning of 2011, it should be noted that this report provides analysis of any achievement concerning implementation of the *Action Plan* after the most recent monitoring in the last quarter of 2010. This approach is primarily justified by the fact that some of the preventive measures were to be implemented in the last quarter of 2010 and since their implementation is continuous and gradual it makes sense to analyze some of the objectives yet to be achieved.

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<sup>12</sup>Compare the most recent *Monitoring of implementation of the 2009-2014 Anti-corruption Strategy*, Transparency International BiH.

## Public sector reform, transparency and responsibility

### SHORT-TERM MEASURES

#### Specific measure 2.1

Develop and adopt a public sector modernisation programme with the purpose of strengthening public sector in BiH, so that it performs its function in a more efficient, reliable and predictable manner.

**Time limit for implementation:** November 2010

**Responsible institution:** BiH Council of Ministers, Agency, Public administration reform coordinator's office

**Implementation indicators:** BiH Council of Ministers adopted the public sector modernisation programme.

**Analysis of the level of implementation of the specific measure:** As indicated in the previous *Monitoring*, the Anti-corruption Agency is not functional at the time of writing the report, which largely hampers implementation of the preventive anti-corruption tasks. This institution is actually an initiator and coordinator of almost all preventive activities. Therefore, the lack of its functioning is a serious obstacle for any attempt to fight corruption.

Thus, questioned about the progress of the anti-corruption preventive activities, the general secretariat of the BiH Council of Ministers in its letter responded by referring to the fact that the Public administration reform coordinator's office and the Agency were responsible to enact the public sector modernisation programme, and that the said institutions failed to provide reports for consideration and thus the Council of Ministers was disabled to discuss them and officially enact them. Following the development of the most recent *Monitoring*, the Public administration reform coordinator's office reported that no activities had been launched with the aim of development of a separate document such as the public sector modernisation programme. However, in its response concerning the present *Monitoring*, the Public administration reform coordinator's office states that a meeting was initiated with the representative of the Anti-corruption Agency in December 2010 concerning the development of the public sector modernisation programme, and that it was concluded that in addition of the general idea, the existing *Public Administration Reform Strategy* was to be revised and another document enacted to directly address the issue of public sector modernisation in the context of fight against corruption. The document should be enacted in spring 2011. Despite the hints of progress in implementation of this measure, it has not been implemented so far (especially taking into account the time limit – November 2010).

### **Specific measure 2.2**

Analysis of implementation of the Law on freedom of access to information in all institutions at all levels of government in BiH.

**Time limit for implementation:** August 2010

**Responsible institution:** Agency, all ministries and other authorities at all levels

**Implementation indicators:** All public institutions at all levels have their procedures for freedom of access to information and have analyzed them; The reports have been provided to the Agency and BiH Council of Ministers.

**Analysis of the level of implementation of the measure:** As Kregar (2008) states, relationship between the government and citizens is based on trust. Therefore, openness is a principle and obligation of public authorities, and citizens are entitled to accessibility to information possessed by public authorities. In order for the civil society to monitor operations of public institutions, exercising right to access to information is a powerful instrument of that concept. Citizens need to be aware of the set-up of public authorities, their role, scope and manner of utilisation of resources and the system of responsibility. That has become the European standard of public administration (Kregar).

Like in case of the previous measure, the BiH Council of Ministers has not received any analysis of procedures of implementation of the Law on freedom of access to information. Based on a survey conducted by Transparency International (2010) on awareness of institutions of the *2009-2014 Anti-corruption Strategy*, majority of those institutions that participated in the survey at entity and Brcko District level performed an analysis of implementation of the Law on freedom of access to information. For that purpose they could provide exact number of parties who addressed them requesting the access to information possessed by them. Most of them received a response. However, since the Agency is not functional and for that reason no report could be provided to it concerning the implementation of the Law, and analyses conducted by the institutions were not initiated by the Agency based on the *2009-2014 Anti-corruption Strategy* and it was rather a result of some other activities, logical is the conclusion that this measure has not been implemented.

### **Specific measure 2.3**

Establish open communication channels in the institutions at all levels of government in BiH in order to encourage client or civil servants to report corruption (indicative list of communication channels may contain sealed mail boxes, special telephone lines, e-mail address).

**Time limit for implementation:** July 2010

**Responsible institution:** Agency, all ministries and other authorities at all levels

**Implementation indicators:** Sealed mail boxes, special telephone lines, e-mail address to which individuals may report corruption (including the possibility of anonymous complaints).

**Analysis of the level of implementation of the measure:** Notorious is the fact that because of symptomatic behaviour of people prone to corruption, it is characterised by clandestiness. It is not as obvious as other illicit activities. In addition, corruptive act is often perpetrated in intimacy of the perpetrators. Therefore, witnesses are excluded. The measure under 2.3. of the *Action Plan* is aimed at encouraging reporting of corruption in order to eliminate or reduce difficulties in an attempt to detect corruption. It is close to impossible in Bosnia and Herzegovina to establish the system in which a person would be able to anonymously report corruption without fear of any maltreatment (it is probably the intention of the author of the *Strategy*). Such mechanisms do exist in some places;<sup>13</sup> however, not in all authorities. Their activities in this field are not the result of systematic implementation of the *Strategy*. They are rather a result of efforts made in the overall public administration reform or initiatives of respective institutions. As the measure is in correlation with others (e.g., 2.6. and 2.12.), that have been incompletely implemented, it can be concluded that it has been to some extent implemented.

#### **Specific measure 2.4**

Develop regulations/procedures concerning protection of persons reporting corruption as well as policies ensuring that a civil servant or client of public administration reporting irregularities in *bona fide* will not be punished.

**Time limit for implementation:** December 2010

**Responsible institution:** Agency, BiH Council of Ministers

**Implementation indicators:** Regulations/procedures developed concerning protection of persons reporting corruption

**Analysis of the level of implementation of the measure:** Alen (2008) states that protection of *whistleblowers* that is subject to measure 2.4. from the *Action Plan*, is ensured not only by one legal act but by a series of norms contained in various acts, including the law on civil service, labour law, criminal code, law on administrative procedure, law on freedom of access to information, etc. By ensuring a guarantee that those reporting corruption will not be subject to maltreatment (those pressurizing them will be of course punished) will result in prevention of corruption as those having suspicions (not opinion, judgements, personal frustrations) are encouraged to express them and a chance to detect corruption is better.

Protection of whistleblowers is also subject to measure 2.4. from the *Action Plan*. Like in case of measures 2.1. and 2.2., the BiH Council of Ministers reported that it was not in a position to consider special regulations ensuring protection of those who report corruption *bona fide*. Therefore, the measure has not been implemented.

<sup>13</sup>More information in Transparency International Bosnia and Herzegovina, 2010.

### **Specific measure 2.5**

Conduct a survey of BiH citizens in order to identify areas where corruption is mostly expected.

**Time limit for implementation:** July 2011

**Responsible institution:** Agency, BiH Council of Ministers

**Implementation indicators:** Prepare detailed analysis of all regulatory regimes in the country in cooperation with all stakeholders.

**Analysis of the level of implementation of the measure:** The idea was for the measure to at least partially describe and diagnose status of prevalence of corruptive practice. Surveys are often the only available instrument for obtaining information on quality of public administration and an important supplement to objective measures (Kaufman, Kraay&Mastruzzi, 2008). The said authors state that corruption is by its nature illicit activity. Therefore, direct measures of its prevalence either do not exist or are unreliable, though. Thus, for example a frequency of referring to corruption in media actually indicates the extent to which media are free and objective to cover events; or, figures concerning the number of criminal offences or persecutions indicate professionalism and independence of police and prosecutors. They do not necessarily indicate only prevalence of corruption in society. Therefore, it makes sense to rely on subjective indicators of corruption, including public surveys.

This measure was to be implemented by the Anti-corruption Agency in cooperation with the BiH Council of Ministers. Unfortunately, a letter of the Council of Ministers general secretariat confirm that without the involvement of the relevant Agency, no achievement is possible.

### **Specific measure 2.6**

All institutions at all levels in BiH need to prepare their anti-corruption action plan.

**Time limit for implementation:** July 2010

**Responsible institution:** Agency, all ministries, authorities at all levels

**Implementation indicators:** Enacted plans; progress reports submitted to the Agency.

**Analysis of the level of implementation of the measure:** An important element of building public institutions and prevention of situational corruption is the enactment of anti-corruption action plans at all levels of government. An advantage of enactment of such action plans are clearly identified objectives, time limits and phases in which specific tasks are to be performed. Thus, a positive pressure may be exerted to perform tasks (people do not like to

be marked as obstructers or to be held legally and politically liable for failure to respect plans), by gaining public support acting in a transparent manner and reporting about it, by developing anti-corruption plans or programmes at local level or in an institution, etc. (United Nations Office on Drugs and Crime, 2004).

The survey conducted by Transparency International BiH in 2010 indicated that at entity (including cantonal) and Brcko District level, about one third of respondents in Bosnia and Herzegovina stated that there exists an anti-corruption action plan in the institutions of their employment and that it is followed; at state-level institutions, the same statement was given by one of five respondents. As this information is based only statements without verification of their correctness or quality (what is meant by anti-corruption action plan and is it really based on the *Strategy*), it must be taken with reserve. The statement that action plans exist is plausible. It can be concluded that the measure has been incompletely implemented.

### **Specific measure 2.7**

Modernisation of administration by introducing e-government and e-administration in order to facilitate interaction between citizens and administration and to simplify internal administrative procedures.

**Time limit for implementation:** December 2012

**Responsible institution:** BiH Council of Ministers through relevant ministries

**Implementation indicators:** Documents developed to initiate modernisation measures; Agreement reached concerning recommendations; Document has been published.

**Analysis of the level of implementation of the measure:** An element of the concept of responsibility of public institutions and their better efficiency is the introduction of mechanisms aimed at making performance indicators objective. The most important one is the introduction of e-government as objective performance indicators of every civil servant and legality of their performance. E-government has many advantages, including elimination and reduction of discretion in decision making, promptness, quick access to data possessed by public authorities, etc.

As it was stated in the previous *Monitoring*, modernisation of public administration through more extensive use of information technologies is a part of the *Public Administration Reform Strategy in Bosnia and Herzegovina*. As stated in the letter of the public administration reform coordinator's office, there was an increase in the use of information technologies in public administration from June 2010 to the end of the year from 32.26% to 37.70% in all authorities. It is worth mentioning the fact indicated by the CoM general secretariat that the decision on electronic management and e-government in the Council of Ministers had been issued, which means political support for e-government at this level of executive authority. The decision on e-legislation in Republika Srpska was also issued.

However, as e-government and management have to be implemented at all levels, and the indicator of implementation of the measure is the development of documents initiating establishment of the model of administration, this measure has been incompletely implemented. The time limit for implementation is the end of 2012. Therefore, the conclusion awaits final comments on implementation.

### **Specific measure 2.8**

Enactment of regulations in the domain of lobbying including obligation of lobbyists to register themselves and openly declare about their employers, for whom they are lobbying and to what purpose.

**Time limit for implementation:** December 2012

**Responsible institution:** Agency, BiH Council of Ministers

**Implementation indicators:** Draft Law on lobbying has been prepared, adopted by the BiH Council of Ministers and provided to the BiH Parliament.

**Analysis of the level of implementation of the measure:** In the former *Monitoring* it was indicated that lobbying is not considered to be only an expression of legitimate participation of subjects in political decision making, but also an articulation of expert and professional opinion and contribution to better quality of political processes. There have been no activities aiming to regulate this issue under 2.8. of the *Action Plan*, and in its letter the CoM general secretariat emphasizes that the document has not been provided or considered.

### **Specific measure 2.9**

Introduction of compulsory declaration of all persons participating in the public procurement procedures.

**Time limit for implementation:** October 2011

**Responsible institution:** Agency, Public Procurement Agency

**Implementation indicators:** List of legal persons has been adopted and published in official gazettes in BiH and Agency's web-page.

**Analysis of the level of implementation of the measure:** It was analysed in more detail in the previous *Monitoring* why it is not clear what the measure 2.9. from the *Action Plan* refers to. The UN Convention against Corruption Article 9 (referring to public procurement and management of public finance) does not stipulate compulsory declaration of legal persons participating in public procurement procedures as it is provided for in measure 2.9. from the *Action Plan*. If the point of transparent participation in public procurement procedures is the verification possibility (including review procedure) of market competition, then the

applicable Law on Public Procurement, although imperfect, provides a lot of possibilities in that sense. The letter received from the BiH Public Procurement Agency in response to the current monitoring, reads that this Agency has developed a web-based information system for delivery of reports on contracts awarded in public procurement procedures. It has been in used since 1 July 2009 and all authorities are obliged to deliver only electronic reports on contracts awarded in public procurement procedures for Chapter II and III of the Law. The process commenced on 1 January 2010. According to the letter, this information system offers broad possibilities to the Agency, including keeping record on public procurement procedures, development of reports for the purpose of statistics, etc. This system is a data base with data concerning national and international suppliers. It is a unique "list of legal persons participating in public procurement procedures". It is emphasized in the letter that it is the obligation of the Anti-corruption Agency to publish the list of legal persons participating in public procurement procedures in official gazettes because pursuant to Article 48 of the Law on Public Procurement it is not the obligation of the Public Procurement Agency. Taking into account the time limit for implementation given in the *Action Plan*, and the fact that certain activities concerning the declaration of subjects participating in the public procurement procedures do exist, and with reserve expressed in the former *Monitoring* and this analysis, it can be concluded that the measure has been incompletely implemented.

### **Specific measure 2.10**

Inspection authorities should cooperate with the Agency.

**Time limit for implementation:** January 2011

**Responsible institution:** Agency, BiH Council of Ministers, inspection authorities

**Implementation indicators:** Contact points within government institutions have been defined; they communicate with the Agency on a daily basis.

