

NATIONAL INTEGRITY SYSTEM ASSESSMENT

BOSNIA AND HERZEGOVINA 2015



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**TRANSPARENCY
INTERNATIONAL**
BOSNIA AND HERZEGOVINA

NATIONAL INTEGRITY SYSTEM ASSESSMENT

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NOVEMBER 2015



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THE NATIONAL INTEGRITY SYSTEM ASSESSMENT (NIS) OF BOSNIA AND HERZEGOVINA IS PREPARED BY TRANSPARENCY INTERNATIONAL BIH IN COOPERATION WITH TRANSPARENCY INTERNATIONAL SECRETARIAT IN BERLIN (TI-S).

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ACKNOWLEDGEMENTS

TI BiH owes the deepest debt of gratitude to the following researchers who provided assistance in the research and development of several chapters of this publication:

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The initial findings were significantly improved following the NIS Workshop, held at the Civil Society Promotion Centre in Sarajevo on 5 November 2015, which was attended by:

Dragan Slipac, deputy director of the Agency for Prevention of Corruption and Coordination of the Fight against Corruption
Alena Kurspahić, High Judicial and Prosecutorial Council of BiH
Munevera Baftić, Office for Audit of Institutions of BiH
Muamer Kosovac, Mol of the Sarajevo Canton
Elvedin Okerić, Assembly of the Sarajevo Canton
Damir Dajanović, citizens' association "Zašto Ne"
Minela Alibegović, Office of the Government of FBiH for Legislation
Alija Bakšić, Association of Employees of BiH
Aleksandra Zelić, Centre for Investigative Reporting
Irma Salčin, Institution of the Human Rights Ombudsman of BiH
Elma Tabak, Office of the Government of FBiH for Legislation
Zaim Beriša, Social Democratic Party (SDP) BiH
Jakuf Subašić, Central Election Commission of BiH
Srdan Mikić, Office of the Government of FBiH for Legislation

Mevludin Halilović, Mol of the Sarajevo Canton

Thanks are also due to the members of institutions who were interviewed by the researchers for the purpose of preparing reports on a number of individual pillars in this NIS study:

Jasminka Džumhur, Ombudswoman for human Rights of BiH
Sead Lisak, director the Agency for Prevention of Corruption and Coordination of the Fight against Corruption
Adis Arapović, Centres of Civic Initiatives
Sanja Tošović, Central Election Commission of BiH
Almir Terzić, journalist and political analyst
Faruk Borić, Federal News Agency FENA
Darko Brkan, citizens' association "Zašto Ne"
Bojan Kovačević, Development Agency EDA
Leila Bičakčić, Centre for Investigative Reporting
Vesna Vukmanović, member of NGO ICVA
Armin Kržalić, Centre for Security Studies
Nermina Zaimović-Uzunović, Social Democratic Party BiH and member of the Parliamentary Assembly of BiH
Amila Mujčinović, lawyer
Stevo Pucar, PhD, Faculty of Economy Banja Luka
Prof. Zdravko Zlokapa, PhD, Faculty of Political Sciences Banja Luka
Mirza Ustamujić, former member of the House of Representatives of the Parliament of FBiH
Emir Prcanović, Vaša prava
Halid Emkić, Police of the Brčak District BiH
Branislav Borenović, MP in the National Assembly of RS and President of the Party of Democratic Progress
Bodo Weber, Democratization Policy Council

TI BiH remains especially grateful for the expertise of TI Secretariat–Berlin experts: Andrew McDewitt and others who have contributed to the improvement of the NIS Study methodology, its quality, clarity of message and consistency.

We owe an immense debt of gratitude to Saša Đorđević for his graphic design and DTP services.

The TI BiH 2015 National Integrity System Study for Bosnia and Herzegovina has been produced with the financial support of the European Union.

