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IMPROVEMENT OF THE NATIONAL INTEGRITY SYSTEM IN B&H

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TRANSPARENCY INTERNATIONAL
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BANJA LUKA
Gajeva 2
78000 Banja Luka

SARAJEVO
Franje Račkog 2
71000 Sarajevo

www.ti-bih.org

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Author: Aleksandra Martinović
Project manager and editor: Lejla Ibranović
Translation: Bjanka Osmanović
Grafic design: Saša Đorđević

ABOUT THE AUTHOR

Aleksandra Martinović graduated in economics from the University of Belgrade. After university she worked for three years in economy, international economic relations and marketing. Aleksandra started working for TI BiH in 2003 and has served as its Executive Director from 2005 until 2008. She became a member of the Board of Directors in 2008.

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- **Almedina Karić**, Institution of Human Rights Ombudsman of Bosnia and Herzegovina
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- **Zoran Savić**, Direkcija za koordinaciju policijskih tijela BiH
- **Dževad Nekić**, Audit office of the institutions of Bosnia and Herzegovina
- **Đemo Ćar**, Federal administration for inspection issues
- **Edin Jahić**, Ministry of security BiH
- **Eldan Mujanović**, Faculty for criminal justice, criminology and security studies
- **Mirjana Popović**, Centre for Investigative Reporting
- **Mirsad Sirbubalo**, Public procurement agency of BiH
- **Sead Lisak**, Agency for the prevention of corruption and coordination of the fight against corruption
- **Suad Arnautović**, Central Election Commission of BiH

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INTRODUCTION

In 2012 Transparency International Bosnia and Herzegovina (TI BiH) implemented the project National Integrity System Assessment in Bosnia and Herzegovina 2013. The concept of NIS has been developed and promoted by Transparency International (TI) as part of TI's holistic approach to combating corruption. While there is no absolute blueprint for an effective anti-corruption system, there is a growing international consensus as to the salient aspects that work best to prevent corruption and promote integrity. NIS assessment is developed according to the established TI methodology, which around the world constiutes the basis for development of national anticorruption strategies.

The NIS assessment offers an evaluation of the legal basis and the actual performance of institutions relevant to the overall anticorruption system. These institutions – or "pillars"- comprise the executive, legislature, judiciary, the main public watchdog institutions (e.g. supreme audit institution, law enforcement agencies), as well as the media, civil society and business as the primary social forces which are active in the governance arena. When these governance institutions function properly, they constitute a healthy and robust National Integrity System, one that is effective in combating corruption as part of the larger struggle against abuse of power, malfeasance and misappropriation in all its forms. Strengthening NIS promotes better governance in the country and contributes to a more just society overall.

The publication "Improvement of the national integrity system in BiH" is a continuation of work started with the NIS assessment. Based on the key findings of the study and the results of NIS national integrity workshop, its aim is to identify the basic international obligations undertaken by BiH in the field of the fight against corruption and international standards relating to regulations on conflict of interest, funding of political parties and election campaigns, public procurement and free access to information, and to formulate recommendations for improvement of these regulations and their effective implementation in BiH.

At the National Integrity System workshop eminent experts and representatives of relevant institutions, organizations and the media took part, such as; Central Election Commission, the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, representatives of law enforcement agencies, audit institutions, the Public Procurement Agency, Ombudsman for Human Rights, the Center for Investigative Reporting, and many others.

INTERNATIONAL OBLIGATIONS OF B&H IN THE FIELD OF FIGHT AGAINST CORRUPTION

Bosnia and Herzegovina ratified the following basic international instruments in the field of fight against corruption:

- UN Convention against Corruption,
- UN Convention on Transnational Organized Crime,
- Criminal Law Convention on Corruption of the Council of Europe,
- Civil Law Convention on Corruption of the Council of Europe,
- Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime and on the Financing of Terrorism.

The obligations of Bosnia and Herzegovina towards the EU in the field of justice and home affairs, which also include the fight against corruption, are specified in the following key documents:

- Council of Europe Decision on Principles, Priorities and Conditions in the European Partnership with Bosnia and Herzegovina (2007),
- Stabilization and Association Agreement between the European Communities and their Member States, on the one hand, and Bosnia and Herzegovina, on the other hand (2008),
- Visa Regime Liberalization Road Map (2008).

The principles, priorities and conditions in the European Partnership with Bosnia and Herzegovina include obligations of Bosnia and Herzegovina in the field of anti-corruption policy, which, among others, also include the adoption and implementation of a detailed anti-corruption action plan, based on the National Anti-Corruption Strategy, the implementation of recommendations by the Group of States against corruption (GRECO) and meeting of obligations resulting from international conventions on corruption.

In addition to this, Bosnia and Herzegovina is expected to ensure efficient criminal prosecution of perpetrators of criminal offence of corruption, adoption of zero tolerance policy towards corruption, implementation of the Law on Conflict of Interest and to establish a a more efficient state-level system for corruption-related data gathering and keeping of a criminal statistics register.

By ratifying general international legal instruments and assuming the obligations resulting from the EU integration process, Bosnia and Herzegovina made the first step towards their incorporation in the national legal system. However, it failed to consistently harmonize the assumed obligations with the national legislation and implement them in practice.

Not only have there been no improvements of the legal framework for fighting corruption, but over the past months there have also been growing political efforts to derogate the most important anti-corruption regulations and limit public access to information of public interest. As a result, the implementation of anti-corruption reforms at all levels has been stagnating, whereas the perception of corruption and civil dissatisfaction has been continuously increasing.

FREEDOM OF ACCESS TO INFORMATION

The right of freedom of access to information is a fundamental democratic right belonging to the younger (third) generation of human rights and freedoms. It is the prerequisite for establishing *basic principles of democratic governance, rendering possible a more efficient fight against corruption through the control of accountability of government bodies and facilitating journalistic and research activities.* As such, it is based on numerous international conventions and other documents, the most important ones being:

- United Nations Universal Declaration of Human Rights (Article 19)
- United Nations Covenant on Civil and Political Rights (Article 19)
- European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 10)
- Recommendations of the Council of Europe
- United Nations Aarhus Convention.

LEGAL FRAMEWORK

Thanks to the efforts of the international community, Bosnia and Herzegovina is the first country in the region to have adopted the Law on Freedom of Access to Information (LFAI) at the state level in 2000, which has been subsequently amended several times,[1] and in 2001 it was adopted in both entities, Republika Srpska[2] and the Federation of Bosnia and Herzegovina.[3] The laws have largely been harmonized with the international standards, except for the provisions or special regulations on the protection of individuals reporting on or disclosing irregularities ("whistleblowers").

The laws were revolutionary due to the principle they introduced – that "all information possessed by public bodies represent public good" and, as such, is accessible to the public.

Public bodies and information were defined in a quite broad manner for the purpose of full openness of the government. Exceptions to the free access to information are few and they relate to the "interests of defense, security, crime prevention and detection, protection of decision making processes at public bodies" or "protection of confidential commercial information" or "protection of privacy of third parties", and the decision on denial of information must be adopted in every specific case, by implementing the *test of public interest* that has to consider every benefit and damage that may result from the publication of information. The law also renders possible partial access to information, if part of the information was proclaimed to be excepted.

As regards the request submission procedure, the request must be made in writing, with minimum data and without any particular explanation why the access is requested. The access to information is in general free, except when the submitted documents in the printed form exceed a certain number of pages. Administrative proceeding provisions are applied to the request processing procedure. If the access to information is denied, the applicants may also contact the Ombudsman for Human Rights of Bosnia and Herzegovina.

The Office of the Ombudsman also has the obligation to gather information on the application of law, which constitutes a separate part of their annual report, just as provision of guidelines and recommendations on application of law to public bodies.

The laws also define the obligations of all public bodies to appoint a PR officer, draft and distribute a guidebook for citizens, draft and distribute a register of information they possess and to report on a quarterly basis to the Office of the Ombudsman on received requests for access to information and decisions on them and other issues.

Whereas the state law meets most of the criteria for an adequate implementation, including also the sanctions for the violation of law, both for the institution and the person responsible at the institution, the entity laws do not provide for sanctions in case of violation of law.

In addition to this, the Law on Freedom of Access to Information of Republika Srpska contains provisions according to which the applicant is informed on the refusal or approval of access to information by means of a non-administrative letter, which is not an administrative act, instead of a decision, which is an administrative act. At the same time, this is the only relevant Law that has not been amended so far.

Other more important comments in relation to the legal framework are related to the following:

- The obligation of the institutions to organize a process to ensure free access to information by adopting rulebooks and procedures for this purpose has not been

fulfilled;
- Submitting a complaint to the same body that refused the access to information is more inadequate protection of rights than if a complaint had been submitted to a second-instance body or independent institution;
- The obligation of the institutions to be proactive, or to disclose as much information as possible, even when they are not requested to do so, is insufficiently emphasized.[4]

General attempts at abolishing the legal framework that is directly or indirectly related to the fight against corruption, which have been occurring over the past several years, are also present in case of free access to information. At the initiative of the Agency for the Protection of Personal Data of Bosnia and Herzegovina and based on decisions of the Council of Ministers of Bosnia and Herzegovina, the Ministry of Justice of Bosnia and Herzegovina published the Draft Law on Amendments to the Law on Freedom of Access to Information in May 2013 and rendered possible public discussions.

This draft establishes the principles of access to information in a different manner than the existing principles, the definitions of terms are somewhat different, a whole paragraph related to personal information is excluded (since this is specified in the Law on Protection of Personal Data), a restriction for the purpose of protection of the right to privacy and other legitimate private interest is defined and the complaint procedure is specified.

The submitted draft has been evaluated as very negative by the academia and civil society.

First of all, part of the suggested new solutions has already been prescribed by the provisions of other material and process laws and contained in international conventions, so that it is unnecessary to incorporate them in this document.

The suggested restrictions of the access to information related to protection of privacy and other legitimate private interests are particularly troublesome, whereas the access to this information would be an exemption specified by law for specific cases. This would allow for the introduction of the rule of non-disclosure of information and automatic non-disclosure procedure by public bodies, which is contrary to the basic goal and spirit of laws on the freedom of access to information in the world, according to which information disclosure is a rule, and non-disclosure rather an exception. According to documents of the Council of Europe and European Union, the protection of personal data refers to protection from processing of such data and in these documents there are no elements suggesting the need for automatic denial of access to information. In addition to this, the proposed amendments would basically exclude *the test of public interest* from the law, which established the principle of resolving every request on a case to case basis, which is considered one of the most important achievements of the recent legislation in Bosnia and Herzegovina. The introduction of the suggested restrictions would represent a considerable step backwards in this field, render possible considerable abuse of office at public bodies, limit investigative journalism, and, last, but not least, would be contrary to Article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms and Constitution of Bosnia and Herzegovina.