**Analysis of the level of implementation of the measure:** As it was indicated in the former *Monitoring*, inspection authorities are meant to be supervisory services of institutions, enterprises, etc. as well as of physical persons; the text of the *Strategy* does not specify whether it is internal or external inspection/supervision. As it was indicated in the former *Monitoring*, it can be stated that the initiator of the activities in this domain is the Anti-corruption Agency that is not functional yet. There were no activities concerning the implementation of the measure under 2.10.

### **Specific measure 2.11**

Review of efficiency of implementation of the legislation in prevention of corruption at courts

**Time limit for implementation:** December 2012

**Responsible institution:** Agency, relevant justice ministries, High Judicial and Prosecutorial Council

**Implementation indicators:** Progress report has been prepared including recommendations.

**Analysis of the level of implementation of the measure:** As it was indicated in the former *Monitoring* that the definition of anti-corruption legislation (referred to in point 2.11. of the *Action Plan*) is missing in the Strategy, it is accepted that the stakeholder should be the Anti-corruption Agency. Therefore, the report on efficiency of implementation of the anti-corruption legislation, as the indicator of implementation of the measure under 2.11. from the *Action Plan*, has not been prepared. According to *Action Plan* this measure should be implemented by the end of 2012. Some achievement is expected.

## **MEDIUM-TERM MEASURES**

### **Specific measure 2.21**

Enact code of conduct for public service in accordance with best European practice with the purpose of establishment of unique standards of behaviour of civil service in BiH.

**Time limit for implementation:** January 2011

**Responsible institution:** Agency, BiH Council of Ministers

**Implementation indicators:** Code of conduct enacted for public service and made obligatory for all employees in public institutions at all levels in BiH.

**Analysis of the level of implementation of the measure:** The CoM general secretariat indicated in its letter that no document addressing this issue was provided to them for consideration. As stated in the former *Monitoring* information is available that the draft code of conduct was made and provided to institutions for opinion. However, a new code of conduct was initiated in the meantime. The code of conduct for public service is required for the implementation of the measure. It would be then made obligatory for all employees in public service at all levels of authority in Bosnia and Herzegovina. Since it has not been enacted yet, not to mention making it obligatory, the measure has not been implemented.

### **Specific measure 2.22**

Develop guidelines for implementation of the Law on freedom of access to information in government institutions at all levels and train staff.

**Time limit for implementation:** March 2011

**Responsible institution:** Agency, government institutions at all levels in BiH

**Implementation indicators:** Guidelines developed, published and made available to broad public; access to informing of staff ensured in every institution; less rejected requests for information, more information requests.

**Analysis of the level of implementation of the measure:** As a part of the general initiative in the context of better transparency, access to information under the control of public authorities is considered to be a powerful instrument of proving corruptive activities. The fact itself that data possessed by public authorities are made public should have preventive effect, as behaviour with elements of corruption<sup>14</sup> often provides physical evidence that could be used with access to documents and information possessed by public authorities to prove offences. Concerning true democratic instruments, activities of the civil society with the aim of supervision over the work of public authorities is much facilitated by adequate implementation of legislation on freedom of access to information.

In order to facilitate access to information possessed by public authorities thus improving transparency of the work of public administration, *2009 – 2014 Anti-corruption Strategy Action Plan* envisages the development of guidelines for implementation of the Law on freedom of access to information in the government institutions at all levels and providing training for that purpose. A major stumbling block for the implementation of the measure is the fact that the Anti-corruption Agency which should initiate and implement the measure is not functioning. Despite some hints that the implementation of the Law on freedom of access to information is not too bad, potential progress is not based on strategic anti-corruption efforts but on obligations following from the Law. The measure has not been implemented.

### **Specific measure 2.23**

Develop Strategy based anti-corruption programmes in the government institutions at all levels.

**Time limit for implementation:** October 2011

**Responsible institution:** Agency, government institutions at all levels in BiH

**Implementation indicators:** Anti-corruption programme developed by each government institution at all levels in BiH; a person in charge of implementation of the programme nominated by each government institution at all levels.

**Analysis of the level of implementation of the measure:** The author of the *Strategy* failed to elaborate the term “programme”. Therefore, no clear distinction is made between the “programme” from this measure and “plan” from the short-term measure 2.6. of the *Action Plan*,<sup>15</sup> except that this measure should address only prevention and the measure 2.6.

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<sup>14</sup>E.g. a permit is issued although conditions for issuance have not been met or an official (unlawful) activity is undertaken leaving a physical trace.

<sup>15</sup>Both actually mean "schedule" "scope of work", etc.

should generally address fight against corruption. The same can be stated like in case of measure 2.6. Therefore, the measure has been incompletely implemented.

#### **Specific measure 2.24**

Establish legislative framework for protection of whistleblowers.

**Time limit for implementation:** December 2011

**Responsible institution:** BiH Council of Ministers, BiH Parliamentary Assembly

**Implementation indicators:** Legislative framework for protection of whistleblowers established.

**Analysis of the level of implementation of the measure:** In addition to vagueness concerning the terminology and time limit, no distinction can be made between this measure and the short-term measure under 2.4. in the *Action Plan*. The same conclusion applies here. Actually, no activities have been undertaken to implement the measure 2.4..

#### **Specific measure 2.25**

Make anti-corruption training programmes in public institutions.

**Time limit for implementation:** February 2011

**Responsible institution:** Agency, BiH Council of Ministers

**Implementation indicators:** Training programmes for civil servants made obligatory by the BiH Council of Ministers, ministries and other public institutions.

**Analysis of the level of implementation of the measure:** The medium-term measure 2.23. coincides with the already elaborated short-term measure 2.6. and partially with the measure 2.25 – planning of anti-corruption training in all institutions that is mandatory for all civil servants. In that sense Korte (2007) reports that newly recruited staff in public sector must be trained on behaviour that may have elements of corruption. If they work in the field that is in particular exposed to corruption, permanent awareness raising and education about forms and consequences of corruption is necessary. According to Korte, the issue of corruption should be a part of education and training of all employees, especially managers who should be paragons for others by encouraging such training programmes. In addition to training including transfer of knowledge and experience and learning about code of conduct and various rulebooks (in hard copy or electronic version), Korte recommends training on risk of corruption and other forms of knowledge transfer including advice, etc.

The medium-term measure 2.25. coincides with the already elaborated (initially mentioned) measures for which common conclusions in terms of implementation can be drawn. Since the institution in charge of implementation of the measure is the Anti-corruption

Agency in cooperation with the Council of Ministers, it is plausible that no systematic effort was made to establish special and obligatory anti-corruption training programme in all public institutions.

## **LONG-TERM MEASURES**

### **Specific measure 2.28**

Conduct comprehensive organisational and functional review of public administration in BiH.

**Time limit for implementation:** January 2014 to July 2014

**Responsible institution:** BiH Council of Ministers, public administration reform coordinator's office

**Implementation indicators:** Number of administrative structures and civil servants reduced.

**Analysis of the level of implementation of the measure:** As indicated in the former *Monitoring*, the purpose of the review of public administration should be the establishment of the level of quality of European administrative space. An important part of the review should be a review of efficiency of public administration which according to INTOSAI standards consists of the review of effectiveness of administrative activities in accordance with administrative principles and practice, review of efficiency of utilisation of financial and other resources and review of the level of achievement of objectives (Krašić, 2008).

According to information presented by the Public administration reform coordinator's office, it launched a monitoring pilot project *Development of the performance management system in BiH civil service*. According to annual report of the PAR Office, a number of measures are undertaken to review public administration. In addition, Bosnia and Herzegovina in 2010 implemented 10.16 % measures from the *Action Plan and Public Administration Reform Strategy*, that is, it realised 49.23% of all envisaged objectives in the domain of public sector reform. It should be emphasized that although the dynamics of implementation of the measures is not satisfactory, reform activities should draw to a close and only then an assessment should be made whether this long-term measure from the 2009 – 2014 *Anti-corruption Strategy Action Plan* has been implemented and to what extent; Also, public administration review has been implemented as an independent process from anti-corruption activities. Therefore, a question is why the author of the *Anti-corruption Strategy* placed this activity in the *Strategy* bearing in mind that the public sector review is being implemented at the same time including the same stakeholders.

### **Specific measure 2.29**

Weak points within the BiH public administration structures concerning corruption to be identified.

**Time limit for implementation:** January 2013

**Responsible institution:** Agency, relevant ministries, PAR Office

**Implementation indicators:** Weak points identified

**Analysis of the level of implementation of the measure:** An element of anti-corruption/integrity plans (second part of preventive activities from the *Action Plan*) addresses the assessment of risk of corruption and identification of weak points vulnerable to corruption. In addition, measures 2.5. and 2.18. also address the issue of the measure under 2.29. *Summa summarum*, no achievement has been made concerning the implementation of the measure 2.29.

### **Specific measure 2.31**

Introduce a new and modern performance assessment system for public service and link it with a monthly salary calculation system for civil servants.

**Time limit for implementation:** January 2013

**Responsible institution:** Agency, Council of Ministers, Civil Service Agency, relevant finance ministries

**Implementation indicators:** A new and modern performance assessment system for public service introduced and linked with a monthly salary calculation system for civil servants.

**Analysis of the level of implementation of the measure:** Establishment of e-government and management (elaborated under 2.7. and 2.32) in part addresses the measure 2.31. Internal responsibility of civil servants may be improved by such performance assessment based on objective and measurable facts; both penalty and reward should be given objectively. Therefore, fact-based and performance-based management system is an important part of the concept of responsibility.

Since the time limit for implementation of the measure is 2013, and explanation of the concept 'a new and modern performance assessment system for public service' is not provided in the *Action Plan*, it does not make sense to make detailed assessment of the level of implementation of this measure. Some activities concerning computerisation of public administration and amendment of the performance assessment system are on-going.

### **Specific measure 2.32**

Introduce efficient mechanisms of e-government and e-management.

**Time limit for implementation:** January 2014

**Responsible institution:** Agency, Council of Ministers

**Implementation indicators:** E-government and e-management introduced at all levels

**Analysis of the level of implementation of the measure:** Time limit for implementation of this measure is far ahead. It is of course encouraging that some activities concerning introduction of e-government and e-management are on-going (see analysis of the level of implementation of the measure 2.7. from the *Action Plan*). Implementation of the measure is expected within the time limit.

## ANTI-CORRUPTION/INTEGRITY PLANS

### SHORT-TERM MEASURES

#### Specific measure 2.12

Building capacities within government institutions at all levels in BiH for the purpose of implementation of anti-corruption plans.

**Time limit for implementation:** December 2011

**Responsible institution:** Agency, all ministries, government institutions at all levels

**Implementation indicators:** Capacities built and completely used.

**Analysis of the level of implementation of the measure:** Anti-corruption action plans were already referred to in sections concerning measures 2.6. and 2.25. within the part concerning public administration reform, transparency and responsibility. As it is not clear which plans (and programmes) are referred to, it is difficult to analyze which capacities need to be built for implementation of the anti-corruption plans under measure 2.12. of the *Action Plan*. Korte (2007) states that there need to be “anti-corruption contact points” or persons within organisational set-up who are less involved in investigating of suspicion of corruption, but are more involved in providing proposals for prevention, cooperation in education and training and counselling of employees in the context of anti-corruption activities. For example, in the Federal Republic of Germany, those persons are usually officials within organisations who do not belong to administrative structures of the organisations. Their experience in internal audit, legal affairs or budget is an asset. They should also have a possibility to cooperate with employees in charge of data security and audit and they need to communicate with the management to which they report suspicion of existence of corruption and propose measures for prevention of corruption. It is crucial to have official e-mail addresses or special telephone lines (with a possibility of anonymous calls) so that employees could in a simple manner communicate with the anti-corruption contact points within their respective organisations.

Taking into account that it seems possible to undertake certain activities in the domain of prevention of corruption, it makes sense to foresee recruitment of staff in charge of implementation of the anti-corruption tasks. Therefore, it can be concluded that the measure 2.12. has been at least partially implemented.

### **Specific measure 2.13**

Introduction of the risk review system across the respective fields, whereby the fields vulnerable to corruption are identified.

**Time limit for implementation:** December 2011

**Responsible institution:** Agency, all ministries, government institutions at all levels

**Implementation indicators:** Methodology developed – Management of corruption risk/integrity plan; System of corruption risk assessment tested.

**Analysis of the level of implementation of the measure:** Corruption may appear anywhere where a person exercises certain powers. However, there exist certain areas of public work where the risk of corruption is higher than in others, including awarding contracts in public procurement procedures, subsidies, assistance or other grants, issuing of permits, licenses, concessions or collection of taxes and other fees (Korte, 2007). According to federal government guidelines for prevention of corruption of the Federal Republic of Germany, a field vulnerable to corruption is the one in which “by behaviour or decision making of employees a third person may obtain material or non-material gain or harm may be inflicted to someone or third persons may provide advantage to employees to which they do not have legal claim” (Korte, p. 295). Especially vulnerable to corruption are the fields in which gain may be obtained or big harm inflicted as well as the fields in which by nature of the work a frequent contact is made with third persons. Korte warns that declaring certain field vulnerable to corruption must not be associated with lack of trust to its employees (thus creating unnecessary resistance in the entire process of risk assessment). Instead, selection of employees should be precautionous and they should be recognized as professionals who possess qualifications and high level of integrity. Risk assessment should be based on examination of an organisation and organisation of its personnel. Korte states that according to guidelines of the federal government such risk assessment should be conducted at latest five years after organisational and procedural changes or changes related to competencies or tasks in an organisation. An assessment itself is a judgement of “corruption potential” within the field according to the abovementioned criteria, and assessment instruments are legal regulations governing staff management and examination of managers of respective organisational units. The assessment must involve high officials of public authorities. Following the assessment of the field, individual positions are assessed where special attention is dedicated to the manner of conducting supervision of legality of work within positions and potential rotation of staff and their tasks.