ABBREVIATIONS AND ACRONYMS

ABBA/CEELI – American Bar Association/Central-East European Legal Initiative

ADA – Austrian Development Agency

AECID – Agencia Española Cooperacion International Para El Desarrolllo

AFET – European Parliament Committee on Foreign Affairs

Agency – Agency for Prevention of Corruption and Coordination of the Fight against Corruption

ALAC – Advocacy and Legal Advice Centre

ALDI – Agency for Local Development Initiatives

BD BiH – Brčko District of Bosnia and Herzegovina

BFP – Budget Framework Paper

BHJ – BiH Journalists

BHRT – Radio and Television of Bosnia and Herzegovina, public service broadcaster of BiH

BiH – Bosnia and Herzegovina, Bosnian and Herzegovinian

BLSE – Banja Luka Stock Exchange

BP – Border Police

BTI – Bertelsmann Stiftung

CA – Citizens' Association

CCI – Centres of Civic Initiatives

CEC BiH – Central Election Commission of BiH

CIDA – Canadian International Development Agency

CIN – Centre for Investigative Reporting

CJB – Public Security Centre

CM BiH – Council of Ministers of Bosnia and Herzegovina

CMS – Court Management System (software)

CoE – Council of Europe

CPC – Criminal Procedure Code

CPI – Corruption Perception Index of TI

CPI – Public Interest Advocacy Centre

CPT – The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

CRA – Communications Regulatory Agency

CRINIS – Study into the Transparency of Political Financing

DAP – Dayton Peace Accords

DB – Development Bank

DCF – Donor Coordination Forum

DfID – Department for International Development

DNS – Democratic People's Alliance

EBRD – European Bank for Reconstruction and Development

EC – European Commission, European Community

ECHR – European Court of Human Rights

EDA – Development Agency

EU – European Union	Bosnia and Herzegovina
EUPM – European Union Police Mission	MOI RS – Ministry of the Interior of the Republika Srpska
EUSR – European Union Special Representative	NARS – National Assembly of the Republika Srpska
FBiH – Federation of Bosnia and Herzegovina	NATO – Northern Atlantic Treaty Organization
FENA – Federal News Agency	NGO – Non-governmental organisation
FMC – Financial Management and Control	NHDR – National Human Development Report
FPA – Federal Police Administration of FBiH	NIS – National Integrity System
FPI – Foreign Policy Initiative	ODIHR – Office for Democratic Institutions and Human Rights
FTV – Federal Television, public service broadcaster of FBiH	OECD – Organisation for Economic Co-operation and Development
GAP – Governance and Accountability Programme	OHR – Office of the High Representative
GCB – Global Corruption Barometer	OPDAT – Office of Overseas Prosecutorial Development, Assistance and Training
GDP – Gross Domestic Product	OSA/OBA – Intelligence-Security Agency
GONGO – Governmental non-governmental organisations	OSCE – Organisation for Security and Co-operation in Europe
GRECO – Group of States against Corruption	OSF – Open Society Fund
GVA – Gross Value Added	PA BIH – Parliamentary Assembly of Bosnia and Herzegovina
HDI – Human Development Index	PC – Parliamentary Committee
HJPC – High Judicial and Prosecutorial Council	PIC – Peace Implementation Council
IATI – International Aid Transparency Initiative	PPA – Public Procurement Agency
ICITAP – International Criminal Investigative Training Assistance Program	PPL – Public Procurement Law
IDDEEA – Agency for Identification Documents, Registers and Data Exchange	PRB – Procurement Review Body
IFAC – International Federation of Accountants	ROSC – Report on the Observance of Standards and Codes
IFC – International Finance Corporation	RS – Republika Srpska
IFRS – International Financial Reporting Standards	RTRS – Radio-Television of the Republika Srpska, public service broadcaster of RS
IMF – International Monetary Fund	RTV – Radio-Television
INCOSAI – International Organisation of Supreme Audit Institutions Congress	RTV FBiH – Radio-Television of the Federation of Bosnia and Herzegovina, public service broadcaster of FBiH
INTOSAI – International Organisation of Supreme Audit Institutions)	SAIs – Supreme Audit Institutions
IPA – Instrument for Pre-accession Assistance	SASE – Sarajevo Stock Exchange
IRB – Investment-Development Bank (JSC Banja Luka)	SB – Supervisory Board
ISO – International Standard	SDP BiH – Social Democratic Party BiH
ISSAI – International Standards of Supreme Audit Institutions	SEE – Southeast Europe
ITA – Indirect Taxation Authority of BiH	
KM – Convertible Mark	
MOI FBiH – Ministry of the Interior of the Federation of	