IMPLEMENTATION

As regards the practical application of the Law on Freedom of Access to Information, even after thirteen years it is still far from being satisfactory.

In its 2012 Progress Report for Bosnia and Herzegovina, the European Commission stated that little effort was made to improve the implementation of the Law on Freedom of Access to Information, whereas compliance

with the recommendations made by the Ombudsman of Bosnia and Herzegovina is still limited.[5]

Research shows that laws are more complied with by state institutions than entity institutions, probably due to the mentioned lack of sanctions.[6]

According to findings of the research conducted by TI BiH in 2012, only 53% of institutions met their obligations within the legal deadline (15 days), so that the average duration of the procedure exceeds a month, whereas 20% of institutions gave no reply at all. There were also cases of inaccurate extraction of public information, or **failure to conduct the public interest test**, which is frequently a consequence of lack of understanding of the law, its goal and purpose, and insufficient awareness of PR officers at public institutions. A particular problem is the fact that only 15% of institutions provided information in the form of decisions (administrative acts), which is obligatory by law and which is crucial for citizens in order to obtain further judicial protection of this right.[7]

Practical problems also occur as a result of a selective approach of institutions in case of requested information. The most difficult issue is to access information on public procurement, privatization process, budget execution and performance of public companies.[8]

Other identified problems in the practice of public bodies are the following ones:

- lack of structure and supporting regulations of public bodies for the implementation of laws,
- insufficient cooperation between the heads and/or employees of public bodies with PR officers,
- lack of manuals for users that have right to free access to information,
- lack of index registers of information in possession of public bodies,
- poor or superficially explained decisions on refusal to grant access to information,
- non-adoption of decisions within legally specified deadlines and frequent cases of no reply at all to requests,
- non-compliance with the legal form of decision making (written decision containing all elements in compliance with the provisions of the Law on Administrative Proceedings),
- decisions do not include instruction of legal remedy and name of second-instance body deciding on complaints or appeals,
- failure to conduct the test of public interest or ensure a balance between the public interest and protection of personal data or privacy of individuals,
- small number of institutions reporting to the Ombudsman.

As regards specific institutions, the **legislative branch** is somewhat more transparent when it comes to its activities, whereas the activities of the **executive branch**, especially when it comes to public funds use, are frequently highly non-transparent. The Government of Republika Srpska has even adopted a conclusion in which it, by overstepping its powers, specified that the Law on Freedom of Access to Information does not apply to meeting minutes of the Government of Republika Srpska, i.e. that the minutes are not public documents.[9]

The public is generally able to access relevant information on the structure and activities of the **judiciary** and court rulings, with certain legal restrictions. However, there are still examples of some courts and prosecutor's offices drastically violating the principle of public access.[10] A particular problem occurred when the Court of Bosnia and Herzegovina adopted a rulebook on access to information that introduced restrictions in access to information possessed by the Court, including the names of the accused.[11]

The transparency of **law enforcement agencies** is present in practice to an extent that does not endanger the operation or disrupt investigations. However, when it comes to "politically sensitive issues", or cases in which politicians and high-ranking officials are accused of certain criminal offences, especially of corruption, the public has great difficulties to access relevant information. The same applies to disciplinary procedures related to prosecutors.

Access of the public to information on activities of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption is restricted due to the lack of political will needed to make this body functional, which results in the fact that the Agency lacks personnel that would meet all of its legally specified obligations.

The Central Election Committee of Bosnia and Herzegovina is a relatively transparent institution, although this body is facing persistent political pressure that endangers the adoption and impartiality of its decisions. A particular problem is the decision of the Appellate Division of the Court of Bosnia and Herzegovina forbidding the Central Election Committee of Bosnia and Herzegovina to publish on its website scanned declarations of assets of candidates and elected political officials, under the excuse that this practice is in collision with some of the provisions of the Law on Protection of Personal Data. The public is thus denied access to data that are an important prerequisite for the control of participation of citizens and media in the fight against corruption.

The Ombudsman for Human Rights of Bosnia and Herzegovina is competent for the supervision of activities of institutions at all levels, reports on them and makes recommendations to the authorities that they are applicable to and the public. However, these recommendations are not sufficiently obligatory for the institutions that they relate to. There are also complaints that the reports of the Ombudsman do not call for transparency and accountability of government authorities in sufficient manner, just as complaints related to the independence of this institution, which may be a consequence of the political appointment of its members by the Assembly.

The supreme audit institutions are quite transparent and they do as a rule comply with legal obligations. However, the increasing political pressures and attempts to control these bodies, contesting some of the reports and even exclusion of opinions of part of the management structures in relation to audit opinion question their transparence, especially when it comes to decision making.

The operations of **public radio and television broadcasting services** (BHRT, RTRS and RTV FBiH), which are public companies, and as such subject to the laws on freedom of access to information, are still not sufficiently transparent. The attempts of TI BiH to obtain information on financial performance of these companies, especially in relation to pre-election campaign advertising, in compliance with law, have been unsuccessful.[12]

When it comes to **business companies**, the level of disclosure of information is at a low level, except for the basic financial statements. It is difficult to obtain audit reports of companies, and there is mostly no updated information disclosure on the conflict of interest of steering committee members.[13]

International organizations in Bosnia and Herzegovina are not subject to explicit rules on availability of information. Most of them have multilingual websites and publish individual reports. As regards financial performance, they mostly do not disclose detailed information.

The basic causes of the previous inadequate application of law are the following ones:

- lack or insufficient political will for an open attitude of institutions towards the public;
- insufficient understanding of the importance of access to information at institutions;
- inadequate structure and lack of expertise at institutions in order to ensure access to information;
- lack of awareness of the public about the right to access information;
- insufficient willingness of the public to request access to information;
- low level of trust of the public in relation to the possibility to access information;
- lack of knowledge about the procedures to ensure the right of the public to access information, etc.

RECOMMENDATIONS

- Harmonize laws regulating free access to information at different government levels, especially in relation to the introduction of provisions for misdemeanor offences at entity laws;
- Replace the word "letter" in the Law on Freedom of Access to Information of Republika Srpska by the word "decision", which will have all elements of an administrative act;
- Conduct authentic interpretation of the test of public interest by explaining and/or setting additional criteria and rules of assessment of social advantages and disadvantages in order to ensure understanding of the purpose of the test of public interest in case of public bodies;
- Specify exemptions from disclosure in compliance with international conventions and standards;
- Specify supervisory bodies in charge of implementation of law;
- Consider the introduction of second-instance bodies for complaints;
- Expand the role of the Ombudsman for Human Rights of Bosnia and Herzegovina to gathering of information on problems in the application of law and distribution of guidelines for their resolution;
- Introduce the obligation for the so-called pro-active transparency of institutions or disclosure of as many pieces of information as possible in cases when they are not even requested to do so;
- Introduce the obligation for the institutions to draft and adopt secondary legislation regulating the activities related to requests for free access to information;
- Ensure training for employees at institutions dealing with requests for access to information (PR officers) and heads of institutions;
- Conduct continuous awareness raising campaigns for all segments of the society in relation to the importance of access to public information for democratic processes and control of use of public money and obligations,

rights and manners of exercising this right;
• Introduce provisions or a separate act related to protection of the so-called whistle blowers.

PUBLIC PROCUREMENT

EU Directive No. 17/2004 for the utilities sector and No. 18/2004 for the general sector regulate the field of public procurement in EU Member States. They regulate part of the EU internal market for different groups of contracting authorities and Member States have the obligation to introduce their provisions in their national legislation. In the process of EU integration, depending on the level of accession, Bosnia and Herzegovina has the obligation to harmonize its regulations on public procurement with the mentioned directives.

The public procurement system in Bosnia and Herzegovina was formally established in 2004 with the adoption of a single Public Procurement Law (PPL)[14] that has been amended several times and with the establishment of the competent institutions: Public Procurement Agency of Bosnia and Herzegovina (PPA) and Public Review Body of Bosnia and Herzegovina (PRB). This field is also regulated by a set of secondary legislation such as rulebooks, rules of proceeding, decisions, instructions and models of standard tender documents. The regulations define the system of rights, duties and responsibilities of stakeholders in public procurement procedures and the procedure for their control.

However, as opposed to EU Member States and neighboring countries, Bosnia and Herzegovina is lagging behind in this field. The European Commission has been admonishing Bosnia and Herzegovina for years in its Progress Reports in relation to the urgency of adoption of new solutions in this field, in compliance with EU Directives. Additional problems that exist are primarily a result of the lack of interest of political parties and government authorities to regulate this field due to their profit from the unregulated system. The political impact on public procurement manifests itself through the failure to adopt a new law that is needed, appointment of officials at public procurement system institutions, immediate implementation of procurement – impact on tendering results, selection of suppliers, etc.

Public bodies that are obliged to apply the Law are: administrative bodies at all levels, public institutions and business companies owned by the state or local self-governance units or institutions financed mostly from the public budget, public companies performing certain prescribed activities (water, electricity and gas supply, transport and telecommunications companies) and bodies under the dominant influence of the contracting authority. However, the scope of application of the law, as opposed to EU Directives, does not include private companies providing public services based on special or exclusive rights, whereas at the same time it includes public companies providing services based on market principles. Also, the possibility of adopting separate regulations for public utility services has still not been used.[15] Although it is the central body for the territory of Bosnia and Herzegovina, the PPA does not conduct procurement procedures. They are rather fully decentralized and full responsibility rests with contracting authorities, the number of which, according to assessments of the PPA, amounts to approximately 2000.

The capacity of contracting authorities for the implementation of the law differs, especially in relation to the expertise of the personnel, and it is quite low in general. The law provides that the contracting authority is obliged to appoint a public procurement committee (in case of procurements with a value under domestic value thresholds its appointment is optional), whose members must possess knowledge of public procurement procedures and at least one member should have special expert knowledge about the subject matter of procurement.[16] This knowledge has been separated as a special profession only over the past years. However, in practice, the level of knowledge of civil servants is not sufficient, and existing trainings are not systematic, continuous and sufficient.[17] Also, there are bodies that have special organization units that deal exclusively with public procurement, but also those bodies where individuals deal with public procurement, as an additional obligation, and due to lack of expert staff or funds for their hiring, they at the same time perform duties that are inconsistent with public procurement due to conflict of interest.