The Anti-corruption Agency is a coordinator of activities concerning establishment of the system of corruption risk assessment in Bosnia and Herzegovina. Due to its lack of functioning, hardly any activities have been undertaken for implementation of the measure 2.13. of the *Action Plan*.

### **Specific measure 2.14**

All government institutions at all levels need to establish the system of corruption risk assessment/integrity plan in order to identify departments/positions most vulnerable to corruption. Appropriate measures need to be established in order to reduce or eliminate the obstacles.

**Time limit for implementation:** May 2012

**Responsible institution:** Agency, all ministries, government institutions at all levels

**Implementation indicators:** All public administration institutions start elaborating and implementing reports on corruption risk management/integrity plans.

**Analysis of the level of implementation of the measure:** This measure largely corresponds to the analysed measure 2.13. (a difference between them is that in case of measure 2.13 there needs to be established a methodology of application of risk assessment, and in case of measure 2.14 the methodology needs to be applied in practice). Therefore, all aforementioned applies here. Actually, no systematic activities seem to have been undertaken within this measure.

### **Specific measure 2.15**

Development of appropriate systems of corruption indicators to ensure unique standards of risk assessment/integrity plans.

**Time limit for implementation:** December 2012

**Responsible institution:** Agency, all ministries, public institutions at all levels

**Implementation indicators:** Based on the report on corruption risk assessment/integrity plans, corruption indicators developed; indicators published on the Agency's web site.

**Analysis of the level of implementation of the measure:** Measures 2.13 and 2.14 would be a logical introduction of the measure 2.15 of the *2009 – 2014 Anti-corruption Strategy Action Plan*. Firstly, a methodology of corruption risk assessment is established, which is then applied in practice, and the measure 2.15 aims at unifying of corruption indicators. Like in case of corresponding measures, no activities seem to be undertaken in this domain.

### **Specific measure 2.16**

Introduction of the systemic testing of integrity of all personnel on high-risk positions undergoing the process of risk/integrity plans assessment.

**Time limit for implementation:** December 2013

**Responsible institution:** Agency

**Implementation indicators:** Methodology of integrity testing adopted and examined.

**Analysis of the level of implementation of the measure:** Integrity testing is a promising strategy both for repression and for prevention of corruption. Objective of integrity testing is to determine to what extent an employee or a field is involved in or is prone to corruption and to increase possibility of detection of corruptive employees (United Nations Office on Drugs and Crime, 2004). It should be emphasized that integrity testing means a simulation of giving or receiving a bribe where a public servant or a citizen is subject to testing of his/her respect of formal rules. It can be used within an organisation in accordance with labour related and disciplinary regulations, or on the basis of criminal legislation (Datzer, 2010). As the time limit for implementation of the measure is 2013 which is far ahead, it is necessary to wait and see whether the system of assessment of corruption risk and integrity will be established.

## **LONG-TERM MEASURES**

### **Specific measure 2.30**

Conduct a detailed investigation of corruption in public administration and develop an anti-corruption strategy in that sector.

**Time limit for implementation:** January 2014

**Responsible institution:** Agency

**Implementation indicators:** Investigation conducted; informing relevant institutions about the results of the investigation conducted.

**Analysis of the level of implementation of the measure:** Implementation is far ahead and the measure itself can be implemented relatively quickly. The fact is that the entire *Strategy* should be based on tangible data<sup>16</sup> and it should permanently rely on investigation of status and dynamics of corruption in order to ensure flexibility of its application (as one of basic principles of a modern, integrated anti-corruption strategy). It is not quite clear why the author of the *Strategy* placed it at the end of application of the *Strategy*, why it was planned as an one-off activity or what the investigation should consist of.

## **SIMPLIFICATION OF BUSINESS ENVIRONMENT**

### **SHORT-TERM MEASURES**

#### **Specific measure 2.17**

Organise seminars and workshops with participation of economic entities in order to identify the areas and practices that hamper efficient market business activities which should be eliminated.

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<sup>16</sup> “Investigations are a basis for setting priorities” (Kregar, 2008, p. 21).

**Time limit for implementation:** December 2010

**Responsible institution:** Agency in cooperation with the relevant government institutions at all level and educational institutions.

**Implementation indicators:** Ten seminars were organised throughout Bosnia and Herzegovina in order to identify the areas of interest and practices in the area of business rules which should be eliminated".

**Analysis of the level of implementation of the measure:** An assessment provided in the former *Monitoring* applies here as well. Due to lack of Agency's functioning, the success of the measure 2.17 from the *Action Plan* is hardly possible. Since the Agency failed to act as coordinator, it is likely that regarding the simplification of administrative procedures in business environment hardly any activities have been undertaken.

### **Specific measure 2.18**

Conduct a survey of business environment in BiH in order to identify areas where corruption is mostly expected.

**Time limit for implementation:** December 2010

**Responsible institution:** Agency, relevant ministries

**Implementation indicators:** The survey conducted of economic entities in BiH in order to identify areas where corruption is mostly expected; survey results disseminated.

**Analysis of the level of implementation of the measure:** United Nations Office on Drugs and Crime reports on survey of professional public in order to identify hot spots in the organisational structure of public administration where corruption is mostly expected as an important part of activities aimed at simplifying of business environment and reducing corruptive practice. This measure complements and extends the measure 2.17. as it addresses more subjects. No activities seem to have been undertaken.

### **Specific measure 2.19**

Introduce examination in order to identify rules and procedures that businesses find most difficult to fulfil and to make the assessment of the relevant costs.

**Time limit for implementation:** June 2011

**Responsible institution:** Agency, relevant ministries

**Implementation indicators:** Survey conducted; survey results disseminated.

**Analysis of the level of implementation of the measure:** Objectives and indicators of implementation of the measure are similar to those in the previous measures. Unfortunately,

the level of their implementation is the same. No activities seem to have been undertaken regarding the survey from the measure 2.19.

### **Specific measure 2.20**

Each institution at all levels of government in BiH should develop a catalogue of administrative procedures with the focus on processes related to private companies.

**Time limit for implementation:** December 2010

**Responsible institution:** All ministries and public institutions at all levels

**Implementation indicators:** Catalogues of administrative procedures are available for each ministry and public institution with the focus on processes related to management.

**Analysis of the level of implementation of the measure:** It was explained in the former *Monitoring* why it is not clear what exactly the measure 2.20. refers to. Administrative procedures in the form of rulebooks and similar acts regulating management and activities of public institutions are in place and comprehensive data on whether all public institutions enact catalogues of the procedures are not in place. It is not clear who should possess such data (*Action Plan* does not specify who is in charge of supervision of implementation of the measure). Rulebooks, if any, are acts available on the basis of the Law on freedom of access to information and some institutions make them publicly available on their web pages. Despite the fact (or rather owing to the fact) that the indicator of the measure is vague, it makes sense to say that the measure has been at least partially implemented.

## **SHORT-TERM MEASURES**

### **Specific measure 2.26**

Conduct a detailed analysis of regulatory regimes in the country and based on the analysis cancel unnecessary procedures and simplify as much as possible existing procedures of registration, issuing, licensing and approving of registration documents in order to reduce possibility of corruption. Where possible, perform registration and ex-ante control rather than ex-post control.

**Time limit for implementation:** December 2012

**Responsible institution:** BiH Council of Ministers, relevant ministries

**Implementation indicators:** Less regulatory regimes, business environment liberalised.

**Analysis of the level of implementation of the measure:** Analysis of regulatory regimes in the country should serve as a basis for their improvement or, where necessary, their elimination. According to the letter of the CoM general secretariat delivered in response to this monitoring, the analysis should be conducted by the relevant ministries (when time comes for that). Simplification of administrative procedures corresponds to this measure and

it is a part of the overall public administration reform in Bosnia and Herzegovina that is being implemented and advanced (more information available in the Public administration reform coordinator's office, 2011, p. 28). In addition, at the level of the Federation of Bosnia and Herzegovina, the second phase of the project of comprehensive analysis, simplification and improvement of administrative procedures is on-going, and the entire procedure tends to harmonisation of the regulations in a sense of simplification of administrative procedures (permits, approvals, licenses, certificates, etc.) (Public Administration Reform Coordinator's Office, 2011). Implementation of short-term measures from the domain of simplification of business environment is definitely a precondition for a comprehensive analysis of the regulatory regimes. However, due to its time limit it does not make sense to make any detailed comment now.

### **Specific measure 2.27**

Adopt necessary legislation according to which the issuing of certificates, licenses and other registration documents would be supervised by the BiH Parliamentary Assembly following an objective assessment.

**Time limit for implementation:** December 2011

**Responsible institution:** BiH Council of Ministers

**Implementation indicators:** Draft Law presented to BiH Parliamentary Assembly in order to ensure that new regulatory regimes be introduced only by the BiH Parliamentary Assembly and only after an objective regulatory impact assessment based on consultations with the stakeholders. This draft law may be used to revoke other opposing laws.

**Analysis of the level of implementation of the measure:** Liberalisation of the regulatory regime means establishment of a legislative framework simplifying procedures of issuing certificates, licenses and other registration documents based on analyses. No activities seem to take place in this domain. The *Action Plan* envisages enactment of the law by the end of 2011.

### ***Component 3: Education, training and public awareness***

Implementation of this *Strategy* component was to commence in the second half of 2010 according to the time limit set in the *Strategy Action Plan*. This component is a crucial strategic objective as its purpose is the establishment of a broad coalition for fighting corruption. Namely, speaking of corruption, we must know that it is a phenomenon largely dependent on gain obtained by two involved parties, possibility of detection of an act or offence and punishment that may be imposed if corruption is established. A possibility of detection of the act of corruption is directly related to the level of education, training and awareness of the public of corruption and its harmful effects.

However, it should be noted that for the achievement of objectives, a fully staffed Agency needs to be in place, allocated budget ensured for implementation of education and awareness raising programmes and clearly defined programmes and projects. Taking into account problems related to Agency's capacities and lack of funds, implementation of this component is seriously hampered.

#### **Within the programme area 3.1. of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

3.1. Assess the civil servants' training needs for the purpose of the development of the necessary training programmes.

Time limit for implementation: November 2010

Responsible institutions: Anti-corruption Agency

Analysis of the level of implementation of the specific measure: By analysis of available reports, it can be stated that no assessment of the civil servants' training needs for the purpose of the development of the necessary training programmes have been so far made. Since the Anti-corruption Agency is responsible for this measure, its implementation can be expected only after the Agency becomes staffed. However, present competencies of the civil servants can be partially assessed on the basis of already implemented programmes. As already said, entity civil service agencies have already organised training related to deontological principles and anti-corruption policies for some civil servants. Also, for the purpose of better performance in the area of prevention of corruption and other crimes, the State Investigation and Protection Agency provided training of investigators under the auspices of the International Criminal Investigative Training Assistance Programme (ICITAP), USA Embassy, Council of Europe Programme for capacity strengthening in fighting gravest crimes, French Police, EUROPOL, FBI, RS Ministry of Interior, etc. At the same time, a number of seminars and workshops was provided under the auspices of regional and international bodies including UNDOC, OLAF, Regional Anti-corruption Initiative (RAI), Organised Crime Training Network (OCTN), George Marshall Centre, and TAIEX technical

assistance. Finally, it should be mentioned that regular training of judges and prosecutors was provided by the FBiH Judicial and Prosecutorial Training Centre and RS Judicial and Prosecutorial Training Centre.

Recommendations: Following the staffing of the Agency, within the procedure of enactment of secondary legislation it will be necessary to include the procedure of the civil servants' training needs assessment for the purpose of the development of the necessary training programmes. Thus, Agency's employees would be under obligation to perform assessment activities along with their regular tasks. Taking into account that other institutions have the same responsibility, it is necessary to involve other responsible institutions in implementation of these programmes as assessment will be performed in for example, state-level and entity civil service agencies, professional training centres, judicial and prosecutorial training centres, etc. a possibility of outsourcing should be also considered here. Therefore, a professional and competent organisation should be hired to provide this service. Time limit for implementation of this measure should be postponed to the end of 2011.

**Within the programme area 3.2. of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

3.2. Create necessary preconditions within the capacity of the Agency and the relevant education institutions, for the purpose of the development of the curricula, pedagogical material and tools and trainers' training in the field of integrity/fighting corruption/ethics for civil servants.

Time limit for implementation: September 2010

Responsible institutions: Anti-corruption Agency

Analysis of the level of implementation of the specific measure: As the implementation indicators relate to adoption of necessary regulations within the Anti-corruption Agency and ensuring of funds for the development of curricula, pedagogical material and training tools, it is obvious that the specific measure has not been implemented within the time limit. The reasons for this lie in inadequate capacity of the Agency and lack of allocated budget.

Recommendations: As already said, a tender would be a better solution to have the curricula, pedagogical material and tools and trainers' training in the field of integrity/fighting corruption in place. This type of outsourcing is a more appropriate mode taking into account the restricted capacity of the Agency and the dynamics of its development. Specialised agencies and civil society could be involved as they have experience in this field. In addition to the Anti-corruption Agency, a national civil service agency and entity civil service agencies should also be foreseen. Time limit for implementation of this measure should be postponed until December 2011.

**Within the programme area 3.3. of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

3.3. Develop interactive and easy-to-use training material for civil servants (on-line content, interactive videos, etc..)

Time limit for implementation: January 2011

Responsible institutions: Anti-corruption Agency

Analysis of the level of implementation of the specific measure: As the implementation indicators relate to tailor-made and distributed interactive easy-to-use material for training of civil servants (on-line content, interactive CDs/DVDs, videos, etc.), it is obvious that the specific measure has not been implemented within the time limit. Namely, at the time of writing this report (end of January 2011), the Anti-corruption Agency did not have its web site, not to mention interactive material. Status of information technologies in the state-level and entity institutions and scope of their use should be in particular borne in mind. Namely, on the basis of a screening of the status of web content in the institutions at state level, it can be stated that every second institution has updated information on its work, while the access to manuals, information and programmes is restricted.