SIDA – Swedish International Development Agency
SIGMA (OECD) – Organisation for Economic Co-operation and Development
SIPA – State Investigation and Protection Agency
SME – (Small and Medium-sized Enterprises
SNSD – Alliance of Independent Social Democrats (RS)
TACSO – Technical Assistance to Civil Society Organisations in the IPA Countries
TI – Transparency International
TI BiH – Transparency International Bosnia and Herzegovina
TV – Television
UN – United Nations
UNCAC – United Nations Convention Against Corruption
UNDP – United Nations Development Programme
UNGC – United Nations Global Compact
UNHCR – United Nations High Commissioner for Refugees
UNIPTF – United Nations International Police Task Force
UPOV – International Union for the Protection of New Varieties of Plants
USA – United States of America
USAID – United States Agency for International Development
UZOPI – Union for Sustainable Return and Integration in BiH
WISPPA – Web Information System for Public Procurement Agency

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I ABOUT THE NIS ASSESSMENT

The National Integrity System assessment approach used in this report provides a framework to analyse both the vulnerabilities of a given country to corruption as well as the effectiveness of national anti-corruption efforts. The framework includes all principal institutions and actors that form a state. These include all branches of government, the public and private sector, the media, and civil society (the 'pillars' as represented in the diagram below). The concept of the National Integrity System has been developed and promoted by Transparency International as part of its holistic approach to fighting corruption. While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity.

A National Integrity System assessment is a powerful advocacy tool that delivers a holistic picture of a country's institutional landscape with regard to integrity, accountability and transparency. A strong and functioning National Integrity System serves as a bulwark against corruption and guarantor of accountability, while a weak system typically harbours systemic corruption and produces a myriad of governance failures. The resulting assessment yields not only a comprehensive outline of reform needs but also a profound understanding of their political feasibility. Strengthening the National Integrity System promotes better governance across all aspects of society and, ultimately, contributes to a more just society.

DEFINITIONS

The definition of 'corruption' which is used by Transparency International is as follows:

The abuse of entrusted power for private gain. Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.

'Grand corruption' is defined as "Acts committed at a high level of government that distort policies or the functioning of the state, enabling leaders to benefit at the expense of the public good." 'Petty corruption' is defined as "Everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies." 'Political corruption' is defined as "Manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers,

who abuse their position to sustain their power, status and wealth."

OBJECTIVES

The key objectives of the National Integrity System assessment are to generate:

1. an improved understanding of the strengths and weaknesses of BiH's National Integrity System within the anti-corruption community and beyond
2. momentum among key anti-corruption stakeholders in BiH for addressing priority areas in the National Integrity System

The primary aim of the assessment is therefore to evaluate the effectiveness of BiH's institutions in preventing and fighting corruption and in fostering transparency and integrity. In addition, it seeks to promote the assessment process as a springboard for action among the government and anti-corruption community in terms of policy reform, evidence-based advocacy or further in-depth evaluations of specific governance issues. This report represents an update to the previous assessment conducted by TI BiH in 2013. The primary purpose of the NIS update is to: (a) assess whether there has been any progress over time with regards to the country's integrity system, (b) identify specific changes (both positive and negative) which have occurred since the previous NIS report was published, and (c) identify recommendations and advocacy priorities for improving the country's integrity system.

METHODOLOGY

In Transparency International's methodology, the National Integrity System is formed by 16 pillars as presented in the following table.

CORE GOVERNANCE INSTITUTIONS	LAW ENFORCEMENT INSTITUTIONS	INDEPENDENT INSTITUTIONS	NON-GOVERNMENTAL ACTORS
Legislature	Law Enforcement Agencies	Central Election Commission	Political parties
Executive	State Prosecutor	Ombudsperson	Media
Judiciary		Office of the Auditor General	Civil society
Public Sector		Anti-Corruption Agency	Business
			State-Owned Enterprises
			International organisations

Each of the 16 pillars is assessed along three dimensions that are essential to its ability to prevent corruption:

1. its overall capacity, in terms of resources and independence
2. its internal governance regulations and practices, focusing on whether the institutions in the pillar are transparent, accountable and act with integrity
3. its role in the overall integrity system, focusing on the extent to which the institutions in the pillar fulfil their assigned role with regards to preventing and fighting corruption

Each dimension is measured by a common set of indicators. The assessment examines for every dimension both the legal framework of each pillar as well as the actual institutional practice, thereby highlighting any discrepancies between the formal provisions and reality in practice.