The law provides for the following public procurement procedures: open procedure, restricted procedure with prequalification, negotiation procedure with and without publication of a procurement notice, design contest, competitive request for quotations, and direct agreement. The open procedure is a priority, whereas all other procedures are in a way limiting and foreseen as exceptions that should be implemented under specific and prescribed circumstances.

According to records of the PPA, the share of open procedures has been decreasing since 2010,[18] whereas the share of negotiation procedures has been dramatically increasing,[19] and the share of competitive requests for quotations and direct agreements is also increasing, which points to a decrease in transparency and accountability of contracting authorities.[20] The true scope of application of open procedures is additionally reduced by the fact that numerous capital structures

of great value are without any justification proclaimed to be excepted from the application of the law, so that they are also excepted from the statistical records of the Agency, and another frequent phenomenon is adding of annexes to existing contracts, which significantly changes the original terms and conditions, especially due to multiple increase of original prices, and all this for the purpose of avoiding the application of transparent procedures.

Although Directives No. 2004/17/EU and No. 2004/18/EU provide for the introduction of electronic procurement, they still do not exist in Bosnia and Herzegovina. The lack of new methods, techniques and instruments of negotiation (dynamic purchase system, competitive dialog, electronic auctions, social and environmental aspects of public procurement) is also emphasized by SIGMA experts.[21]

When it comes to the evaluation of bids, the law provides for two criteria: the lowest price of a technically acceptable bid and the most economically advantageous bid, and includes examples of subcriteria.[22] However, there are no regulations or practical instructions on how to conduct the evaluation by applying a certain method, determine the relations between the individual subcriteria and evaluate the bids within a certain subcriterion (weighting). This and the abuse of existing provisions result in the following irregularities: qualification criteria are established as subcriteria for evaluation of bids (most frequently supplier references), subcriteria are not in compliance with the subject matter and size of procurement, methods of bid evaluation within the subcriteria are not stated, but there is rather complete partiality in scoring (there is no weighing), setting of subcriteria that favor a specific supplier and discriminating against others, etc.

One of the basic principles of public procurement legislation in Bosnia and Herzegovina is the principle of transparency, with the prescribed exceptions that are not accessible to the public.[23] In practice, there is no proactive disclosure of information by contracting authorities, except for the legally binding information (records on the course of procedure, reports of the tender evaluation committee, etc.). The Public Procurement Agency, the central administrative body, reports to the Council of Ministers of Bosnia and Herzegovina. The Agency is financed from the budget of Bosnia and Herzegovina. However, the funds are not in compliance with the needs and on time, and the Agency lacks personnel, especially experts.[24]

In practice, the Agency mostly deals with advisory issues, preparation of draft laws and secondary legislation, gathering and analysis of problems in the application of regulations and definition of opinions, and provision of support to the electronic procurement system and practice development.[25] However, the general opinion is that the Agency is not strong enough to maintain the independence of the system. It is frequently being criticized[26] and under pressure by political parties.

Although the operations of the Agency are relatively transparent,[27] the accuracy of its annual reports on concluded agreements is questionable due to the fact that they are based on incomplete information submitted by contracting authorities.[28] In addition to this, the public waits for report publication for at least ten months, mostly due to delay caused by the Parliamentary Assembly of Bosnia and Herzegovina, and no information on the reasons of delay is published in the meantime.

The PRB is competent for the second-instance review procedure of decisions made by contracting authorities and it reports to the Parliamentary Assembly of Bosnia and Herzegovina that appoints its members. Action against decisions of the PRB may be brought before the Court of Bosnia and Herzegovina.

Contracting authorities and economic operators are of the opinion that the PRB is not doing their job well, since the procedures are bureaucratic and lengthy, and decisions inconsistent and superficial.[29] The relations at the PRB are complicated – there is a continuous conflict due to non-application of all procedure rules, frequent decision making by outvoting, inconsistency in decision making,[30] and even bodily conflicts.[31] The transparency of the PRB is extremely low, which has serious consequences for the establishment and harmonization of practice in the review procedure and preventive measures,[32] and archiving of closed cases is not done in compliance with regulations.[33]

A particular problem is the difference in attitudes and opinions between the PPA and PRB, which results in confusion of contracting authorities and gives the public the impression of lack of cooperation and coordination.[34]

The PPL contains very few anti-corruption provisions. One of the rare examples is Article 27 that provides for disqualification of tenderers by contracting authorities in case of bribery and conflict of interest. The law does not provide for a code of ethics for public procurement officers, rules related to acceptance of gifts, obligatory submission and disclosure of data on assets, or monitoring of the lifestyle and income of these officers. There are some provisions regulating the independence of the Public Procurement Committee,[35] according to which every Committee member has to sign a confidentiality and impartiality declaration in relation to tenderers.

An illustration of the necessary requirements for preparing the EU accession process is also the obligation of Bosnia and Herzegovina at the end of 2012 to respond to a list of questions about the selected chapters - Public Procurement (Chapter 5)[36] and Environment (Chapter 27). A significant part of the questionnaire on public procurement is focused on prevention and fight against corruption. As regards the previous problematic practices in Bosnia and Herzegovina that need to be improved, the most important requested data include the rules for exclusion due to corruption/conflict of interest and related problems and cancellation of the contracts entered into based on this, as well as data on the extent to which the existing rules were implemented in past and how many of the identified conflicts of interest were reported by the competent civil servants. Audit and legal protection mechanisms in case of violation of public procurement regulations, independence of the competent bodies and other important issues were also analyzed. Neither the new draft law or the existing law contain any adequate solutions for all possible problems stated in this questionnaire.

Although the PPL does not explicitly state the mentioned violations and relevant sanctions, in case of its violation, the PRB can bring minor offence or criminal offence charges before the competent court or impose a fine of up to KM 4000. It also can compensate the tenderer who suffered a loss due to a violation of law.[37] These provisions are rarely applied in practice - the number of imposed sanctions and minor offence or criminal offence charges is very low, and the damaged tenderers have not been compensated in any of the cases. Such cases mostly result in unjustified annulment of the procedure by contracting authorities or court proceedings lasting for several years.

The PPL does not provide for the establishment of control and supervisory bodies in public procurement procedures. Although initially it had been established as an advisory body, the Council of Ministers of Bosnia and Herzegovina authorized the Agency in 2008 to monitor the legality of application of individual public procurement procedures and publish a report periodically.[38] The most frequently mentioned violations of the Law are related to reduced competitiveness and complicated

requirements for the participation of tenderers, and especially the following:

- Goods, services and works are procured by means of a single public procurement procedure,
- Procedures are divided into "unrelated" lots,
- Certificates on VAT registration are required in relation to the ability to perform professional activity,
- Qualification criteria are applied as bid evaluation criteria,
- Tenderers are requested to possess a certain level of technical capacity as part of the technical and professional capacity,
- Unreasonably high fees for tender documents are requested,
- The date of bid opening is not scheduled immediately after the deadline for bid delivery,
- Documents include statements that "the employer reserves the right to increase or reduce the quantities as compared to the quantities stated in tender documents" and other violations of the law.[39]

The activities of the Agency in case of violation of regulations amount to mere pointing to identified irregularities and making of recommendations to contracting authorities for their removal.

The supreme audit institutions also audit public procurement. They focus on the financial aspect and most of audit reports include general findings that state that "provisions of the law have not been complied with". Part of the audit reports, especially in case of performance audit, does contain the analysis of implemented procurement, identified mistakes, irregularities or abuses, and recommendations made to contracting authorities. Unfortunately, these reports lack an adequate response of the competent institutions, and primarily of the judiciary and parliaments. The most frequent mistakes identified by supreme audit institutions at all levels are the following ones:

- Non-existence, poor planning of public procurement, lack of transparency of public procurement plans, which increases the discretionary power of contracting authorities in the manner of implementation of procedures and reduces competitiveness,
- Imprecise compilation of tender documents,
- Insufficiently detailed criteria for the selection of suppliers,
- Division of procedures for award of contracts,
- Delivery of competitive requests without additional notification only to three addresses,
- Selection of suppliers in spite of the fact that they do not meet qualification criteria or have not submitted complete documents,
- Selection of suppliers based on less than three bids,
- Selection of suppliers based on unit price,
- Failure to implement public procurement procedures,
- Selection of negotiation procedure without adequate arguments and meeting of all requirements for its selection, stating of specific trademarks, etc.
- Leaving out protection clauses in the text of public procurement contracts.

The internal audit function, the establishment of which is provided for by law,[40] still does not exist everywhere, and even in cases where it has been introduced, it mostly does not have an important role in the control of public procurement.[41]

Civil and social control mechanisms have not been adequately regulated, and there is no protection of persons that report corruption bona fide at institutions – the so-called "whistleblowers", which makes the detection of irregularities more difficult. In general, the existing methods of public procurement control are neither sufficient nor efficient.[42]

The reports compiled periodically by SIGMA experts point to chronic problems that are not being resolved.

In the last report from May 2011, it was pointed to the need for the adoption of a new law in compliance with EU Directives, and the criticism mainly focuses on the following items:

- Existence of provisions on obligatory preference of domestic tenderers (decision by the Council of Ministers of Bosnia and Herzegovina), which discriminates against foreign companies. Although they were adopted with the explanation that their purpose is to support domestic economy, these provisions result in reduced competitiveness and possibility of occurrence of corruption,[43]
- Differences in contract award procedures,
- Bureaucratic approach to public procurement and formalistic approach to implementation, such as, for example, the need to certify all documents stating qualifications of tenderers, which results in an increase of costs for participants and reduced competitiveness,
- Lack of regulations and non-recognition of status of tenderers between cantons/entities, which results in certain tenderers being favored,
- Costs of publication of public procurement notices in the Official Gazette of Bosnia and Herzegovina, irrespective of the fact that there is an alternative consisting in electronic disclosure on the website of the PPA, which leads to avoidance of the obligation to publish the contract award report by some of the institutions,
- Insufficient capacity of the PPA BiH and PRB, especially when it comes to monitoring activities of the Agency, transparency and professionalism of the work of the PRB and insufficient coordination between these institutions,
- Perception of public procurement practices by the business sector, since they are seen as subject to corruption and political pressures and lack of political will to improve the situation in this field.