Recommendations: Designing interactive and easy-to-use material for training of civil servants is a measure that may be implemented subject to full capacity of the Agency and its allocated budget. It is necessary to perform consultation with state-level and entity agencies for the purpose of implementation of this activity in order to identify basic elements for such materials. Like in case of the previous measure, a possibility of outsourcing should be considered. Finally, concerning the time limit is was January 2011 which was too ambitious taking into account problems concerning capacities and lack of solutions (who, when, where, during which period, etc.). Therefore, it should be postponed by at least one year until the full establishment of the Anti-corruption Agency, that is, mid of 2012.

**Within the programme area 3.4.of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

3.4. Assess the needs for anti-corruption training programmes for elementary and high schools and universities.

Time limit for implementation: December 2011

Responsible institutions: Anti-corruption Agency, education ministries, universities

Analysis of the level of implementation of the specific measure: As the time limit for implementation of the measure is December 2011, it can be stated that it is too ambitious because preparatory activities for its implementation have not been undertaken. Actually, as already stated, entity and cantonal governments and parliaments need to get involved in implementation of the Anti-corruption Strategy and the corresponding Action Plan for the purpose of implementation of this measure. As it has not happened so far, entity and cantonal

ministries can hardly undertake activities without defined time limits within their programmes.

Recommendations: This measure, the time limit of which is December 2011 requires close cooperation between the Agency and entity and cantonal education ministries along with the involvement of the BiH Agency for pre-school, elementary and high education and the BiH Agency for higher education. In addition, the involvement of the relevant pedagogical institutes and representatives of the civil society is foreseen. Taking into account the scope of activities related to this measure, its realisation should commence immediately in order to achieve results (assessment of training need in elementary and high schools and universities and draft documents necessary to create infrastructure for training delivered to responsible authorities) until mid 2012. A possibility of outsourcing could be considered or the measure could be implemented on the basis of a project. At the same time, a task like this requires a lot of resources. Therefore, an application for IPA project should be submitted to the EC Delegation.

**Within the programme area 3.5. of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

3.5. Organisation of courses – in the form of seminars for high-ranking officials and for corruption high risk groups as well as an on-line course for other civil servants

Time limit for implementation: December 2011

Responsible institutions: Anti-corruption Agency

Analysis of the level of implementation of the specific measure: Given the low level of complexity and reasonable time limit for the realisation of the measure (December 2011), there should not be any major realisation obstacles concerning the organisation of three testing seminars for high officials. Anyway, the implementation itself depends on the dynamics of establishment of full capacity of the Agency and availability of resources. However, a part related to an on-line seminar for other civil servants is definitely related to the measure 3.3. and dynamics of development of interactive contents available to broad public on the part of the Agency. This implies that implementation of this part of the measure can be expected at the beginning or mid 2012.

Recommendations: Implementation of this specific measure depends on several factors including the following: establishment of the full capacity of the Agency, allocation of budget, acceptance of the Strategy and Action Plan on the part of entities and cantons, and “ownership of the Strategy” through broad communication with the management of the institutions. It is only after the fulfilment of the aforementioned activities when it will be possible to implement this measure. Taking into account that this measure includes the creation of on-line content for civil servants, the time limit for implementation of this measure should be mid 2012.

**Within the programme area 3.6.of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

3.6. Improve the strategy of public communication for the purpose of broad awareness raising concerning the corruption related threats and instruments for fighting corruption and citizens' individual responsibility

Time limit for implementation: July 2011

Responsible institutions: Anti-corruption Agency, PR offices

Analysis of the level of implementation of the specific measure: Although this measure will be implemented in future, it is directly related to cooperation of the Anti-corruption Agency with other institutions in order to develop programmes and plans for public communication. However, since the implementation indicator relates to the strategy of public communication for the purpose of broad awareness raising concerning the corruption related threats and instruments for fighting corruption and citizens' individual responsibility, it can be stated for sure that the time limit is not realistic.

Recommendations: Following the establishment of the Agency and enactment of the relevant secondary legislation and internal documents, the Agency should shortly start developing the strategy of public communication. However, in addition to cooperation with PR offices of the relevant institutions, there needs to be a broad coalition during the preparation and especially during the implementation of this strategy. This implies involvement of other interested parties including media, civil society, academic community, business community, etc. If the strategy of public communication is created without involvement of other parties, it may stand as a dead letter. Taking into account certain public administration reform projects aimed at improving communication, representatives of Public Administration Reform Coordinator's Office should be contacted. Namely, integration with these programmes would enable the implementation of the measure within short time and with fewer resources. The time limit for implementation of the measure should be postponed to the end of 2011.

**Within the programme area 3.7.of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

3.7. Improve the public relation strategy in order to ensure the proactive relation of any government institution with media

Time limit for implementation: December 2011

Responsible institutions: Anti-corruption Agency, PR offices

Analysis of the level of implementation of the specific measure: This specific measure is directly related to the previous one and it is also related to the implementation of the strategy

of public communication. Therefore, it is necessary to implement the previous measure completely in order to have successful implementation of this measure.

Recommendations: As already said, the preparation of the strategy of public communication must involve all key stakeholders of which the crucial one is the media. That is the only way to create advanced model of PR strategy aimed at ensuring proactive relationship of the government institutions with media. Taking into account a possibility of resistance against need to make changes, the time limit for implementation of this measure should be mid 2012.

**Within the programme area 3.8.of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

3.8. Introduce periodic training for journalists in the field of investigative reporting

Time limit for implementation: January 2011

Responsible institutions: Anti-corruption Agency, Association of journalists

Analysis of the level of implementation of the specific measure: Since the BH Novinari Association, Transparency International BiH and the Centre for Investigative Reporting (CIN) have on more than one occasion organised and provided training, it should be noted that the measure should be realised in cooperation with these organisations. Of course, fulfilment of the measure within the time limit depends on the manner of planning of training on the part of the Agency (internally, in cooperation with the said organisations, through outsourcing).

Recommendations: Taking into account the so far activities in this field, the best solution would be for the Anti-corruption Agency to announce call for proposals from interested organisations and to ensure material preconditions for implementation of periodic training programmes in the area of investigative reporting. Although this time limit is realistic, it could be postponed until the next budget year (2012) when planning of funds would be done. Also, donation application is possible for implementation of training for journalists in the area of investigative reporting.

**Within the programme area 3.9.of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

3.9. Repeated training need assessment in the civil service is necessary in order to introduce necessary changes of the infrastructure for the training or programmes subject to the course testing results

Time limit for implementation: July 2011

Responsible institutions: Anti-corruption Agency

Analysis of the level of implementation of the specific measure: Taking into account other activities related to the Strategy, it seems that this measure is not necessary. Also, since for the implementation of the measure, one assessment is planned for the entire public administration and certain risk segments, it can be stated that the time limit is not realistic from the aspect of the capacity of the Anti-corruption Agency and lack of action plans at the level of entities and cantons. This measure is directly related to previous measures concerning the preparation of the plans and programmes for civil servants' training which depends on Agency's capacity, coordination of action plans with other ministries and institutions at state level and entity/cantonal level.

Recommendations: *This measure should be left out of the reviewed 2009 – 2014 Anti-corruption Strategy Action Plan.*

**Within the programme area 3.10. of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

3.10. Commencement of the comprehensive realisation of the civil service training in BiH

Time limit for implementation: December 2011

Responsible institutions: Anti-corruption Agency

Analysis of the level of implementation of the specific measure: This measure is comprehensive, costly and needs coordinated approach of a number of stakeholders. However, since one of the implementation indicators is that training was provided at all levels of public service in BiH, the envisaged time limit has not been postponed. Actually, it should be borne in mind that the BiH public service system includes several hundreds of ministries, agencies, institutes and other bodies of public administration. Therefore, the measure cannot be implemented within this time limit.

Recommendations: For adequate implementation of this measure it is necessary to create feasible and realistic implementation plan with clearly defined responsibilities, time frame and material resources. Of course, implementation of this measure depends on the establishment of the Anti-corruption Agency in its full capacity, availability of budget allocation, acceptance of the Strategy and Action Plan by entities and cantons and "ownership of Strategy" by means of extensive communication with the management of the institutions. The time limit for implementation should be December 2012 and state-level and entity civil service agencies should be involved.

**Within the programme area 3.11. of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

3.11. Introduce compulsory training programmes in the field of ethics and corruption fighting in elementary and high schools and universities

Time limit for implementation: February 2011

Responsible institutions: Anti-corruption Agency, education ministries, universities

Analysis of the level of implementation of the specific measure: This measure is directly related to measure 3.4., and its time limit is sort of uncommon (February 2011). Namely, instead of February 2011, it is more appropriate for the measure to be realised until September 2012 as a new academic year is to commence then. As in the case of measure 3.4., close cooperation of the Agency and entity and cantonal education ministries is necessary with the involvement of the BiH Agency for pre-school, elementary and high school education and BiH Agency for higher education. In addition, the involvement of the relevant pedagogical institutes and representatives of the civil society is foreseen.

Recommendation: Implementation of this measure depends on the establishment of the Anti-corruption Agency in its full capacity, availability of budget allocation, acceptance of the Strategy and Action Plan by entities and cantons. Since the implementation indicator is related to at least one training programme in the area of deontology and fight against corruption which has been tentatively introduced for elementary and high schools and universities for each level of education system, it is important to establish cooperation with the relevant entity and cantonal education ministries. After that, a rulebook should be developed to define basic elements of the training programme in the area of deontology and fight against corruption. Also, curricula, teaching material and manuals should be developed and tailored to high school students and university students. The activity is time consuming and commencement of its implementation may not begin before September 2012.

**Within the programme area 3.12.of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

3.12. Implement and assess the strategy of public communication for the purpose of broad awareness raising concerning the corruption related threats and instruments for fighting corruption and citizens' individual responsibility

Time limit for implementation: January 2011

Responsible institutions: Anti-corruption Agency, PR offices

Analysis of the level of implementation of the specific measure: Taking into account current state of institutions responsible for implementation of this measure (Anti-corruption Agency, PR offices), it is not surprising that the measure has not been implemented. Also, it largely overlaps with the aforementioned measures of improvement of public communications strategy and public relations strategy or 3.6 and 3.7. In that context, this measure depends on the capacity of the Anti-corruption Agency to develop the strategy of public communication and on the capacity of the PR offices within every government, ministry and/or public institution. Of course, this does not mean that new jobs related to PR need to be created. It is actually implementation of the strategy of public communication through existing

communication channels (including national media) which was earlier described. No matter how simple it seems, this measure requires a lot of resources as there is a need to broadcast certain contents or events. A confirmation of the foregoing statement is contained in the awareness raising campaign *Corruption takes away everything from you* launched in 2009 by the BiH Law implementing agency with support of EUPM. It was aimed at raising awareness of corruption in society. The purpose of the campaign through projects, programmes and media communication was to draw attention to fight against corruption and importance of efforts to prevent corruption. The result is that in the first two months of 2010, 100 calls were made on the telephone line of crime stoppers which is an increase by 200% compared to 2009, while the number of corruption related calls is by seven times higher.

Recommendations: Taking into account the content of this measure and specific measures 3.6 and 3.7, they should be integrated into one specific measure “Development and implementation of the strategy of public communication...”, integrating all activities envisaged by measures 3.6 and 3.12., by 2011. It is also necessary that funds are ensured for the purpose of implementation of the strategy of public communication in order to educate broad public about corruption related threats and instruments for fighting corruption and individual responsibility of each citizen regarding this issue. Finally, there need to be an extensive list of responsible institutions, including media, civil society and private sector.

**Within the programme area 3.13. of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

3.13. Beginning of journalists’ training in cooperation with their syndicates

Time limit for implementation: January 2011

Responsible institutions: Anti-corruption Agency, PR offices

Analysis of the level of implementation of the specific measure: Implementation of this measure is directly related to the preparation of curricula and training programme defined within the specific measure 3.8. It should be noted that it was stated by mistake that PR offices were responsible for the commencement of training instead of association of journalists and that the time limit was not realistic given the fact that problems exist (Agency understaffed, training programmes not developed, lack of involvement of experienced trainers, etc.).

Recommendations: Given the so far activities in this area, best effort is made for the Anti-corruption Agency to announce call to interested organisation and ensure material preconditions to provide periodic training programmes in the area of investigative reporting. The time limit for these activities should be the beginning of 2012 or after the development of the curriculum and training programme in this area. Also, a necessary amendment to the existing Action Plan should refer to responsible institutions, primarily the Anti-corruption Agency and existing associations of journalists.

**Within the programme area 3.14. of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

3.14. All civil servants in BiH will undergo at least one training in the field of ethics and fighting corruption on the basis of adopted programmes subject to regular evaluation.

Time limit for implementation: End of 2014

Responsible institutions: Anti-corruption Agency

Analysis of the level of implementation of the specific measure: Although the realisation of this measure is foreseen for the end of 2014, it should be borne in mind that a measure like this cannot be implemented in only 3 years. Actually, there needs to be organisation and implementation of training for thousands of civil servants, for which a number of prerequisites need to be fulfilled including the organised programme and trainers. The training provided in past years in other fields (ECDL, strategic planning, etc.) can be taken as a confirmation for this statement. There is an obvious lack of capacity of the Agency, including the lack of curricula, teaching instruments, material resources and qualified lecturers.

Recommendations: Following the establishment of the capacity of the Anti-corruption Agency, it will be necessary to start systemic planning and organising of training in the area of deontology and fight against corruption. All relevant institutions, including state-level and entity civil service agencies and well-known organisations and institutions (based on outsourcing) should be involved. The time limit for the activities should be open during the implementation of the 2009 – 2014 Anti-corruption Strategy.