DIMENSION	INDICATORS (LAW AND PRACTICE)
Capacity	Resources Independence
Governance	Transparency Accountability Integrity
Role within Governance System	Pillar-Specific Indicators

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather it seeks breadth, covering all relevant pillars across a wide number of indicators in order to gain a view of the overall system. The assessment also looks at the interactions between pillars, as weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the

interactions between pillars helps to prioritise areas for reform.

In order to take account of important contextual factors, the evaluation is embedded in a concise analysis of the overall political, social, economic and cultural conditions – the ‘foundations’ – in which the pillars operate.

POLITICS

SOCIETY

ECONOMY

CULTURE

The National Integrity System assessment is a qualitative research tool. It is guided by a set of 'indicator score sheets', developed by Transparency International. These consist of a 'scoring question' for each indicator, supported by further guiding questions and scoring guidelines. The following scoring and guiding questions, for the resources available in practice to the judiciary, serve as but one example of the process:

PILLAR	JUDICIARY
INDICATOR NUMBER	3.1.2
INDICATOR NAME	Resources (practice)
SCORING QUESTION	To what extent does the judiciary have adequate levels of financial resources, staffing and infrastructure to operate effectively in practice?
GUIDING QUESTIONS	Is the budget of the judiciary sufficient for it to perform its duties? How is the judiciary's budget apportioned? Who apportions it? In practice, how are salaries determined (by superior judges, constitution, law)? Are salary levels for judges and prosecutors adequate or are they so low that there are strong economic reasons for resorting to corruption? Are salaries for judges roughly commensurate with salaries for practicing lawyers? Is there generally an adequate number of clerks, library resources and modern computer equipment for judges? Is there stability of human resources? Do staff members have training opportunities? Is there sufficient training to enhance a judge's knowledge of the law, judicial skills including court and case management, judgment writing and conflicts of interest?
MINIMUM SCORE (1)	The existing financial, human and infrastructural resources of the judiciary are minimal and fully insufficient to effectively carry out its duties.
MID-POINT SCORE (3)	The judiciary has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.
MAXIMUM SCORE (5)	The judiciary has an adequate resource base to effectively carry out its duties.

The guiding questions, used by Transparency International worldwide, for each indicator were developed by examining international best practices, as well as by using our own experience of existing assessment tools

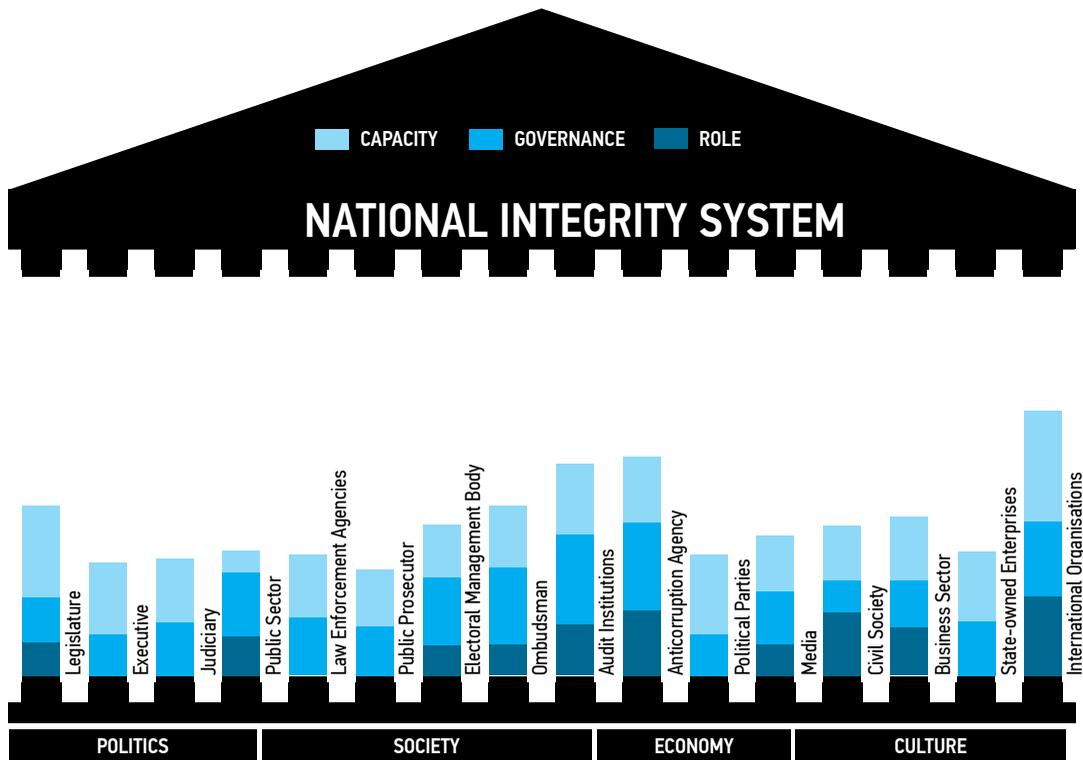
for each of the respective pillars, and by seeking input from (international) experts on the respective institutions. These indicator score sheets provide guidance for the BIH assessment, but when appropriate the lead