Based on the Decision of the Council of Ministers of Bosnia and Herzegovina of February 23, 2012, the PPA was entrusted with the preparation of an analysis of the situation in the field of public procurement, which might result in an initiative for amendments to the Law. In addition to the already mentioned issues, the analysis identified the following problems:

- Receipt of less than 3 bids or 3 requests for participation is a problem making the situation more complex, especially considering the lack of market development in Bosnia and Herzegovina. Procedure repeating in these cases increases the costs and time and makes the system inefficient;
- Implementation of the framework agreement in compliance with the applicable provisions of the law is a quasi-solution for procurements that are frequently needed by contracting authorities;
- Limitation of procurements through direct agreement of 10% as compared to the procurement budget constitutes unnecessary limiting for contracting authorities with small budgets (e.g. primary and secondary schools);
- Too frequent use of the negotiation procedure without publication of a procurement notice;
- Deadlines applied in open, limited and negotiation procedure with publication of a procurement notice that are below the international value thresholds are longer than in the countries of the region;
- Contracting authorities apply exemptions from secrecy from Article 5 of the PPL even when they have no basis for that, and in some of the cases identified in the field even involve abuses of exemptions;
- Due to omissions in the implementation of contracts by internal controls, contracts are also awarded to those tenderers that state unnaturally low prices in their bids;
- The role of the public procurement officer has been defined in a wrong way – in most cases contracting authorities transfer all the responsibility to the person who deals with public procurement together with the committee;

- The role of the public procurement committee lost its sense, since insufficiently competent employees are appointed members, and this is particularly the case when it comes to complex procurements;
- The issue of defining technical specifications at contracting authorities is one of the greatest problems;
- Tender documents are prepared superficially, without clear definitions and specification, and in case of requests for clarifications or complaints, contracting authorities do not know how to explain why they set certain requirements or made certain definitions.[44]

The scope of the law, and thus also the competence of the Agency ends with the provisions on the award of contracts. This does not regulate the issues of implementation of contracts, amendments to contracts being implemented, final receipt of the subject matter of the contract or payment, results and effects of implemented public procurement procedures ("value for money"), but they are rather in part regulated by other provisions (legislation on contractual relations). Trainings for public procurement officers rarely include topics such as contracts, their types, protection of rights of contracting authorities, etc. Standard tender documents, prepared by the Agency, do not include contract models that would be useful for contracting authorities and serve as an example. In practice, the quality of contracts is frequently questionable, which has negative consequences for the contracting authorities.[45]

Lack of responsibility of economic operators and resulting failure to implement contract and lack of quality in relation to or untimely meeting of obligations is not entered in official records and there are no ''black lists'' of economic operators that would warn contracting authorities about possible consequences of entering into contracts with such operators.

Instead of resolving all the mentioned problems in a comprehensive manner, on November 27, 2012, the President of the Social Democratic Party of Bosnia and Herzegovina sent a set of laws and other legislative acts, including also the Law on Amendments to the Public Procurement Law, to the Chairman of the Council of Minister for further actions.[46] The Council of Ministers removed the item related to the review of the new Public Procurement Law from its agenda on November 28, 2012, a law that has been drafted for two years by the Public Procurement Agency of Bosnia and Herzegovina, including a comprehensive public discussion involving all interested parties. This draft law is a result of the need for improvements and modernization of the existing legal framework, both in relation to domestic problems and assumed international obligations, and primarily EU Directives. Instead of the finalization and sending the new document to relevant bodies for further procedures, the Council of Ministers received priority draft amendments of the *existing* Law contrary to all prescribed procedures, the amendments consisting of only few articles.

The draftlaw provides for the establishment of branch offices of the PRB in Banja Luka and Mostar, which would take over part of the duties of the seat of the PRB in Sarajevo (in compliance with the principle of territoriality and depending on the value of the procurement)[47] and that would have five members (probably also certain administrative and technical personnel that is not mentioned in the draft). Although the proposing party stated that this solution does not require additional funds from the budget of the institutions of Bosnia and Herzegovina, it is nowhere stated what costs would result from this solution for the entities and whether the alleged improvement of the efficiency of the process and speeding up of the planned investments would justify such costs considering the need for more rational use of public administration funds. Also, there are no criteria that would ensure consistency in decision making of PRB branches, since this is not even ensured at the very seat of the PRB in Sarajevo.

Lacking criteria would lead to different legal practice in the country, which is contrary to the very essence of the relevant regulations, namely the creation of a single public procurement market in Bosnia and Herzegovina. Finally, the Draft Law specifies the content of the complaint and defines compensations for complainants initiating a review procedure varying from KM 500 to even KM 25,000, which is much more than in economically better developed countries in the region and constitutes *discrimination against damaged tenderers (primarily small and medium companies)* and discouragement for any kind of fight against irregularities and corruption in public procurement in Bosnia and Herzegovina.

RECOMMENDATIONS

• It is necessary that the PPA improves the existing Public Procurement Strategy: a greater focus on control and repressive mechanisms is needed instead of the previous, primarily preventive mechanisms, as well as defining of operating goals and action plans and speeding up its implementation;
• The Council of Ministers of Bosnia and Herzegovina should draft an anti-corruption strategy in the field of public procurement, as part of the overall Anti-Corruption Strategy;
• A new public procurement law and relevant secondary legislation must be adopted, and they have to be more harmonized with the EU Directives on Public Procurement, and should, among other things, include:
- open procedure as a general rule,
- modern solutions for public procurement (dynamic purchase, e-procurement, etc.), that should be based on the capacity of institutions competent for their implementation,
- prescribed and clear procedures,
- prescribed and clear system of pre-qualifications and qualifications,
- prescribed, easily accessible and complete tender documents (without paying a fee for them),
- prescribed and clear criteria or sub-criteria for the evaluation,
- clear and available evaluation methods,
- rules for clear and transparent selection of candidates or tenderers,
- defining stakeholders and behavior in public procurement that may be characterized as fraud (secret deals between procedure participants and other types of behavior), and defining of relevant sanctions for these offences,
- multiple sharpening of existing sanctions,
- precisely defined exceptions from the application of the law, including restrictive criteria and opinion of the Public Procurement Agency on whether the exception is

justified or not,
- obligatory and precise keeping and availability of all necessary registers, data bases, reports, plans and other information by all public procurement system stakeholders,
- obligatory control and monitoring of the implementation of contracts entered into and reporting on the successfulness of contracts,
- obligation of contracting authorities to disclose information on contracts entered into, activities following the entry into contracts and effects of implemented public procurement procedures ("value for money"),
- introduction of norms for the profession of public procurement officers: defining the type and scope of their responsibility, requirements to be met in terms of qualifications, expertise, special knowledge and authorizing the Public Procurement Agency to establish a certification system for public procurement officers, establishing a continuous training system, establishing of ethical codes, defining conflict of interest issues, acceptance of gifts, introduction of declarations of assets and monitoring of living standards,
- improvement of the review procedure (in compliance with EU Directives),
- improvement of the existing and introduction of norms and establishing of new control mechanisms – public procurement monitoring procedure, internal and external control/audit, civil and social control, participation of citizens in public discussions, etc.
- introduction of norms and establishing of protection mechanisms for persons reporting on irregularities, omissions, abuses and corruption in public procurement,
- improvement of transparency of the Public Procurement Agency of Bosnia and Herzegovina and especially the Public Review Body by improving the reporting policy and strict adherence to the defined data publishing rules;
- strengthening the capacity of central bodies in terms of the number and expertise of personnel, permanent financing, improvement of the image and strengthening the influence and administrative capacities of contracting authorities, but also of economic operators,
- improvement of the electronic communication system between public procurement actors,
- establishment and publication of so-called ''black lists'' of inadequate tenderers, or those that failed to implement the contracts entered into, who implemented them in an inadequate manner or untimely, or who caused damages to contracting authorities, on the website of the PPA or chambers of commerce,

• Harmonization of other relevant regulations in both entities that have an impact on the establishment of the single public procurement market (licenses, social insurance);

• Awareness raising on the importance of an independent, transparent and accountable public procurement system by the PPA, government authorities at all levels and professional associations through the media, trainings, etc.

PREVENTION OF CONFLICT OF INTEREST

The conflict between public and private interest of persons in public positions is one of the basic factors leading to corruption. Rules on prevention of conflict of interest thus lead to higher trust in public institutions, their accountability, integrity, ethics and reduced level of corruption. Conflict of interest is thus included in numerous international standards, most important of them being:

- Guidelines for Managing Conflict of Interest in the Public Service by the Organization for Economic Cooperation (OECD);
- United Nations Convention against Corruption;
- Recommendations and other documents of the Council of Europe, etc.

The following laws are applied in the field of conflict of interest in Bosnia and Herzegovina:

- Law on Conflict of Interest at Government Institutions of Bosnia and Herzegovina[48]
- Law on Conflict of Interest at Government Institutions of the Federation of Bosnia and Herzegovina[49]
- Law on Prevention of Conflict of Interest at Government Institutions of Republika Srpska[50]
- Law on Conflict of Interest at Institutions of Brčko District of Bosnia and Herzegovina[51]
- Law on the Agency for Prevention of Corruption and Coordination of the Fight against Corruption[52]

There are also two important pieces of secondary legislation adopted by the Central Election Committee of Bosnia and Herzegovina): Rules on Procedures in the Field Regulated by the Law on Conflict of Interest[53] and Rulebook on Register Keeping.[54]

Laws on conflict of interest are related to elected officials, holders of executive functions and advisors at government institutions performing public functions (hereinafter: public officials) and regulate the field of prevention of conflict of interest, incompatibility of functions, prohibition of certain engagements and activities, restrictions on employment upon expiration of term of office, rules on acceptance of gifts and provision of services, obligation to submit financial statements, sanctions for non-compliance with law and other related issues. However, incomplete and unharmonized legal solutions leave room for a comprehensive set of situations of conflict of interest that are not resolved adequately or not at all, which is also mentioned in the 2012 Progress Report for Bosnia and Herzegovina by the European Commission.

Previous amendments to the relevant laws were mostly made for the purpose of their derogation and by ignoring the opinions of the relevant domestic and international institutions and organizations. This is primarily the case with documents of the Council of Europe Group of States against corruption (GRECO) and European Commission for Democracy through Law (Venice Commission), which contain certain recommendations and standards that still have not been included in domestic laws. Also, the OHR, OSCE and other organizations reacted in Bosnia and Herzegovina in case of continuous attempts to derogate these laws. The basic reason for this situation is the fact that political parties in Bosnia and Herzegovina put their interests above the need for a better legal framework in the field of fighting corruption.