**Within the programme area 3.15. of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

3.15. All elementary and high schools and universities in BiH need to include the training programmes in their curricula in the field of ethics and fighting corruption

Time limit for implementation: End of 2014

Responsible institutions: Anti-corruption Agency, education ministries, universities.

Analysis of the level of implementation of the specific measure: Although the measure is quite complex, its realisation depends on the education system and possibility to review the curricula. It is assumed that the training programme in the field of deontology and fight against corruption could be incorporated in the practical aspects of the existing curricula (democracy, sociology, etc.) which requires the opinion of the entity and cantonal pedagogical institutes and relevant ministries.

Recommendations: Since this measure is directly related to implementation of measures 3.4. and 3.11., it is first necessary to implement these measures so that by end of 2014 all elementary and high schools and universities in BiH incorporate training programme in the

field of deontology and fight against corruption in their curricula. Only by development of systemic solutions sustainability of solutions in the education system in BiH is possible. This measure requires direct cooperation of the Anti-corruption Agency with entity and cantonal education ministries and pedagogical institutes, along with the involvement of the BiH Agency for pre-school, elementary and high education and the BiH Agency for higher education.

**Within the programme area 3.16.of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

**3.16. Awareness raising programmes should become an integral part of editorial policy and programmes of public broadcasters**

**Time limit for implementation:** By beginning of 2015

**Responsible institutions:** Anti-corruption Agency, public broadcasters in BiH, PR offices

**Analysis of the level of implementation of the specific measure:**This measure, the realisation of which is foreseen for the period before 2015, is not any big obstacle taking into account EU standards to be adopted by public broadcasters. As long as the public broadcasters act responsibly towards the citizens there will be an integration of public awareness programmes concerning consequences of corruption in the editorial policies. Given the importance of their function, public broadcasters could become an important partner to the Agency in the implementation of the Strategy of public communication and fighting corruption.

**Recommendations:** Since implementation of this measure depends on preparation and implementation of the strategy of public communication and some PR strategies, it is crucial to start implementing the said strategies within the time limit envisaged for this measure. It is important for the Anti-corruption Agency to respect the principle of openness and readiness for cooperation. Time limit for implementation is realistic and it does not need to be adjusted.

***Realisation of the activities in the field of education, training and awareness raising requires a lot of resources as well as a considerate approach to other institutions (relevant ministries, agencies, education institutions, media, civil society, etc.) in order to get the activities implemented, taking good care to avoid any politicized positions.***

#### ***Component 4: Implementation of law***

Analysis of achievement of certain strategic objectives or efficiency of implementation of measures in the area of law enforcement from the *2009 – 2014 Anti-corruption Strategy* largely relies on former findings from the first interim report made by *Transparency International BiH* concerning the monitoring of implementation of the *2009 – 2014 Anti-corruption Strategy* (hereinafter: first interim report) published by the end of 2010. Actually, the said report contains statements concerning the level of implementation of certain specific programme activities in the domain of law enforcement, drawbacks in implementation and finally recommendations to responsible institutions regarding what they should or could do in the forthcoming period in order to fully achieve strategic objectives. Also, the first phase of the monitoring in this strategic area indicated several general tendencies in the so far implementation of certain programme measures. In short, they relate to the fact that the undertaking of the measures from the *2009 – 2014 Anti-corruption Strategy* and the corresponding Action Plan largely depends on the following: (a) general level of awareness of responsible institutions of their tasks in implementation of the said legal-strategic documents, (b) set priorities of the institutions that mainly include some other objectives different from efficient fight against corruption (it was actually about the meeting of requirements of the so called Road Map for visa liberalisation for BiH citizens), (c) mainly promise-based support to the objectives of the *2009 – 2014 Anti-corruption Strategy*, and (d) other factors that prevented more successful achievement of objectives in this area (the fact that the Anti-corruption Agency has not *de facto* become operative was indicated as a major drawback). Such status in the strategic area of the implementation of the Law affected the following: (a) different level of involvement of the relevant institutions in undertaking certain programme activities, (b) different level of implementation of the specific strategic objectives and (c) general impression concerning the relatively low success in achieving strategic objectives in this area. Based on these findings, the second interim report methodology-wise in brief addresses the former findings for each programme activity and recommendations then provided, following which recent activities of responsible institutions are analyzed for each programme field (if there exist reliable indicators of how much the responsible institutions worked on undertaking specific programme measures and activities in the period between the two interim reports on monitoring). Based on the foregoing, time-wise the concerned report encompasses the period from October 2010 to beginning of February 2011.

It is important to note that at general level the *2009 – 2014 Anti-corruption Strategy* in the area of law enforcement is based on basic principles of general and social (individual) prevention of criminal offences according to criminal legislation. In other words, in case of offences involving corruption, by implementation of these strategic measures, offenders should be thwarted in their intention to commit offences involving corruption, while on the other hand, the general public should thus become aware of punishability of these and other offences. General measures in thus part of the Strategy rely on ensuring of adequate legislative, material-technical, human resources and other resources for relevant authorities

implementing law in order to finally be able to efficiently detect, prove and resolve the criminal offences. The ultimate objective of this part of the Anti-corruption Strategy is to create preconditions for the application of the measure of forfeiture of property gain obtained by committing criminal offences involving corruption and of prevention from enjoying any rights ensuing from the offences, without any prejudice to offenders' human rights and fundamental freedoms (especially a right to defence). It can be reiterated that in this manner basic elements of the phenomenon of corruption have been identified correctly, including the specific intention of obtaining illegal property gain or other gain by committing these offences, which necessarily requires adequate response by the relevant authorities including the forfeiture of property gain and other gains derived from corruption.

It should be noted that in order to implement these specific measures for efficient implementation of laws, short-term (by end 2010), medium-term (by end 2012) and long-term objectives (by end 2014) have been set. Medium-term objectives are in particular relevant for the present analysis. They need to be implemented by the end of next year especially because the time limits for implementation of the short-term strategic objectives expired at the beginning of 2011.

With respect to responsible institutions for implementation of the strategic objectives in the domain of implementation of law, as the time limit for implementation of short-term objectives has expired, no significant change has happened. In both legal-strategic documents responsibility is assigned to the following institutions: BiH Council of Ministers, Anti-corruption Agency, ministries of interior, justice ministries, BiH High Judicial and Prosecutorial Council, Judicial and Prosecutorial Training Centres in FBiH and RS, BiHBrčko District Judicial Commission, relevant prosecutor's offices and courts, relevant economic ministries and entity police academies.

Based on the foregoing and in accordance with the available information on undertaking certain measures by the responsible institutions, the following findings are in place:

**Within the programme area 4.1. of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

**4.1. Enhance efficiency of all BiH law implementing agencies by ensuring funds, equipment and staff;**

Time limit for implementation: December 2010

Responsible institutions: BiH Council of Ministers, Anti-corruption Agency, ministries of interior.

Analysis of the level of implementation of the specific measure: In addition to earlier conclusion that this strategic objective has not been implemented (especially because the same wording is used in both documents without specific elaboration of certain measures and activities aimed at enhancing efficiency of all law implementing agencies in BiH), it should be emphasized that it is a short-term objective from the 2009 – 2014 Anti-corruption Strategy

which should have been achieved by the end of 2010. However, as emphasized in the first interim report, key drawback in the formulation of this objective is that it was not sufficiently elaborated though measures and activities of the responsible institutions and no parameters were set based on which efficiency of law implementing agencies would be assessed in the context of their institutional capacities to prevent and suppress corruption in BiH. Also, funding, providing equipment and training of staff cannot be taken as an one-off activity. It is rather a permanent process. In that sense, it should be noted that there were two categories in the Action Plan based on which monitoring of implementation of this strategic measure is conducted: (a) identification of needs concerning funds, equipment and staff capacity building, and (b) undertaking activities to achieve the foregoing. It should be noted that the first interim report emphasized the fact that the relevant police bodies in the FBiH, RS and BD BiH in 2010 undertook certain activities aimed at implementing this strategic objective. Therefore, law implementing bodies enacted their plans referring to more decisive prevention of corruption. They defined their programme objectives, strengthened institutional capacities, ensured material and other preconditions to achieve those objectives, which was a positive implementation indicator.

However, a permanent drawback concerning the implementation of the *2009 – 2014 Anti-corruption Strategy* is caused by the lack of functioning of the Anti-corruption Agency. It also hampers the implementation of this strategic objective given the fact that there needs to be some coordination between several law implementing agencies in BiH as well as monitoring of implementation of certain objectives. This is of course one of the tasks of the Anti-corruption Agency. Therefore, it is realistic to expect that once it becomes operative a monitoring system in the area of financing, providing equipment and training to law implementing agencies will be in place for the purpose of enhancing their efficiency in prevention of corruption in BiH. On the other hand, BiH Council of Ministers has not published the 2011 work plan with potentially envisaged activities referred to in the *2009 – 2014 Anti-corruption Strategy*.

**Recommendations:** Despite the fact that this strategic objective should have been implemented by 2010, it is still necessary that all responsible institutions continue undertaking envisaged activities aimed at implementing this objective. It is crucial that the Anti-corruption Agency immediately starts performing its law-based assignments in order to ensure unique and harmonised realisation of this strategic objective. In addition, the BiH Council of Ministers needs to envisage in its plans necessary funds for the functioning of the Anti-corruption Agency. It should provide permanent support to the Agency and **undertake activities** within its competencies in order to get this objective realised. Thus, necessary preconditions will be created for efficient implementation of the BiH anti-corruption legislation. Also, the relevant ministries of interior in BiH should **continue strengthening their own capacities** for fighting corruption, especially regarding the planning of funds, provision of equipment and training of staff in order to efficiently detect, prove and resolve criminal offences involving corruption.

**Within the programme area 4.2. of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

4.2. Evaluation of application of special investigative actions in case of corruption in order to review their efficiency.

Time limit for implementation: December 2010

Responsible institutions: Ministries of interior, BiH Council of Ministers

Analysis of the level of implementation of the specific measure: Importance of special investigative actions for efficient prevention of corruption is enormous, especially taking into account clandestine nature of these criminal offences that directly affects the possibility of their detection and ability to prove them. This strategic objective should have been implemented by the end of 2010. However, it was emphasized in the first interim report that no reliable information existed on whether the responsible institutions had really undertaken any activities aimed at implementing it. It is primarily because of the relatively recent time since which special investigative actions have been applied following the enactment of regulations approving their application when proving criminal offences involving corruption. It is worth noting that the legislation from 2003 did not provide for the application of special investigative actions in this field. Following the pressure exerted by professionals, academic community and non-governmental sector, the legislator amended criminal legislation in 2009 and created legal preconditions for the application of special investigative actions including repression of offences involving corruption.

As presented in the first interim report, some police and prosecution authorities have already applied special investigative actions to prevent criminal offences involving corruption. It can be concluded with confidence that due to unrealistic time limit or lack of compatibility of the 2009 – 2014 Anti-corruption Strategy with the dynamics of amendments of the criminal legislation in BiH there is short time left for application and evaluation of application of the special investigative actions undertaken by police and prosecution authorities in BiH. Thus, it can be *prima facie* stated that the responsible institutions failed to implement this strategic objective. However, speaking objectively, it takes time to obtain experience in this area by resolving a number of cases in which special investigative actions would be applied. Only then their impact could be evaluated and proposals given for improvement of practice. Therefore, this programme activity has not been implemented because of unrealistic time limits and not because of failure of the responsible institutions.

Recommendations: Despite the fact that this is a short-term strategic objective that should have been implemented by the end of 2010, it is still necessary for the relevant police authorities responsible for implementation of this strategic and programme objective to conduct a comprehensive analysis of application of special investigative actions for prevention of corruption in BiH. In addition, the BiH Council of Ministers should by all means **provide support** to the activities in order to have reliable data on efficiency of the special investigative anti-corruption actions.

Within the programme area 4.3.of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:

4.3. Specialised training for staff of law implementing agencies involved in fighting corruption as well as for judges and prosecutors concerning corruption and forfeiture of illegally gained property.

Time limit for implementation: December 2010

Responsible institutions: Anti-corruption Agency, justice ministries, ministries of interior, BiH Council of Ministers, High Judicial and Prosecutorial Council, FBiH Judicial and Prosecutorial Training Centre and RS Judicial and Prosecutorial Training Centre and BiH Brčko District Judicial Commission.

Analysis of the level of implementation of the specific measure: Based on the earlier findings from the first interim report it can be stated that it is one of few short-term strategic objectives which has been implemented within the time limit. Despite the fact that some measures have not been transformed into specific activities, it can be stated that education and training activities in the area of prevention of corruption and forfeiture of illegally obtained gain were successful in the responsible institutions in 2010. This primarily refers to judicial and prosecutorial training centres in FBiH and RS and BiH Brčko District judicial commission, which in 2010 organised a number of events including seminars, workshops and conferences related to this programme activity. Also, the responsible police authorities, either independently or together with judicial and prosecutorial training centres, made considerable effort for training of their staff.

A key drawback in implementation of this strategic objective is related to the fact that the Anti-corruption Agency has not yet become operative. That is important to mention because the law based on which the Anti-corruption Agency was established stipulates that its competence shall be, *inter alia*, to develop education programmes related to prevention of corruption and to supervise their implementation. Therefore, a statutory precondition has been ensured for a unique and systematic regulation of education and training in the domain of anti-corruption. In addition, the Agency shall have supervisory role with respect to implementation of the programmes.