The Central Election Committee of Bosnia and Herzegovina is competent for the implementation of most laws related to the conflict of interest, except for the Law on Prevention of Conflict of Interest at Institutions of Republika Srpska, which is implemented by the Committee for Identification of Conflict of Interest of Republika Srpska, and the Law on the Agency for Prevention of Corruption and Coordination of the Fight against Corruption, which is implemented by the Agency established under that law. However, over the past months, there have been attempts of the governing political parties in Bosnia and Herzegovina to abolish state-level powers for the implementation of law, which, according to the Draft Law on Amendments to the Law on Conflict of Interest that is currently being reviewed in an urgent parliamentary procedure, would be implemented by the new parliamentary Committee for Decision Making on Conflict of Interest.[55] The composition and competences of this committee were defined by amending Article17 of the existing law, according to which it would consist of nine members, and most of them (six members) would be elected from the members of the Parliamentary Assembly of Bosnia and Herzegovina (three members from the House of Representatives and House of Peoples, respectively, and the Chairman of the Committee and at least one third of members would be representatives of opposi-

tion parties). Other members of the Committee are the Director and two Deputy Directors of the Agency for Prevention of Corruption and Coordination of the Fight against Corruption.

This solution would render possible direct influence of political parties on the decisions of the Committee, since the suggested composition of the Committee would imply that its members verify the existence of a conflict of interest in case of their colleagues. Similar models have proven to be extremely bad in some of the countries of the region (Croatia). Complaints about political partiality and decision making under political pressures were also made in case of the Central Election Committee of Bosnia and Herzegovina.[56] The Election Law of Bosnia and Herzegovina guarantees at least formal independence of this body, so that the concern due to such approach to the issue of independence of law implementation bodies and additional allocations of budget funds is justified.

In addition to this, no criteria related to necessary qualifications and expertise of Committee members are not stated, which results in members not having sufficient knowledge about the relevant legal matter or sufficient experience in the relevant field.

It is also planned to establish a branch of the Committee at the Agency for Prevention of Corruption and Coordination of the Fight against Corruption, the composition of which would be specified separately, and its personnel would have the status of civil servants and employees. In the draft law it is also stated that the Agency will take over employees of the Central Election Committee of Bosnia and Herzegovina who performed these duties up to that moment, ignoring the fact that these employees were also in charge of the application of the laws on conflict of interest in the Federation of Bosnia and Herzegovina and Brčko District of Bosnia and Herzegovina, so that this raises the question who at the Central Election Committee of Bosnia and Herzegovina would be in charge of the duties related to the application of these two laws if the mentioned staff is taken over by the Agency.

Article 4 of the Draft Law specifies that the Committee adopts decisions by majority votes, "which implies the votes of at least two members from every of the constituent people", emphasizing thus pointlessly ethnic affiliation, since this principle of decision making may be applied only in case of adoption of general documents, and in no way in case of individual decisions of the Committee.

For the purpose of verifying the presence of conflict of interest, "the Committee may initiate a procedure ... based on its decision upon receipt of a valid, justified and non-anonymous report or ex officio". However, it is nowhere stated that the person filing a report has the status of a party in administrative proceedings, so that the Committee would have the discretionary right on deciding on whether to initiate the proceedings. As a consequence of this, if the Committee is of the opinion that there is no conflict of interest, the person filing a report would have no legal remedy to challenge such a decision. Also, the deadline for initiating proceedings is not mentioned (according to the existing law, it amounts as much as four years, and it would continue to be applicable), or its duration, so that public officials might remain in a situation of conflict of interest, even until the expiration of their term of office in case of elected officials.

In addition to the law, the differing practice of the Central Election Committee of Bosnia and Herzegovina and the Committee for Identification of Conflict of Interest of Republika Srpska in terms of their application has also been a problem, just as numerous identified cases when laws are applied selectively or are not applied at all. The European Commission also stated that the ex-

amination of legality of decisions on conflict of interest is not guaranteed in an equal manner at all government levels.[57] This is even made worse by the practice of the ruling parties to distribute key positions at public institutions that are supposed to conduct independent monitoring, including the Central Election Committee, Agency for Prevention of Corruption and Coordination of the Fight against Corruption, and other.[58] The activities of the Committee for Identification of Conflict of Interest of Republika Srpska are also limited by extremely bad regulations and the refusal of politicians to improve them.

The following basic deficiencies of regulations on conflict of interest (contained in the findings of GRECO, Venice Commission, Central Election Committee of Bosnia and Herzegovina and TI BiH) leading to problems in their practical application, may be emphasized:

- Individual principles of acting from Article 2 of the still valid law (legality, efficiency, impartiality, openness, etc.)are too broad and their interpretation may be unclear, because there are mostly no legal consequences in case of violation of these obligations or principles,[59]
- Directors and deputy directors of government authorities, agencies, directorates, institutions, institutes and other bodies are in an unequal position, since the provisions of the laws on conflict of interest are applied on one of the groups, namely holders of executive functions, whereas they are not applied on others, namely civil servants, although they are also heads of institutions with high financial assets at their disposal,[60]
- The submission of financial statements is prescribed only by the Election Law (which applies only to elected officials) and is used in the field of conflict of interest, since this law does not have such provisions, so that there is eventually no information in case of other officials to whom the Law on Conflict of Interest (executive officials and advisors) is applied,
- There is no mechanism for reporting on the financial situation during the term of office, especially in case of significant changes in assets,
- There is no control of accuracy of information submitted in financial statements. Although the Agency for Prevention of Corruption and Coordination of the Fight against Corruption was entrusted with the analysis of submitted data on the assets of public officials for the purpose of verifying whether there are cases of corruption and taking of necessary measures in compliance with law, the Agency is still not functioning, and it is still unclear when it might have the capacity for the performance of these duties. In practice, there have even been cases when its competences were even challenged by some of the institutions, which is particularly applicable to the potential conflict of competence between the Agency and the Central Election Committee of Bosnia and Herzegovina in the field of verification of conflicts of interest,
- There are no adequate sanctions for provisions of inaccurate data on the assets of officials,
- Declarations on assets, income and interests are not fully public,
- In practice it happens that the elected officials, holders of executive functions and advisors avoid submitting filled personal data forms to the Central Election Committee, which are crucial for verifications on potential conflicts of interest, and the laws do not provide for sanctions in case of such behavior,
- The deadline for initiating the procedure amounts to four years and it is fully inadequate considering the fact that the officials, due to this deadline, may be in a situation of conflict of interest during the entire term of office. This gave the Central Election Committee of Bosnia and Herzegovina discretionary right to elect officials that will be sanctioned on time, which is an additional impetus for officials to exert improper political pressure on the Central Election Committee,
- The Central Election Committee of Bosnia and Herzegovina has taken over monopoly over the initiation of procedure for verification of conflict of interest by

changing the rules applicable on the procedure in such a manner that other interested parties may only file a report, but do not constitute a party in the procedure. As a result of this, if the Central Election Committee is of the opinion that there is no conflict of interest, the interested party has no legal remedy to possibly challenge such a decision,

- One of the most important sanctions for a proven situation of conflict of interest, removal from duty and annulment of the results of the situation of conflict of interest has not been incorporated in the legal framework. At this moment, the Central Election Committee does not have the power to annul terms of office under the Law on Conflict of Interest, but rather based on the Election Law applied to the elected officials,[61] whereas the holders of executive functions and advisors cannot be sanctioned by removing them from office, since the implementation is decided on by the body that appointed them. In practice, the appointed officials and advisors mostly remain in their positions even after the decisions on sanctions due to violation of legal provisions become enforceable,
- In some cases, persons that are prohibited from being candidates for any position of elected officials, holders of executive functions and advisors are still appointed, which endangers the compliance with the principle of legality and consistent implementation of law, just as compliance with decisions by competent bodies,
- The existing money sanctions from KM 1,000 to KM 10,000 are not appropriate, especially in cases of significant material gains, and offenses of this type are not defined as criminal offenses.

The system of sanctions has been revised under the mentioned Draft Law on Amendments to the Law on Conflict of Interest at Institutions of Bosnia and Herzegovina, the explanation of which includes a statement that the sanctions have been made stricter. However, it is a fact that the Committee has the possibility to stop the procedure of verification of conflict of interest if an official eliminates the circumstances, which renders possible avoidance of sanctions, irrespectively of the previous duration of conflict of interest and the achieved material gain. Furthermore, sanctions consisting in reducing the net monthly salary by 30% or 50% for a maximum period of 12 months, are not much stricter than the existing provisions, because there is no definition of the minimum threshold, which can also mean a reduction of the monthly salary by 1%, which is in no way adequate, especially in cases of significant illegal material gains. Instead of the previous sanction involving impossibility for the candidates to be elected, the new document introduces the sanction "proposal for removal from duty", which is submitted by the Committee to the competent body that appointed the person. However, a "proposal" defined in this manner does not oblige the competent bodies to implement it, which, again, does not guarantee compliance with law. Competent bodies oblige themselves only to submit an explanation to the Committee if they do not accept the proposal for removal from office, but there is no definition of further activities in relation to this explanation and whether it is possible to challenge it. The next suggested sanction is "invitation to the elected official, holder of executive function or advisor to resign", which also does not oblige them to do so, but is rather some form of public condemnation, which has no effect considering the existing level of political culture in Bosnia and Herzegovina. Finally, in the new draft law, officials are even additionally protected by provisions according to which they have to be given protection of integrity of personality, which implies that the law deals more with the protection of personal integrity of officials than the protection of integrity of public functions, which should be their basic goal.