However, it is encouraging that the responsible institutions in its work programmes for 2011 envisaged some education and training activities in the area of prevention of corruption, organised crime, forfeiture of illegally obtained gain, etc. thus, the RS Judicial and Prosecutorial Training Centre in its 2011 training programme envisaged two seminars in the area of *forfeiture of illegally obtained gain* in February 2011 and *modern methods of detection of organised crime* in November 2011. Also, the FBiH Judicial and Prosecutorial Training Centre in its 2011 training programme envisaged a round table in the area of *fighting organised crime and corruption in BiH and forfeiture of illegally obtained gain* in September 2011.

Based on earlier findings of the first interim report, it is important that future activities of the responsible institutions in this area are undertaken in a systematic and harmonised manner in

order to implement the strategic objective completely. That would be facilitated by the functioning Anti-corruption Agency tasked to coordinate the activities.

Recommendations: Despite the fact that this strategic objective was implemented within the time limit, it is still necessary that the responsible institutions continue education and training activities for police officers, prosecutors and judges dealing with prevention of corruption. As already said, the purpose of such education activities is to make individuals from the target groups aware of the most efficient methods of prevention of corruption, which would make the activities useful. Logistic support for their realisation should be provided by other responsible institutions, in particular by the BiH Council of Ministers and relevant justice ministries.

**Within the programme area 4.4.of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

4.4. Completely harmonise criminal legislation in BiH with international standards.

Time limit for implementation: December 2012

Responsible institutions: Anti-corruption Agency, justice ministries, ministries of interior, BiH Council of Ministers.

Analysis of the level of implementation of the specific measure: Harmonisation of the criminal legislation of Bosnia and Herzegovina with the relevant international standards includes *inter alia* harmonisation of the substantial provisions of the criminal legislation with the sources of international law the party of which is BiH. It refers to legal definition of criminal cases involving corruption, providing for the institute of mandatory forfeiture of illegally obtained gain, etc. Although the first interim report highlighted some drawbacks in planning of programme activities for the realisation of this strategic objective in the Strategy and Action Plan (including contradictions between time limits, lack of catalogue of reference international standards, different implementation indicators, etc.), it must be admitted that some progress has been made.

Progress made has to do with the most recent amendments to criminal legislation in BiH, whereby improvement has been made in terms of extension of the categories of offenders of offences including accepting, giving gifts and other forms of benefits.<sup>17</sup> Also, it is worth mentioning that these amendments include the institute of forfeiture of received or obtained gift, property gain, money, securities and other movable goods within offences of abuse of office or official position, that is, offence involving corruption (illegal brokerage, abuse of office and official position, fraud in service). It must be emphasized that additional amendments related to the instituted of forfeiture of illegally obtained gain were made only to criminal legislation of BiH and FBiH.

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<sup>17</sup>Law on amendments and addenda to the BiH Criminal Code, BiH Official Gazette, No. 8/10. (Article 94 and 95). Namely, the extension of categories of offenders including foreign official persons is provided for in some of the international sources, that is in the UN Convention against Corruption (Article 16), Civil Law Convention on Corruption (Article 5), etc.

Taking into account the importance of the analysis of harmonisation of the internal criminal legislation in the context of latest amendments at the level of BiH, the same conclusions like in the first interim report are provided here. Following the amendments of BiH legislation, a limited internal harmonisation of regulations was done. The categories of offenders were extended only in case of BiH Criminal Code while the entity criminal codes and the criminal code of BiH Brčko District have different level of harmonisation with the BiH Criminal Code. It is in particular related to the definition of the criminal offence "*Accepting Gifts and Other Forms of Benefits*" when it comes to intention to, by demanding or accepting gift or other benefit, obtain certain benefit for the offender or another person.<sup>18</sup> Therefore, the amendment is that officials or responsible persons, including foreign official persons (and exceptionally international officers in case of BiH Criminal Code) commit offence by accepting gifts or other benefits (alternatively promise to accept gift or other benefit) for themselves and for other persons, too, which was not the case in operative statements of judgements (but would go without saying from the standpoint of criminal legislation). Entity criminal codes address this issue differently. FBiH Criminal Code is harmonised with the BiH Criminal Code. However, recent amendments do not include extension of the categories with international officers.<sup>18</sup> On the other hand, recent amendments of the RS Criminal Code do not include any amendments relative to the categorisation of the criminal offences under Article 351 – *Accepting of Gifts* and Article 352 – *Giving of Bribe*. Thus, this legislation remains non-harmonised with the BiH Criminal Code with respect to extension of the categories of offenders and special intention to, by accepting gifts or other benefits, obtain benefits for offenders or other persons.<sup>19</sup> Also, the most recent amendments to the BiH BD Criminal Code did not include the harmonisation of this Code with the BiH Criminal Code concerning the referenced elements under Article 374 "*Accepting Gifts and Other Forms of Benefits*" and Article 375 "*Giving Gifts and Other Forms of Benefits*", which remains the weak point of the harmonisation of the criminal legislation in BiH.<sup>20</sup>

Since this is the medium-term strategic objective, it should be emphasized that in the forthcoming period BiH should incorporate in this legislation some other international agreements. Actually, BiH should approximate its legislation to the relevant standards including the Additional Protocol to Criminal Convention of the Council of Europe on Corruption, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and harmonise legislation with the Council of Europe Civil Law Convention on Corruption. As for the Additional Protocol, the most important elements of harmonisation relate to introduction of more stringent forms of punishment for offenders who are national or international arbiters and judges - juries for criminal offences of active and passive bribery. OECD Convention is important because of *inter alia*, determination of official persons without the status of government officials and are involved in corruptive acts in international business transactions. On the other hand, BiH internal regulations should be harmonised with the Council of Europe Civil Law Convention on

<sup>18</sup>Law on amendments and addenda to the FBiH Criminal Code, FBiH Official Gazette, No. 42/10.(Article 62).

<sup>19</sup>Law on amendments and addenda to the RS Criminal Code, RS Official Gazette, No. 73/10.

<sup>20</sup>Law on amendments and addenda to the BiH Brčko District Criminal Code, BiH Brčko District Official Gazette, No. 21/10.

Corruption in the degree in which BiH should ensure effective protection of rights of persons who were inflicted damage due to offences involving corruption.

Based on the analysis, the conclusion is that **this strategic objective has been partly realised**, and there exists the **need for its full implementation** by the responsible institutions within the time limit or end of 2012.

Recommendations: It is necessary that BiH **adopts and transposes** the provisions of the Additional Protocol to Criminal Convention of the Council of Europe on Corruption, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and Council of Europe Civil Law Convention on Corruption.<sup>21</sup> Also, the internal national criminal legislation needs to be fully harmonised with respect to the already made amendments and addenda to the BiH Criminal Code and new legislative solutions to be adopted after the adoption of the said international instruments.

**Within the programme area 4.5. of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

4.5. Proposing of various procedures whereby investigative actions would be enhanced for the purpose of efficient prosecution of criminal offences involving corruption.

Time limit for implementation: End of 2012.

Responsible institutions: Anti-corruption Agency, justice ministries, ministries of interior, BiH Council of Ministers, prosecutor's offices.

Analysis of the level of implementation of the specific measure: As stated in the first interim report, realisation of this medium-term strategic objective should have been done in a different manner. That primarily concerns the need to harmonise time limits provided in the Strategy and Action Plan and to develop specific activities aimed at realising this objective. Also, this programme activity needs to be systematically linked to strategic areas formerly described and related to evaluation of application of special investigative actions, introduction of specialised training, etc. In this moment, a major drawback for complete implementation of these activities is the fact that the Anti-corruption Agency, as a responsible institution, has not become operative. Therefore, implementation of this objective remains dissatisfactory. An essential part of this activity would be to perform a comprehensive and systematic analysis of the existing practice of investigation of criminal offences involving corruption, identify potential drawbacks and examples of positive experience. Based on such analysis, constructive and pragmatic recommendations should be provided. Results of analyses should be used by prosecutors and law implementing agencies investigating these offences.

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<sup>21</sup>It should be emphasized that BiH has ratified Additional Protocol to Criminal Convention of the Council of Europe on Corruption (ETS 191) that entered into force on 1 November 2003, as well as Council of Europe Civil Law Convention on Corruption (ETS 174) that entered into force on 1 November 2003.

In short, this is the medium-term objective to be realised by the end of 2012. The responsible institutions are expected to undertake activities to that end.

**Recommendations:** Given the fact that since the time of the first interim report, no major activities have been undertaken in order to realise this strategic objective, recommendations have remained the same. Actually, It is necessary that the Anti-corruption Agency starts performing its functions that include monitoring of effects of implementation of laws and other regulations pertaining to preventive/repressive measures of the relevant institutions and giving relevant recommendations for improvement of the regulations relevant for investigative actions. It is also necessary that other responsible institutions perform permanent evaluation of effects of investigative actions carried out for repression of criminal offences involving corruption, and give their recommendations concerning improvement of regulations. It is especially important that the activities are realised by the relevant prosecutor's offices and ministries of interior that directly use these legal instruments in practice. Other responsible institutions should provide adequate support to such activities (especially BiH Council of Ministers), in other words, they should ensure that recommendations for improvement of regulations be accepted by the relevant legislative authorities (which should be the responsibility of the relevant justice ministries).

**Within the programme area 4.6.of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

**4.6. Improve provisions pertaining to Agency procedures for the purpose of prevention of abuse of official duty by Agency officers.**

Time limit for implementation: End of 2012

Responsible institutions: Anti-corruption Agency, justice ministries, ministries of interior, BiH Council of Ministers, prosecutor's offices.

**Analysis of the level of implementation of the specific measure:** This is another medium-term strategic objective, the evaluation of which was low in the first interim report. In addition, it should be mentioned that when formulating this strategic objective, determining specific activities for its realisation and setting time limits for implementation, there appeared some inconsistencies between the Strategy and Action Plan. There is the inconsistency of time limit for implementation of this objective and lack of precise elaboration of activities that the responsible institutions need to undertake in order to realise this objective. It should be reiterated that there are implementation indicators provided in the Action Plan as the following two activities: (a) making of analyses, and (b) informing of the law implementing agencies about their results. It remains unclear which type of analysis needs to be done in order to "improve provisions relative to agency procedures with the purpose of prevention of abuse of official duty...", and what the ultimate purpose of informing of the agencies about the analyses is. In addition, a question may be posed as to which procedures the realisation of this objective refers to and whether rulebooks on internal organisations and systematisation of

posts and rulebooks on disciplinary responsibility are instructions or instructive acts on management in the law implementing agencies, etc.?! Also, neither the Strategy nor the Action Plan, as important legal-political documents in the present case, specifies the agencies in which these procedures need to be improved. Only the foreseen realisation indicators indicate that these most probably include police authorities responsible for law enforcement. However, an inconsistency like this may create a number of difficulties in undertaking activities pertaining to the realisation of the concerned objective. It was earlier indicated that the content and substance of implementation of this strategic objective is tentative as implementation indicators are not available. As indicated in the first interim report, the essence of this specific strategic objective is probably the disabling of abuse of official duty by staff of the law implementing agencies. Forms of abuse are numerous and various, and they often include abuse of special official duty or information accessible to Agency officers as they exercises official duties and other privileges ensuing from the status of an officer in agencies for their private needs or benefits.

Again, there remains the issue of the lack of functioning of the Anti-corruption Agency. It is crucial as the competence of the Anti-corruption Agency is to monitor the efficiency of implementation of the law and by-laws aimed at preventing corruption or to provide opinion and instructions concerning the implementation of laws and by-laws and to initiate activities related to amendments of the existing legal solutions and their harmonization. Thus, once the Agency starts performing its duties, it will be able to identify and comprehensively analyse the relevant procedures pertaining to management of official persons in the law implementing agencies as well as to recommend specific measure for their improvement with the purpose of reduction of abuse of official duty in the concerned institutions.

Recommendations: In order to realise this strategic objective completely, in the context of drawbacks concerning its formulation and elaboration of activities, it is important that the Anti-corruption Agency becomes operative as soon as possible. Thus, preconditions would be created to interpret the essence of this strategic objective and propose manner of its realisation. As indicated in the first interim report, it is primarily important to specify key activities to be undertaken for its realisation. These include a specification of the internal procedures catalogue to be thoroughly reviewed, revision of its efficiency concerning prevention of abuse of official duties and finally, initiating of necessary amendments of the relevant acts governing these procedures. It would be appropriate for the relevant prosecutor's offices to initiate this activity together with the law implementing agencies. They should submit the recommendations for improvement of procedures to the relevant justice ministries. The Agency, supported by the BiH Council of Ministers, should coordinate this process pursuant to law.

**Within the programme area 4.7.of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

4.7. Improve procedures and applicability of the provisions of law governing the forfeiture of illegally gained property and rights.

Time limit for implementation: End of 2012

Responsible institutions: Anti-corruption Agency, justice ministries, BiH High Judicial and Prosecutorial Council.

Analysis of the level of implementation of the specific measure: It is obvious that the specific strategic objective is to qualitatively elaborate and improve the existing substantive-legal provisions governing the forfeiture of illegally gained property and rights so that they become applicable in cases when it is necessary to forfeit property and rights derived from offences involving corruption. In that sense it should be emphasized that in recent years in BiH the issue of forfeiture of illegally gained property has been frequently addressed. Based on discussions related to this issue, a conclusion can be made that it is an essential element of all strategies intended to efficiently fight against organised crime, corruption, etc. it has become clear that it is such a legal instrument which must be comprehensively regulated by criminal, civil, administrative, executive, etc. legislation. It is crucial since in that manner complete efficiency of its application needs to be ensured in all phases of identification, temporary forfeiture and forfeiture of property gained obtained by perpetration of criminal offence. However, major difficulties in the application of this institute in practice are caused by imprecise competencies of certain institutions in a sense of keeping of forfeited property, execution of court decisions imposing forfeiture, etc.