- The regulations do not include provisions on prevention of improper migration of officials from the public to the private sector,
- Provisions on prohibition of acceptance of gifts are

inconsistent, since it may be interpreted that it is allowed to receive gifts from several persons during a certain year, since the number of these persons is not limited. The Criminal Law of Bosnia and Herzegovina defines acceptance of gifts and other forms of benefits as a criminal offense (Article 217), just as receiving promises and requesting gifts,

- Institutions do not submit information to the Central Election Committee in relation to gifts received by officials, although they are obliged to do so no later than 15 days of the day of receipt of information. According to existing provisions, several years may pass before the institutions gather information on received gifts and submit it to the Central Election Committee of Bosnia and Herzegovina, and the law does not provide for any sanctions for failure to do so, just as there are no adequate control mechanisms in case of (non)reporting on gifts,
- The obligations of other bodies and institutions in charge of law implementation are not planned in an adequate manner. The Central Election Committee complains that a certain number of institutions and courts do not cooperate in an adequate manner with them when it comes to delivery of information needed by it for implementation of procedures,
- The Central Election Committee of Bosnia and Herzegovina does not have sufficient capacities for the implementation of all laws within its competence,
- The Central Election Committee of Bosnia and Herzegovina has problems with the fact that it applies laws on conflict of interest both in the Federation of Bosnia and Herzegovina and Brčko District of Bosnia and Herzegovina, without being authorized for this by laws of Bosnia and Herzegovina. This further complicates the scope of work and costs of the Committee in their application, whereas fines are paid to the budgets of the Federation of Bosnia and Herzegovina and Brčko District of Bosnia and Herzegovina, and all costs of investigations and possible lost cases at the Court of Bosnia and Herzegovina are paid from the budget of institutions of Bosnia and Herzegovina,
- Additional burden for the activities of the Central Election Committee of Bosnia and Herzegovina is the election period during which there are most activities related to verification and identification of conflict of interest, in addition to the implementation of elections themselves, considering that new persons are appointed, and persons that had public positions in the previous term are leaving, which makes this period very difficult for the Committee and may have a negative effect on the quality of its activities.
- Awareness raising and information campaigns about the law turned out to be useful, although they were implemented only since the middle of the term of office and depended on donations from international organizations.

Whereas the Law on Conflict of Interest at Government Institutions in the Federation of Bosnia and Herzegovina is more harmonized with the state-level Law on Conflict of Interest, the Law on Prevention of Conflict of Interest at Government Institutions of Republika Srpska is much less restrictive. It includes, among other things, the following:

- A more restricted group of persons to whom it is applied (exclusion of kinship relations by marriage),
- A more restricted group of institutions in relation to which officials may face a conflict of interest,
- A more restricted group of incompatible functions,
- Shorter deadlines for taking over of incompatible functions upon expiration of the term of office,
- Less restrictive prohibitions of provision of personal services,
- There are no formal obstacles for membership at steering bodies of associations or foundations financed from other sources, except for the budget of Republika Srpska,
- Higher value of gifts that may be accepted without any obligation of reporting,

- There is no guarantee for independence of the competent Committee for Identification of Conflict of Interest of Republika Srpska – the Committee is elected by the National Assembly of Republika Srpska, at the proposal of the competent Assembly committee,
- There is a two-instance administrative procedure related to the application of the Law (the Review Committee, which is also appointed by the National Assembly of Republika Srpska), whereas in case of other levels, there is just a one-instance administrative procedure, which may be followed by an appeal to the Appellate Council of the Court of Bosnia and Herzegovina,
- The competent Committee is not authorized to impose sanctions such as termination of term of office, since there is no exclusive competence of the Central Election Committee over the election process,
- Considerably lower sanctions, etc.

Such a regulation results in a situation where in practice the competent Committee has difficulties to verify whether there has been a conflict of interest, even in case of persons that perform several public functions. In addition to this, the existence of considerably different legal provisions at different levels of Bosnia and Herzegovina leads to additional legal gaps, unclarities and unjustified introduction of different legal practice.

RECOMMENDATIONS

- Harmonize all laws at the state and entity level that are directly or indirectly related to this field, in order for the application of the laws to be clear and consistent, and in order for officials at different levels in Bosnia and Herzegovina to be in an equal position,
- An equal treatment in relation to conflict of interest for all heads of public administration bodies, agencies, directorates, institutes, institutions and other bodies that have significant funds must be legally defined and ensured,
- Greater focus is needed on the generated financial gain,
- Introduce the obligation to deliver declarations of assets for all officials obliged by the law, at the beginning of term of office, at the end of every calendar year, at the end of term of office and at any other time during their term of office in case of a significant change (which also has to be legally defined),
- Define sanctions for failure to deliver reports or delivery of inaccurate and incomplete data on the assets of elected officials, holders of executive functions and advisors and their near relatives,
- Establish control of accuracy of information submitted in financial data and the obligatory cooperation of all relevant bodies,
- For the purpose of prevention and early detection of conflict of interest and unjustified material gains, declarations of assets, income and interests should have the status of public documents, and for this purpose it is necessary to establish public registers at bodies for prevention of conflict of interest,
- The span of fines should be increased, in order to be more appropriate for cases of significant material gains,
- In case of significant material gains, there should be provisions specifying automatic opening of investigations on the origin of assets, and in case of proven illegal gains, sanctions involving assets confiscation and other relevant sanctions from criminal legislation should be applied,
- It is necessary to introduce the sanction of obligatory removal from office and annulment of the consequences of the situation of conflict of interest in case of a proven situation of conflict of interest, for all persons included in the scope oflaw, in order to ensure equal legal consequences and prevent any additional abuses if the officials facing conflict of interest remain in office,
- Ensure mechanisms for consistent application of law by all public bodies and institutions in order to avoid the appointment of officials that were prohibited from being candidates for any function of elected officials, holders of executive functions or advisors for a period of four years from the violation (if this measure stays in power, considering that the Venice Commission and Court of Bosnia and Herzegovina have differing opinions on this),
- Introduce legal provisions on prevention of improper migration of officials from the public to the private sector,
- In order to ensure efficiency and equality before law, it is necessary to specify in the law the obligation of the competent body to initiate the procedure on time and to make a decision on conflict of interest within 6 months,
- All third interested parties should be given the possibility to initiate the procedure for verification of conflict of interest, including the right to be considered parties to the procedure,
- Introduce provisions related to gifts need to be specified, the number of persons from whom gifts are allowed during a certain period needs to be limited, a deadline for reporting on gifts has to be introduced, as well as a mechanism of control of reporting of gifts by officials, the obligation of institutions to provide information on gifts received by officials within a certain deadline, and sanctions for officials and institutions failing to comply with these provisions,
- The obligation of all government authorities, institutions, courts and other legal and natural persons at all levels of Bosnia and Herzegovina to submit relevant

information and other forms of cooperation with bodies competent for implementation of the Law on Conflict of Interest should be clearly defined,
- Adequate resources for the implementation of law should be ensured for all competent bodies,
- Resolve issues of insufficiently clear competences of the Central Election Committee of Bosnia and Herzegovina for the application of the Law on Conflict of Interest in the Federation of Bosnia and Herzegovina and Brčko District of Bosnia and Herzegovina, the issue of submission of reports on the application of law at these levels and issue allocation of costs and income related to the application of law at different levels,
- Ensure timely awareness raising and information campaign, so that public officials are informed about regulations on conflict of interest when taking over their function,
- Ensure continuous awareness raising and information campaigns for other segments of the society, too, especially the media and NGOs that make significant contributions to the identification and disclosure of conflict of interest.

FINANCING OF POLITICAL PARTIES AND ELECTION CAMPAIGNS

The field of financing of political parties and election campaigns is gaining more and more importance for the fight against corruption due to the nature of financing of parties and the size of amounts that are exchanged in these processes, which exposes this field to the risk of corruption. International standards applicable to this field are contained in the UN Convention against Corruption (UNCAC), documents of the Council of Europe (especially the recommendations (2003/4) to member countries on common rules for fight against corruption in financing of political parties and election campaigns and other documents).

The most important regulations in Bosnia and Herzegovina regulating this field are the Election Law of Bosnia and Herzegovina (Chapter 15 applies to the field of financing of campaigns)[62] and laws on financing of political parties (at the state level,[63] level of Republika Srpska[64] and Brčko District). In addition to these, some segments of work of political parties are also regulated by laws on conflict of interest, laws on registration of political parties, and laws related to business operations of all legal persons (laws on accounting and audit,

International Standards on Auditing), and acts adopted by the Central Election Committee of Bosnia and Herzegovina (rulebooks, guidelines, forms, etc.).

The law sets limits and defines allowed sources and limits of financing, obligation to report on donations and financial reporting, audit and control of financial statements of political parties, sanctions and other issues. The Central Election Committee of Bosnia and Herzegovina is competent for the implementation of the Election Law of Bosnia and Herzegovina and Law on Financing of Political Parties of Bosnia and Herzegovina.

Unfortunately, the legal framework and practice of political parties in Bosnia and Herzegovina are such that parties are very frequently financed illegally and even constitute a source of extremely negative impact on other pillars of the society. The findings of the Global Corruption Barometer of Transparency International confirm that citizens see political parties as precisely the ones that represent the most corrupted segment of the society.[65]

Parties put their interests above the need for a better legal framework in the field of fight against corruption, which is also evidenced by the new Law on Financing of Political Parties in Bosnia and Herzegovina, which entered in force on December 6, 2012 and which failed to resolve most of the problems contained in the previous law. It rather created a series of new dilemmas and potential problems.

Key deficiencies of the legislation and problems in its application are the following ones:

• The existence of numerous mutually unharmonized regulations on financing of political parties and election campaigns leads to confusion in practice, both for institutions competent for their implementation and for political parties and candidates;

• When it comes to financing sources, the new Law on Financing of Political Parties in Bosnia and Herzegovina also introduced certain novelties related to the following:

- The term membership fee was determined and the annual membership fee amount was limited to as much as KM 15,000, which is fully inappropriate considering the economic situation in Bosnia and Herzegovina;
- The limits for the overall annual amount of voluntary contributions of natural and legal persons to political parties were drastically increased, amounting now to KM 10,000.00 and KM 50,000.00, instead of the previous eight average salaries (around 6,400 KM) and 15 average salaries (around 12,000 KM), which are also very high amounts for the current economic situation in Bosnia and Herzegovina and may lead to an even greater impact of donors on the activities of political parties.

• The new law also provides for two new sources of financing of political parties. The first one are publications, sale of propaganda material and organization of party-related events. However, since political parties are associations of citizens, and as such non-for-profit organizations by definition, this source of financing is contrary to their legal basis and introduces the parties to the segment of profit operations (so that parties should accordingly be subject to all tax regulations, fiscal process, etc.). This will make it difficult for the Central Election Committee of Bosnia and Herzegovina to monitor this source of financing, which automatically increases the possibilities of potential abuses.