However, despite the difficulties concerning forfeiture of property gained obtained by perpetration of criminal offence, the fact should be emphasized that it is an imperative of the entire strategic chapter *Implementation of law* since by implementation of this strategic chapter there need to be created appropriate normative, institutional and other preconditions for its application in prevention of offences involving corruption in BiH. As earlier indicated in the first interim report, it is one of few strategic objectives that was implemented to the extent above average at least at normative level (which is a direct result of amendments to criminal legislation in BiH). Actually, it is important to reiterate the previous finding according to which a basis of this kind of strategic effort includes awareness resulting from the analysis of the phenomenon of offences involving corruption which are perpetrated with the intention to illegally obtain property or other benefits for offenders or other persons. A number of international instruments (usually international multilateral agreements), aimed at setting standards for harmonised and integrated fight against corruption and organised crime, stipulate that these measures be incorporated in national legislation of signatory countries thus enabling efficient, timely and lawful forfeiture of property gain obtained by perpetration of offences involving corruption and other offences of organised crime. These instruments generally stipulate that provisions governing forfeiture of illegally gained property are efficient instruments of internal anti-corruption strategies thwarting motivation for perpetration of criminal offences involving corruption. The implementation of international standards in this area varies depending on the manner, scope and procedures within which the signatory countries incorporated these standards into their respective national legislations. Thus, a distinction is made between the measures of basic and the so called "extended"

forfeiture of illegally gained property, including criminal, administrative, civil and combined procedures whereby property gain may be forfeited. What is of special relevance for the analysis is the distinction between the basic instruments and "extended" instruments of forfeiture of property gain that emerged from differences in principles concerning the burden of proof when establishing actual origin of such gain. International agreements tend to stipulate that signatory countries should incorporate "extended" forfeiture of illegally gained property in their respective national legislations. This principle consists of establishing of origin of property under suspicion to have been illegally obtained ("eligible" for forfeiture), and transferring of burden of proof to an accused person who is obliged to submit evidence of legal origin of such property to the court. If the accused person fails to do that, the court establishes whether the property gain was obtained by perpetration of criminal offence(s) and orders its permanent forfeiture. As for the implementation of this instrument, there exist a number of legal, practical, organisational and other issues to be addressed by national legislation in order to ensure its efficient implementation. These issues include the following: (a) efficient protection of human rights and fundamental freedoms of the accused person, (b) clear identification of illegally obtained property gain in each respective case, especially if it has been combined with another, legally obtained property, that is, if there exists gain or other form of benefits that ensued from the illegally obtained property gain, (c) ensuring of functional mechanisms of management of illegally obtained property gain that has been temporarily or permanently forfeited pursuant to court decision or otherwise. A short overview of basic elements to be taken into account when regulating this area indicates complexity of this instrument that directly affected its quality within BiH legislation. Namely, since the amendment of the criminal legislation in 2003 until recently, there have existed provisions of procedural and substantive law pertaining to protection from seizure, temporary forfeiture and forfeiture of property gained obtained by perpetration of criminal offence. However, major difficulties in practice are caused by imprecise and unclear regulation of "extended" forfeiture of illegally obtained property gain and mismanagement of forfeited property. In response to that, the legislative authorities amended substantive criminal legislation that now **more precisely provides for "extended" forfeiture of property gain obtained by criminal offence**. Pursuant to new law, property gain obtained by criminal offence may be forfeited if the prosecutor submits sufficient evidence that such property gain was obtained by perpetration of criminal offences (from the clearly defined catalogue of offences), and the offender fails to submit evidence that gain was legally obtained. Criminal offences whereupon this instrument may be applied are the following: (a) Criminal Offences against Humanity and Values protected by International Law, (b) Criminal Offences against Economy and Market Integrity and in the Area of Customs, (c) Criminal Offences of Corruption and Criminal Offences against Official Duty or other Responsible Duty, (d) Criminal Offences against BiH Armed Forces, and (d) Criminal Offences from the special chapter of the Criminal Code "conspiracy, preparation, associating and organised crime".<sup>22</sup> It is important to note that amendments to the BiH Criminal Code are in compliance with entity/Brčko District criminal codes. In addition, a positive indicator of the realisation of this

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<sup>22</sup>BiH Criminal Code, Article 110a.

strategic objective is the fact that *lexspecialis* in this area has been passed in Republika Srpska. That is the Law on Forfeiture of Property Obtained by Perpetration of Criminal Offences.<sup>23</sup> It was earlier emphasized that newly amended laws pertaining to certain forms of offences, that is, offences involving corruption, criminal offences against official duty and other responsible duty, provide for mandatory forfeiture of accepted gifts, benefits, money, securities and other forms of property gain or other benefits obtained by perpetration of the criminal offences in question.

It is important to emphasize that this strategic objective has been implemented to considerable extent even before the time limit. However, its practical implementation is to be verified in future especially concerning the executive provisions in the area of forfeiture of property gain obtained by perpetration of criminal offences or misdemeanours. Actually, the effect of court decisions on forfeiture of property gain obtained by perpetration of criminal offences involving corruption will be verified in practice. It is expected that execution of the court decisions on forfeiture of property gain obtained by perpetration of criminal offences will be comprehensive and consistent in a sense of ensuring all necessary legal, institutional (Agency in charge of management of temporarily or permanently forfeited property) human resources and material and technical conditions for complete implementation of this institute in practice.

**Recommendations:** It is necessary that all prosecutor's offices and courts start applying newly amended legislation providing for forfeiture of property gain obtained by criminal offence, in particular by criminal offence involving corruption especially where conditions have been met for the application of "extended" forfeiture of such gain. Also, the Anti-corruption Agency should become operative as soon as possible in order to perform coordination between the relevant institutions regarding this issue and harmonise practice in this area. A conclusion already provided in the form of the recommendation in the first interim report should be reiterated, that is, it is of **particular importance** to **harmonise** the existing legislation governing forfeiture of property gain obtained by perpetration of criminal offences with other regulations pertaining to civil, administrative, executive and other branches of law. That would enable comprehensive application of this important institute in prevention of all forms of criminal offences involving corruption.

**Within the programme area 4.8. of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

4.8. Adopt procedures enabling establishment of public registers of legal persons and responsible persons within legal persons involved in corruption.

Time limit for implementation: By end of 2012

Responsible institutions: Anti-corruption Agency, justice ministries, relevant ministries of economy, BiH Council of Ministers.

<sup>23</sup>Law on forfeiture of property obtained by commission of criminal offence, RS Official Gazette, No. 12/10.

Analysis of the level of implementation of the specific measure: The issue of adoption of new procedures enabling establishment of public registers of legal persons and responsible persons within legal persons involved in corruption was discussed from various aspects in the first interim report. It has to do with the discrepancy between the time limit provided in the Strategy (2012) and the time limit in the Action Plan (2011). It is not quite clear why this measure is within the strategic area “implementation of law” as it is an anti-corruption standard which is most often related to internal corporate responsibilities and good business practice. It is the anti-corruption standard which among other things provide for reporting of any suspicion as to potential participation in corruptive practices of an employee of an economic entity. For that purpose business corporations which apply the highest anti-corruption standards issue internal acts providing for indicators of participation in corruptive activities serving as a basis for reporting such activities. The purpose of the anti-corruption registers is to register and store at one location all information about the participation in corruptive activities of employees of economic entities in order to ensure full transparency and commitment to highest standards in the work of economic entities.

In broad sense, anti-corruption registers can store data on legal and physical entities convicted of criminal offences involving corruption and economic entities that, by participating in corruptive activities, violated the rules of fair market competition, business ethics, etc. In that case, corruption registers are kept by the responsible public authorities. An important aspect of which sufficient account needs to be taken when realising this strategic objective concerns the enabling of access to data stored in the register. It is a highly sensitive issue primarily related to protection of human rights and freedoms and prevention of discrimination based on prior convictions of criminal offences involving corruption. Ideally, this standard can be applied if the corruption register exists for the purpose of promotion of transparent business activities especially in public procurement procedures. The registers store data pertaining to possible prior corruption affairs of legal entities or responsible persons in legal entities participating in public procurement procedures as tenderers. In some cases, such data may pertain to corruptive activities of business entities in private sector. Finally, corruption registers should serve to protect integrity of business entities that are resolute to apply anti-corruption standards in their business activities.

The responsible institutions in Bosnia and Herzegovina seem to be far from the realisation of this strategic objective.

Recommendations: Taking into account dilemmas concerning the essence and role of this anti-corruption standard in the overall strategic area *Implementation of law*, it is necessary that the responsible ministries of economy together with the Anti-corruption Agency, Council of Ministers and other responsible institutions in this area (in particular Public Procurement Agency) identify **best modes of realisation of this programme objective** that are in accordance with regulations governing protection of personal data, criminal records, etc.

**Within the programme area 4.9. of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

4.9. Adopt procedures for protection of persons reporting irregularities of procedures.

Time limit for implementation: By end of 2012

Responsible institutions: Anti-corruption Agency, BiH Council of Ministers, relevant ministries.

Analysis of the level of implementation of the specific measure: This is the last medium-term strategic objective within the chapter *Implementation of law*. The strategic objective devoted to protection of whistleblowers should be realised by the end of 2012. However, no clear indicators exist that the responsible institutions have undertaken any major activities for its realisation. As it is highly important to adopt procedures protecting persons reporting corruptive activities, it is necessary to repeat the earlier finding from the first interim report that addressed this issue. Actually, the issue of protection of persons reporting irregularities in the institutions of their employment is an important standard in anti-corruption strategies. These persons are often referred to as *whistleblowers* that, acting as accusers *bona fide* on grounded suspicion, report corruptive behaviour in the employer organisations. The reporting of such activities is internal if there exist mechanisms of reporting to senior management structures within the organisations or external if in different circumstances corruptive activities are reported to media, judicial institutions, law implementing agencies, etc. Some national and international legal sources provide for adoption of the measures that ensure protection of persons reporting corruptive practices within their organisations. The legislation pertaining to whistleblowers that needs to be passed includes the passing of appropriate measures providing support to these persons in their activities of detecting and reporting corruptive practices or enabling their protection against any form of threat. The scope of protection of these persons varies. Their protection is applied by passing certain measures that can be generally defined as follows: (a) prohibition of internal procedures or practices preventing or disabling detection of irregularities within the employer organisations and reporting such irregularities to responsible public authorities, and (b) prohibition of procedures whereby persons reporting irregularities are disqualified, intimidated, disturbed, deprived of promotion or otherwise discriminated due to the fact that they detected and reported corruptive practices in their employment organisations. As for the activities aimed at realising this programme objective, there are certain drawbacks concerning the specification of "prescribed procedures" referred to in the Strategy and unclear modalities of protection of persons reporting irregularities. Based on the foregoing, it can be concluded that the responsible institutions need to undertake intensive activities to create a normative framework ensuring protection of persons reporting corruptive practices in their employment organisations.

Recommendations: Since the Anti-corruption Agency is in charge of implementation of this strategic objective, it needs to become operative in shortest time possible in order to be able to carry out activities and in cooperation with other institutions propose a model procedure ensuring protection of persons reporting corruptive practices in all sectors. Again, the regulation of this area should include the harmonisation of new provisions with the relevant international instruments and good practice in other countries that apply high-standard anti-corruption policies.

**Within the programme area 4.10.of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

4.10. Review of existing legislation pertaining to organisation and jurisdiction of the law implementing agencies, prosecutor's offices and courts and, if needed, adoption of new laws and procedures for their efficient functioning.

Time limit for implementation: End of 2014

Responsible institutions: Anti-corruption Agency, ministries of interior, justice ministries, BiH Council of Ministers, prosecutor's offices and courts in BiH.

Analysis of the level of implementation of the specific measure: Assessment of the level of implementation of one of two long-term strategic objectives in the domain of law enforcement is certainly determined by conclusions on the level of implementation of the short-term and medium-term objectives in this area. As already indicated, there is an obvious difference in approach of the responsible institutions in the realisation of the specific objectives and measures within the Strategy and Action Plan. That practically means that the objectives related to harmonisation of the substantive criminal legislation, education and training as well as definition of the legal institute of "extended" forfeiture of illegally obtained property gain have been successfully implemented, unlike others for which the responsible institutions have not undertaken any activities. Therefore, conditions have not been met for the realisation of the comprehensive and complex strategic objective. It should be borne in mind that by the end of 2014 the Strategy envisages a comprehensive review, adoption and/or further amendment of legislation pertaining to organisation and competencies of the Anti-corruption Agency and law implementing agencies, prosecutor's offices and courts with the purpose of "recommending further necessary steps"! This means that by the end of the time limit, the Anti-corruption Agency and other responsible institutions should assess their own competencies and make proposals for improvement of practice in that sense. In a situation when the Anti-corruption Agency exists only formally, hardly any progress can be made with respect to this objective. As indicated in the first interim report, the level of efficiency of the Strategy and recommended legislative solutions would be indirectly measured by analysis of institutional capacities of the responsible institutions. Therefore, it is necessary to completely implement all preceding short-term and medium-term strategic objectives.

Recommendations: In order to realise this strategic objective, It is necessary for the Anti-corruption Agency in shortest time possible to start performing its duties pertaining to **improvement of the existing legal framework** for prevention and repression of corruption or **monitoring of the results of implementation of laws or by-laws** (especially rules of procedure in the responsible institutions) and recommendation of new legislative solutions in this area. Other responsible institutions should also make assessment of their own jurisdictions in this area and providing specific proposals for improvement of the overall practice.

**Within the programme area 4.11. of the 2009 – 2014 Anti-corruption Strategy Action Plan, the following specific measures are foreseen to be undertaken:**

4.11. Introduction of additional verification procedures for candidates applying for positions relevant for detection of corruption.

Time limit for implementation: By end of 2014

Responsible institutions: Anti-corruption Agency, Ministries of interior, BiH Council of Ministers, police academies.

Analysis of the level of implementation of the specific measure: Strategic chapter *Implementation of law* contains another long-term objective that should be realised by end of 2014. Disregarding the formerly emphasized drawbacks concerning the inconsistencies between the Strategy and Action Plan (which contains somewhat modified version of this objective: "*introduction of additional selection procedures including additional verification of candidates applying for positions relevant for detection of corruption as well as their superior positions*") with respect to the objective and activities aimed at its realising, it must be admitted that considerable effort was made in order to implement this objective.

As indicated in the first interim report, by implementation of this objective from the 2009 – 2014 Anti-corruption Strategy, there needs to be ensured higher level of integrity of official persons dealing with detection of corruption cases. Although not explicitly stated in the Strategy, it evidently follows from the formulation and essence of the objective in question that it refers to additional verification procedures for police officers in the law implementing agencies who directly deal with detecting, proving and resolving of criminal offences involving corruption and criminal offences of abuse of official duty and other responsible duties. This conclusion is also indicated by the inventory of institutions responsible for the realisation of this programme objective. At the same time, it should be emphasized that this strategic objective has to some extent been realised owing to the fact that the legislation governing protection of secret data in BiH was adopted. However, it must be emphasized that this legislation had been enacted long before the 2009 – 2014 Anti-corruption Strategy was adopted. Therefore, it cannot be stated that these were the activities undertaken by the responsible institutions in this area.

However, because of the importance of legislation governing protection of secret data, including security verification of the official persons applying for positions in the authorities that produce, deal with or store secret data. The most important components of verifications will be touched upon because of their importance for implementation of this strategic objective. Actually, according to applicable regulation, the BiH Intelligence Agency performs these verifications before the nomination, designation or recruitment.<sup>24</sup> On the other hand, the BiH State Investigation and Protection Agency performs the so called “elementary security verification” of the members of police and security agencies and other administrative institutions responsible for performing police functions in BiH. Given the fact that the official persons, who perform tasks of detecting, proving and resolving of criminal offences involving corruption as a rule deal with data of certain level of secrecy, it can be consequently concluded that **there exists certain level of integrity protection** of the institutions recruiting those persons. As emphasized in the first interim report, the Strategy and Action Plan refer to additional verification procedures for the selection of official persons applying for positions relevant for detection of corruption (“*adoption of additional procedures*”). Therefore, it can be concluded that by the end of the time limit for the implementation of this strategic objective, the passing of new internal acts is expected in order to ensure performing of additional verifications, independent of verifications for providing access to secret data for the nomination of this specific category of official persons.

Recommendations: Mandatory adoption of new procedures based on which verification of official persons detecting, proving and resolving of criminal offences involving corruption and offences of abuse of official position and other responsible duty would be performed is primarily related to police authorities in BiH or judicial institutions prosecuting crimes at all levels of authority. As there are many institutions, it is crucial for the Anti-corruption Agency to perform coordination and compliance of regulations in order to get the objective implemented. As for internal procedures to be adopted concerning additional security verifications, they need to be in compliance with the relevant laws governing special administrative (police) law and regulation governing organisation and jurisdiction of prosecutor’s offices and courts in BiH, etc.

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<sup>24</sup>Law on Secret Data Protection, BiH Official Gazette, No. 54/05. Law on amendments and addenda to the Law on Secret Data Protection, BiH Official Gazette, No. 12/09.

### ***Component 5: Coordination and implementation of the strategy***

A very important part of the implementation of the Anti-Corruption Strategy (2009-2014) concerns the harmonization of activities of all relevant institutions in the realization of the set legal-political objectives in this area. In that sense, it was necessary to ensure the appropriate normative, institutional and other preconditions for as effective as possible coordination and overall implementation of strategic activities.

So far a partial progress in securing the mentioned preconditions has been made and it mostly pertains to the normative aspects of coordination of the Strategy and the Action Plan. Namely, the Law on Anti-corruption Agency stipulates that this body will coordinate and monitor the implementation of the Anti-Corruption Strategy and the corresponding Action Plan, and it will have an additional advisory and instructive authority which pertains to the implementation of these documents in practice. It is evident that this legal norm is additionally qualitatively explained in the Strategy itself as well as in the Action Plan. Namely, it is evident that there is a wish, in the broadest sense possible, to set up a unique and efficient coordination system in the implementation of anti-corruption activities in BiH, by realizing measures from this strategic area. Coordination should be established at all levels of government, with the necessary interaction between the public and private sector, and the permanent evaluation of real effects of its implementation in practice. In this manner, these important legal-political documents in BiH are adequately harmonized with the relevant international standards which state that the anti-corruption strategies should be propulsive for constant monitoring and evaluation, which should be done on a permanent basis, with equal participation of all subjects from the governmental and non-governmental sector in the monitoring process. The purpose of such efforts is twofold; by constant evaluation the existing measures of the fight against corruption can be altered and supplemented as needed, if so suggested by the input from practice; i.e. by virtue of the implemented monitoring, new measures for more efficient fight against corruption can be proposed for adoption in some states.

In a brief retrospect to the Anti-Corruption Strategy (2009 - 2014) and the corresponding Action Plan, some general characteristics of these documents can be spotted in the area of coordination and implementation. Reviewed at a time distance, this segment of the Strategy should be made possible by realization of short-term objectives (until the end of year 2010), medium-term objectives (until the end of 2012) and one long-term objective (until the end of validity of the Strategy, that is - the end of 2014). Substantially, coordination should be realized through several, by their nature different but mutually harmonized measures, which consist of: (a) coordination of the corruption prevention policies in all BiH institutions, (b) coordination and monitoring of the implementation of these measures, (c) development of the coordination system, (d) development of cooperation with the non-governmental sector, (e) better communication and cooperation between the key stakeholders and (f) creating the basis for the future legal-political documents for the continuous fight against this phenomenon. In

any case, the carrier of these activities should be the Anti-corruption Agency which is nowadays only to begin performing tasks from its jurisdiction, including the coordination of the implementation of the Anti-Corruption Strategy.

However, since there are still no necessary preconditions for the functioning of the Agency, and as, in the meantime, a need for a certain degree of monitoring of the realization of the Action Plan has appeared, the BiH Ministry of Security has in the past period done certain activities to a limited extent, which mostly pertained to the evaluation of degree of implementation of these documents as a part of fulfillment of conditions from the so-called Road Map for visa regime liberalization for the BiH citizens. These important activities of the Ministry of Security have resulted in a report called *“Analysis of the Level of Implementation of the Action Plan of the BiH Anti-Corruption Strategy“*, in which the realization of specific strategic areas was evaluated. In that sense, this report contains information that “for the purpose of realization of measures and activities from the Action plan at the BiH level, the RS Ministry of Interior is in the process of forming its own working group, or a team, composed of representatives of all relevant organizational units of the RS Ministry of Interior which will contribute to the making of an overall anti-corruption action plan and realization of other activities stemming from the Anti-corruption Strategy Action Plan “, which is, anyway, a valuable data for the subject analysis. This depletes the available information on the activities of responsible and other institutions in the realization of program activities related to the coordination and application of the Strategy in practice.

Recommendations: it is necessary for the Anti-corruption Agency to start performing its duties within its area of responsibility as soon as possible, including coordination and monitoring of the Strategy and the Action plan, which is especially important, considering that the Agency is designated in all program areas as the only institution responsible for the realization of this strategic area.

## Conclusions

Monitoring of implementation of the Anti-corruption Strategy is a task that requires full dedication and systemic approach. As this activity is in inception phase, the following activities are the top priority concerning the implementation of the Anti-corruption Strategy:

- Strengthening of the capacity for implementation (or strengthening of the Anti-corruption Agency)
- Setting priorities within the Action Plan
- Linking the implementation of the Anti-corruption Strategy with the planning and budgeting of the relevant institutions.

Bosnia and Herzegovina is still facing a problem of the lack of a coherent policy of fight against corruption and prevention of corruption. Deeds not words should be in place. There need to be serious efforts to revolutionise the treatment of corruption and to strengthen democratic instruments through raising awareness of the public of their role in the culture of freedom and transparency.

Concerning the analysis of the level of implementation of the 2009 – 2014 Anti-corruption Strategy and the corresponding Action Plan, there are following conclusions concerning the Strategy components.

**Component 1: Capacity building of the Anti-corruption Agency.** It was concluded that by adoption of the Law on Anti-corruption Agency in December 2009, a good legislative framework was created for the operation of the Anti-corruption Agency. However, the Anti-corruption Agency has not been staffed since that time. Also, Agency's director and deputy director have not been nominated. The relevant secondary legislation has not been enacted. Therefore, Agency's capacity has not been sufficiently used. The rulebooks should specify coordination of implementation of the national strategy as well as the corresponding prevention and education programmes. The reason for a slow capacity building process lies in insufficient readiness of the political structures to realise these activities. Therefore, clear time limits for each stakeholder should be set and if the stakeholders fail to meet the time limits, they need to provide explanation for that.

**Component 2: Prevention of corruption.** As emphasized in the former report, it is obvious that little has been done concerning the systematic anti-corruption activities and the reason for that lies in the failure to establish the Anti-corruption Agency. The actual role of this institution is to be an initiator and coordinator of most of the anti-corruption activities. Therefore, the lack of its functioning implies the lack of any serious effort to prevent corruptive behaviour. As indicated in the former *Monitoring*, crucial recommendation is to establish Anti-corruption Agency as soon as possible. The so called "third phase" of anti-corruption activities (see Datzer, 2010) in Bosnia and Herzegovina obviously has not been addressed yet. Only words and promises are made. And adequate anti-corruption institutions

are not in place thus leaving little hope for a real change to happen. Therefore, the establishment of the Anti-corruption Agency (commitment resulting from Article 6 of the UN Convention against Corruption) is *conditio sine qua non* of serious anti-corruption efforts in Bosnia and Herzegovina. The Anti-corruption Agency is not supposed to exist formally for the sake of fulfilment of international and other commitments. It should rather exist in order to address the needs of the BiH society and professionals striving to make progress in raising public awareness of harmful effects of corruption and the need to fight against corruption.

**Component 3: Education, training and awareness raising.** Therealisation of this Strategy component has not started yet due to the time limits envisaged by the Strategy Action Plan. Namely, it has been envisaged since the time of the passing of the Strategy until the time when this report is written, the Strategy and its Action Plan envisage the development of the curricula, pedagogical material and tools and trainers' training for the purpose of future providing of training in the field of integrity/fighting corruption/ethics for civil servants. However, it should be noted that for the achievement of objectives, a fully staffed Agency needs to be in place and the time limit envisaged for September could not be respected. This is due to insufficient capacity and the secondary legislation governing the functioning of the Anti-corruption Agency. It has been recommended to announce tender for procurement of the service including the development of the curricula, pedagogical material and tools and trainers' training for the purpose of future providing of training in the field of integrity/fighting corruption. This type of outsourcing is a more appropriate mode taking into account the restricted capacity of the Agency and the dynamics of its development.

**Component 4: Law implementation.** In this area, it is important that the Anti-corruption Agency immediately starts performing its assignments in order to ensure unique and harmonisedrealisation of this strategic objective. In addition, the BiH Council of Ministers is to ensure necessary funds for the functioning of the Agency provide permanent support to the Agency and undertake activities within their competencies in order to get this objective realised. Thus, necessary preconditions will be created for efficient implementation of the BiH anti-corruption legislation. Also, the relevant ministries of interior in BiH should continue strengthening their own capacities for fighting corruption, especially regarding the planning of funds, provision of equipment and training of staff in order to efficiently detect, prove and resolve criminal offenses involving corruption. The Anti-corruption Agency should also immediately start performing its duties in the domain of training about the most efficient anti-corruption methods. Also, the BiH council of Ministers and relevant ministries of justice should support these activities, by ensuring sufficient funds for the realisation of this Strategic objective. It is furthermore of key importance that competent police agencies carry out a comprehensive analysis of the application of special investigative actions in fighting corruption in BiH. In addition, the Council of Ministers BiH should support these activities in order to get reliable information on the effects of the special investigative actions for more efficient fight against corruption. On the international plan, it is very important for BIH to ratify and implement in domestic legislation the provisions of the Additional protocol adopts and transpose the provisions of the Additional Protocol to Criminal Convention of the

Council of Europe on Corruption, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and Council of Europe Civil Law Convention on Corruption. Also, the internal national criminal legislation needs to be fully harmonised with respect to the already made amendments and addenda to the BiH Criminal Code and new legislative solutions to be adopted after the adoption of the said international conventions. It is necessary to continue activities regarding application and evaluation of efficiency of the newly amended legislation providing for forfeiture of property gain obtained by criminal offense, in particular by criminal offense involving corruption. It is necessary for the Anti-corruption Agency to start performing its duties in order to coordinate and harmonise activities of the relevant institutions in this area. It is of particular importance to harmonise the existing legislation governing forfeiture of property gain obtained by perpetration of criminal offenses with other regulations pertaining to civil, administrative, executive and other branches of law. It is necessary for the Anti-corruption Agency in shortest time possible to start performing its duties pertaining to improvement of the existing legal framework for prevention and repression of corruption or monitoring of the results of implementation of laws or by-laws (especially rules of procedure in the responsible institutions) and recommendation of new legislative solutions in this area.

**Component 5: Coordination and implementation of the strategy:** Given the importance of harmonisation of activities of all the relevant institutions in the realisation of set legal-political objectives in this area. In that sense, it was necessary to ensure the appropriate normative, institutional and other preconditions for as effective as possible coordination and overall implementation of strategic activities. So far a partial progress in securing the mentioned preconditions has been made and it mostly pertains to the normative aspects of coordination of the Strategy and the Action Plan. It is necessary for the Anti-corruption Agency to start performing its duties within its area of responsibility as soon as possible, including coordination and monitoring of the Strategy and the Action plan, which is especially important, considering that the Agency is designated in all program areas as the only institution responsible for the realization of this strategic area.



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