• The other new source of financing is borrowing from commercial banks. However, these provisions are contradictory and contrary to entity laws on banks according to which commercial banks cannot provide credit funds to political parties.[66] As a result, if a political party would obtain a credit from the Investment and Develop-

ment Bank of Republika Srpska and Development Bank of the Federation of Bosnia and Herzegovina (which are not commercial, but rather 100% state-owned banks) under extremely favorable conditions (low interest rate, long grace period, etc.), it would risk being fined with an amount of only KM 500.00 to KM 5,000.00, which actually pays off.

• The law furthermore provides that political parties have to keep records on the receipt of membership fees and voluntary contributions and issue receipts for the received amounts. However, there are dilemmas about the way of payment of voluntary contributions, i.e. whether voluntary contributions to a political party may be paid in cash to the petty cash or be paid directly to the transaction account by the donor. Namely, although the legislators claim that the law stimulates the use of the banking system (which is also the recommendation made by GRECO for the purpose of more efficient supervision of received donations and other sources of income and costs), according to the law, the person responsible from a political party pays the fee and voluntary contributions to the transaction account of the party no later than 10 days following the day of receipt of payment. In addition to this, according to the Law on Prevention of Money Laundering and Financing of Terrorist Activities, all financial institutions have the obligation to monitor and report to the State Intelligence and Protection Agency transactions amounting to KM 30,000 or more, whether this is a one-time transaction or several related transactions. Since this obligation is not applicable to political parties and considering the new limits of donations by legal persons of KM 50,000.00, the application of these provisions allows for abuse, for example by means of use of intermediaries for payments.

• Only political parties, independent candidates, lists and coalitions that have representatives at parliaments at different government levels are entitled to direct budget financing in Bosnia and Herzegovina. The state-level law thus regulates financing of political actors that work at the Parliament of Bosnia and Herzegovina. The relevant law in Republika Srpska renders possible direct public financing of political actors at the entity level and assemblies at lower government levels. On the other hand, the Federation of Bosnia and Herzegovina still has not adopted the relevant law that would regulate the allocation of budget funds at different levels, which has been contributing to the irregular and arbitrary financing of parties in this entity for years. The mentioned rules are mostly based on the principle of proportionality, which means that parties with a higher number of MPs also get more budget funds. Since the law does not consider the ratio between public and private financing, budget funds are the main source of financing for most of parties, according to available data.[67] In practice, the payment of these funds is sometimes delayed for several months, which puts smaller and opposition parties that have no significant access to other sources of financing in an unequal position.[68]

• The rules for indirect budget financing are in part there as part of the rules for media presentation during election campaigns (Election Law of Bosnia and Herzegovina). However, although the law provides that officials at all government levels that are election candidates may not have preferential treatment in case of media presentation,[69] the abuse of power for the purpose of personal or party promotion is not clearly defined or regulated, which in practice results in the fact that political parties and their representatives in public functions finance their pre-election activities from the budget of institutions that they manage (use of infrastructure of public bodies, companies, etc.).[70] There are no sanctions for such behavior.

• An obstacle for efficient supervision of the division and use of budget funds by parties is the fact that laws do not define which specific categories of costs may

be covered by the budget and which may not. The legal framework in Republika Srpska does not deal at all with the issue of control of use of budget funds, whereas the state-level legislation is only focused on establishing whether the limits for election campaigns have been exceeded or not. Regulations are mainly focused on the control of income and the Central Election Committee is not competent for detailed supervision of the use of funds, so that political parties are in the position to haphazardly and arbitrarily spend the money of tax payers.[71] In its reports, the Central Election Committee provides detailed data on budget use by parties, and the amounts allocated to parliamentary groups may be specified based on the budgets of all government levels, which constitute public documents. However, in practice it is difficult to determine the exact amounts since these funds are presented within different budget items at different levels.[72]

• The new Law on Financing of Political Parties also contains changed provisions on forbidden contributions. In spite of the prohibition for political parties to use administration bodies at all levels, an exception was made in case of the use of the premises that a party obtained based on the decision by the competent body, which is actually legalization of the problem that was continuously present in the practice of political parties and was contrary to provisions of the previous law.

In addition to this, it is forbidden for political parties to be financed by other countries, foreign political parties and foreign legal persons, except for the financing of training programs, for the purpose of development and promotion of democratic principles.

Instead of the previous prohibition of donations to parties by all private companies providing services under contracts with the Government, now the donations are allowed under the condition that the value of the contract with the Government does not exceed the annual amount of KM 10,000. This constitutes further liberalization of regulations that will not contribute to reduction of impact of private companies on political parties and the related reduction of corruption.

• As regards obligations from the Election Law related to financing of election campaigns, parties are obliged to submit pre-election and post-election financial statements and the Central Election Committee is obliged to make them public. The election candidates and elected candidates are obliged to submit reports on their personal assets and the assets of their family members. These reports are submitted at the beginning, 30 days upon the expiration of their term of office and in case of termination of the term of office. However, based on these provisions it is not possible to timely identify any potential illegal gains during the term of office, which manifests itself through the increase in assets of officials, which is in disproportion to their regular income. Standards support the obligation of submission of these data both every year during their term of office and at any other moment in case of significant change of their assets.

Although these data are public in compliance with all international standards and domestic laws, based on a ruling of the Court of Bosnia and Herzegovina, the Central Election Committee stopped publishing data on assets of candidates, providing the argument that the reason for this was protection of personal data of public officials.[73] Another problem is also the fact that there is still no independent control of data contained in assets declarations, considering that this task was given to the Agency for Prevention of Corruption and Coordination of Fight Against Corruption, which is still not functioning and has no resources for its basic needs.

Considering that there is the possibility to prohibit the parties or candidates from running for offices, parties mostly submit their financial statements, although

frequently with delay. Their quality and reliability is questionable, since in practice parties frequently violate legal provisions or operate at the very edge of legality. In practice, the Central Election Committee used its power to prevent them from running for offices only after having exhausted all other legal remedies.

An obstacle for efficient control of financing of political parties and candidates is also the fact that donors, service providers of parties and media (at least when it comes to advertisings of the parties) are not obliged to report on services provided to political parties and candidates. The same also applies to third parties related to political parties (NGOs, associations of citizens), which may indirectly support election campaigns without any financial records on this. Also, the lack of obligation to finance campaigns through single bank accounts (recommendation by GRECO) prevents the Central Election Committee from obtaining complete information on transactions of the parties, reducing thus the possibility to discover abuses.

• The Audit Unit of the Central Election Committee of Bosnia and Herzegovina conducts financial control of political parties. The control includes both regular annual financial statements and reports related to financing of election campaigns. However, the number and expertise of auditors and other necessary resources are missing at this unit. In addition to this, the deadlines for the publication of audit reports, especially in relation to campaigns, are inadequate, so that reports are published too late to have any impact on the election results.[74] Also, regulations do not clearly specify expenses that are to be considered campaign costs, regular costs, and operating costs of political parties during campaigns, which makes it impossible to verify campaign costs independently.[75] Public control is also rendered more difficult by the fact that the Central Election Committee publishes only summaries of financial statements of parties, which do not contain detailed information on individual donations, their sources or individual expenses. Complete financial statements of parties may be obtained only upon request for viewing the documents at the premises of the Audit Unit of the Central Election Committee of Bosnia and Herzegovina.

Part of the problem related to efficient control of financing of political parties is also the fact that since political parties are not public bodies, they are not subject to laws on freedom of access to information or any other similar regulation that would enable the public to access data in their possession. According to research by TI BiH, parties express declarative support for the right of citizens to access information, but in practice they are mostly not transparent, especially when it comes to financial information.[76] This also applies to clubs of MPs at the Parliamentary Assembly of Bosnia and Herzegovina, which do not even submit financial statements to the competent parliamentary committee.

Provisions of the new law related to voluntary contributions, prohibition of financing and support, supervision and financial operations are also applied to the lists of independent candidates and independent candidates.

• The set of sanctions for political parties and candidates is quite limited. Whereas in case of some misdemeanors, the sanctions were reduced, the new law does not contain at all sanctions for situations in which parties: do not keep any records on income and expenses, except for fees and contributions of natural and legal persons, or do not keep any business records at all, do not submit financial statements on time and in the specified manner and do not appoint a person for submitting financial statements and contact to the Central Election Committee of Bosnia and Herzegovina. These provisions are retrogressive due to the fact that they impair the achieved level of financial reporting discipline, which will make the control of financing of political parties significantly more difficult or even

impossible. According to findings of the Audit Unit, laws were mostly violated in such a manner that parties generated illegal income; they received contributions exceeding the allowed limit, they failed to report all contributions of natural and legal persons exceeding the previous legal limit of KM 100.00; they used premises of entity, cantonal and municipal bodies and non-for-profit organizations free of charge, they received contributions from public companies, they failed to keep adequate records on their income and expenses, they submitted financial statements late, they failed to submit them on prescribed forms and they failed to submit additional financial documents at the request of the Central Election Committee. As may be noticed, some of these irregularities were legalized in the new Law on Financing of Political Parties of Bosnia and Herzegovina, in case of which political parties once again put their interests above standards and laws.

What happens in practice of political parties is that due to the possibility to use cash, a certain percentage of regular monthly income of members who received public functions thanks to the party is returned to the party, which is not entered in the financial statements. Also, parties have violated regulations on cash operations and instead of daily records on petty cash changes, they mostly update their accounting records on a monthly or quarterly basis.

In addition to the above stated, regulations do not include sanctions for other legal and natural persons related to political parties, including also donors, and who do not comply with financing rules, and laws also do not contain any provisions on the criminal responsibility of leaders of political parties for non-compliance with financing and reporting rules. The chapter of the Criminal Law related to election-related criminal offences does not provide for the criminal offence of non-compliance with provisions of the Election Law by persons responsible of political parties.[77]

The application of sanctions in practice has been controversial so far, and political pressures on the Election Committee of Bosnia and Herzegovina were very frequently mentioned. These pressures even went as far as open agreements on the number of members to be appointed by a certain party.[78] GRECO considers the independence and impartiality of the Central Election Committee somewhat questionable and states in its report that provisions of the relevant laws are to such an extent unclear and incomplete that the Central Election Committee interprets them in a manner that is too broad and sometimes implements them in an unequal manner. GRECO also states that the Central Election Committee is sometimes partial in case of the governing parties and that if it sanctions a party of a certain ethnic group, the next sanction is imposed on a party belonging to a different ethnic group – for the purpose of political balance. There are also complaints of individual political parties on double standards of the Central Election Committee in relation to financial audit and sanctions for parties, which are mostly imposed on opposition parties.[79] According to the 2011 report of the organization Global Integrity for Bosnia and Herzegovina, the independence of the Central Election Committee was assessed with a score of 25 (out of the maximum 100 points) due to the unquestionable party loyalty of most of its members.[80]

- Also, the law still contains the principle of voluntary submission of these data that provides for the possibility for parties to voluntarily eliminate deficiencies prior to being imposed sanctions. The current practice shows that it is not founded to expect the parties to voluntarily comply with law and eliminate irregularities themselves.

- There is no legal obligation for other control bodies (tax authorities, inspection bodies, etc.) to cooperate with the Central Election Committee of Bosnia and

Herzegovina.

RECOMMENDATIONS

- In order to render possible equal conditions for the establishment and activities of political parties and consistent behavior of parties and candidates throughout the country, it is necessary to adopt harmonized regulations on political parties for all administrative levels in Bosnia and Herzegovina;
- The laws should clearly encourage the use of banking systems for all income and payments of political parties and the use of a single banking account for election campaigns, which would facilitate financial control and discourage irregular financing, especially by means of cash;
- For the purpose of more efficient control, expenses of political parties related to regular operations and election campaigns should be specified in legislation and separated and categories of costs that may be covered from public subsidies should be defined;
- Prescribed formats of financial statements of political parties should be more detailed and credible, in order to contain more information of public interest (detailed data on donations, income and expenses of parties). In order to render possible a better overview of financing of parties, these statements should also include information on related legal persons or legal persons controlled by political parties, and they should be fully available to the public;
- The Central Election Committee of Bosnia and Herzegovina must be given competence over the audit of costs of parties and more powers when it comes to verification of financial statements of parties. At the same time, it is also necessary to strengthen the resources and capacities of the Central Election Committee of Bosnia and Herzegovina for the application of law, and especially those of the Audit Unit competent for the audit of financing of political parties;
- It is necessary to introduce deadlines for financial audits, especially in case of audits of election campaigns.
- Reports on the assets of elected candidates, which are obligatory in compliance with the Election Law, should be submitted both every year during their term of office and in case of any significant changes of assets in order to timely identify any possible illegal gains. In addition to this, it is necessary to specify legal control mechanisms for verification of information contained in these reports. Since the Agency for Prevention of Corruption and Coordination of Fight Against Corruption also became responsible for supervision of declarations of assets, it is necessary to provide it with technical training, resources and independence for the performance of this duty. Finally, these data must be publically available, and sanctions for failure to submit them or submission of inaccurate data have to be sufficiently strict and clear;
- The legal framework regulating behavior during pre-election campaigns must distinguish between the performance of public and party functions for the purpose of preventing abuses of public functions for promotion of parties;
- It is also necessary to abolish the principle of voluntary elimination of irregularities by parties prior to imposition of sanctions;
- In addition to significant sharpening of monetary fines, the set of fines for political parties and candidates has to be expanded, among other things by refusing to allocate budget to parties that do not comply with financing and reporting rules. Sanctions should also be imposed in case of all other legal and natural persons related to political parties, including donors that do not comply with financing rules. Also, it should be considered to introduce criminal responsibility of leaders of political parties for non-compliance with financing rules;
- In order to improve the efficiency of financial control it is necessary to incorporate the obligation of other control authorities and bodies competent for implementation of laws to cooperate with the Central Election Committee of Bosnia and Herzegovina in legal provisions, especially in case of tax authorities, inspection bodies, etc.

- It is necessary to ensure political independence and impartiality of the Central Election Committee and other bodies competent for implementation of law;

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[15] SIGMA *Assessment Bosnia and Herzegovina*, May 2011, available at: http://www.oecd.org/site/sigma/publicationsdocuments/48971635.pdf

[16] Instructions for the Application of the Public Procurement Law of Bosnia and Herzegovina, *Official Gazette of Bosnia and Herzegovina*, No. 3/05 and *Official Gazette of Bosnia and Herzegovina*, No. 24/09.

[17] SIGMA, *2010-2011 Assessment Summary*, available at:http://www.oecd.org/site/sigma/publicationsdocuments/48971635.pdf

[18] In 2010, the open procedure with an amount of KM 1,343,821,679.59 constituted 38.73% of all implemented procedures, which is by 10.85% less as compared to 2009. In 2011, this ratio decreased additionally and amounted to 37.38% (KM 1,169,515,441.01).

[19] In 2010, the value of negotiation procedures amounted to KM 1,235,715,915.88, which is an increase of 549.12% as compared to 2009.

[20] Transparency International BiH, *Monitoring of the Implementation of the Public Procurement Law of Bosnia and Herzegovina*, 2012

[21] SIGMA *Assessment Bosnia and Herzegovina*, May 2011, available at: http://www.oecd.org/site/sigma/publicationsdocuments/48971635.pdf

[22] Quality, price, technical capacity, functional and environmental characteristics, cost-efficiency, operating costs, after-sale service and technical assistance, delivery period, etc. Contracting authorities have the discretionary right to also specify other subcriteria.

[23] This is confidential information contained in any tender bid related to commercial, financial or technical information or business secrets or confidential knowledge of participants in the procedure.

[24] According to the *2011 Financial Audit Report* of the PPA BiH by the Supreme Audit Institution of Bosnia and Herzegovina, the number of positions at the Agency listed in the job systematization amounted to 32, whereas in 2011 the average number of employees was 20.

[25] Public Procurement Agency, *Public Procurement System Development Strategy in Bosnia and Herzegovina for the period 2010 – 2015*, available at: http://www.javnenabavke.ba/vijesti/2010/Strategija_razvoja.pdf; http://www.javnenabavke.ba/vijesti/2010/Strategija_razvoja.pdf

[26] PPA and PRB are not sufficiently proactive in providing information on the public procurement system and provision of practical assistance to contracting authorities and economic operators. 2010-2011 SIGMA *Assessment Summary* http://www.oecd.org/site/sigma/publicationsdocuments/48971635.pdf; European Commission, *2011 Progress Report for Bosnia and Herzegovina.* Working document of Commission personnel (Brussels: European Commission, 2011), Association of Citizens Tender, *Conference on Corruption in Public Procurement*, October 3, 2011

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[28] Only 919 of contracting authorities were registered at the WiSPPA system - web information system for reporting on conducted public procurement procedures in use since the beginning of 2010 and reporting on contracts awarded in 2011 - Public Procurement Agency, *Draft Annual Report* on concluded agreements in case of public procurement procedures in 2011

[29] SIGMA, *2010-2011 Assessment Summary*, Review System Chapter, http://www.oecd.org/site/sigma/publicationsdocuments/48971635.pdf

[30] European Commission, 2011

[31] In the 2011 report on the operations of the PRB, it is stated that the initiation of an examination procedure of alleged conflict of interest in case of one of its members even resulted in a bodily conflict between this member and the Chairman of the PRB.

[32] During six years, his decisions were published only in a short five-month period (December 2010 – April 2011)

[33] The 2011 report on the operations of the PRB

[34] https://www.parlament.ba/sadrzaj/ostali_akti/izvjestaji/default.aspx?id=29407&langTag=bs-BA&pril=b

[35] Instructions for the Application of the Public Procurement Law of Bosnia and Herzegovina, O*fficial Gazette of Bosnia and Herzegovina*, No. 3/05 and *Official Gazette of Bosnia and Herzegovina*, No. 24/09.

[36] From the viewpoint of the EU, the field of public procurement also includes public-private partnerships and concessions, which, however, are not included in this report.

[37] In compliance with Article 52 of the Law, the amount of the compensation is limited to the maximum amount spent for the costs of bid preparation or up to 10% of the price of the tenderer, no matter which of these two amounts is higher. The PRB may also order a contracting authority to compensate the complainant for the review procedure costs.

[38] Rulebook on Monitoring of Public Procurement Procedures, *Official Gazette of Bosnia and Herzegovina*, No. 48/08.

[39] Public Procurement Agency of Bosnia and Herzegovina, 2010 Report on Monitoring of Public Procurement Procedures

[40] For example, out of 63 municipalities in Republika Srpska, only 10 municipalities have the internal audit.

[41] European Commission, *2012 Progress Report for Bosnia and Herzegovina*, http://www.dei.gov.ba/dei/dokumenti/prosirenje/Archive.aspx?template_id=88&pageIndex=1

[42] SIGMA, *2010-2011 Assessment Summary*, Public Procurement Agency Chapter http://www.oecd.org/site/sigma/publicationsdocuments/48971635.pdf

[43] Association of Citizens Tender, Formulations on Corruption in Public Procurement in Bosnia and Herzegovina, available at: http://www.tender.ba/index.php?option=com_content&view=article&id=5&Itemid=4&lang=sbh; Although certain goods are not even produced in Bosnia and Herzegovina, some private companies deliver certificates by the competent chambers of commerce on national origin, increasing thereby their chances of being selected in public procurement procedures.

[44] Analysis of procedures and application of the Public Procurement Law, Council of Ministers of Bosnia and Herzegovina, July 2012

[45] Contracts usually lack provisions protecting contracting authorities from poor quality and untimely implementation of contracts (procurement of goods, services or works).

[46] Set of drafts resulting from the Agreement on Cooperation and Principles of Government Participation of the six ruling political parties in Bosnia and Herzegovina and the Agreement between SNSD and SDP BiH on program cooperation in the legislative and executive branch in the period 2012-2014

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[52] Law on the Agency for Prevention of Corruption and Coordination of the Fight against Corruption, *Official Gazette of Bosnia and Herzegovina*, No.103/10

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[56] According to the 2011 Global Integrity Report, the integrity of the Central Election Committee has frequently been compromised due to the postponement and selective application of law and its refusal to implement certain court rulings, which points to the political ties of most of its members, http://www.globalintegrity.org/report/Bosnia-and-Herzegovina/2011/scorecard

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[59] European Commission for Democracy through Law (Venice Commission), *Opinion on Draft Law on Prevention of Conflict of Interest at Institutions of Bosnia and Herzegovina*, Venice, June 4, 2010

[60] In this respect, the most obvious examples is the Investment and Development Bank of Republika Srpska and Development Bank of the Federation of Bosnia and Herzegovina, the management of which is appointed by the executive branch of the entities, and which have been at the center of attention due to their non-transparent procedures present for years (or due to complete absence of procedures) in relation to nepotism, irregular social transfers and other financial irregularities.

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