researcher has added questions or left some questions unanswered, as not all aspects are relevant to the national context. The full toolkit with information on the methodology and score sheets are available on the Transparency International website.

To answer the guiding questions, the research team relied on four main sources of information: national legislation, secondary reports and research, interviews with key experts, and written questionnaires. Secondary sources included reliable reporting by national civil society organisations, international organisations, gov-

ernmental bodies, think tanks and academia. To gain an in-depth view of the current situation, interviews with representatives of the relevant institutions were conducted for each pillar.

NIS is presented in a variety of graphic forms to show its holistic approach and interconnections and interdependence of institutions. One such graphic illustration of the NIS study can be seen below.



THE SCORING SYSTEM

While this is a qualitative assessment, numerical scores are assigned in order to summarise the information and to help highlight key weaknesses and strengths of the integrity system. Scores are assigned on a 100-point scale in 25-point increments including five possible values: 0, 25, 50, 75 and 100. The scores prevent the reader getting lost in the details and promote reflection on the system as a whole, rather than focusing only on its individual parts. Indicator scores are averaged at the dimension level, and the three dimensions scores are averaged to arrive at the overall score for each pillar, which provides a general description of the system's overall robustness.

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

The scores are not suitable for cross-country rankings or other quantitative comparisons, due to differences in data sources across countries applying the assessment methodology and the absence of an international review board tasked to ensure comparability of scores. For the NIS update, the scores of the previous NIS assessment were used for comparative reasons and are presented alongside the updates scores in the table of scores.

CONSULTATIVE APPROACH AND VALIDATION OF FINDINGS

The assessment process in BiH had a strong consultative component, seeking to involve the key anti-corruption actors in government, civil society and other relevant sectors. This approach had two aims: to generate evidence and to engage a wide range of stakeholders with a view to building momentum, political will and civic demand for reform initiatives.

TI BiH organised an NIS workshop to present the preliminary findings and hold a discussion with key stakeholders. The workshop was attended by representatives of the following institutions and CSOs: Ombudsman Institution, Central Election Commission, Agency for Prevention of Corruption and Coordination of the Fight against Corruption, Assembly of the Sarajevo Canton, Ministry of the Interior of the Sarajevo Canton, Office for Audit of Institutions of BiH, High Judicial and Prosecutorial Council, Association of Employers of BiH, Office of the Government of the Federation of Bosnia and Herzegovina for Legislation and Harmonisation with European Union Regulations, SDP, Centre for Investigative Reporting, Zašto NE.

II EXECUTIVE SUMMARY

OVERVIEW OF OVERALL SCORES BY PILLARS:

LEGISLATURE: 43
EXECUTIVE: 29
JUDICIARY: 31
PUBLIC SECTOR: 33
PUBLIC PROSECUTOR: 26
LAW ENFORCEMENT AGENCIES: 32
ELECTORAL MANAGEMENT BODY: 40
OMBUDSMAN: 46
AUDIT INSTITUTIONS: 58
ANTICORRUPTION AGENCY: 56
POLITICAL PARTIES: 32
MEDIA: 37
CIVIL SOCIETY: 40
BUSINESS SECTOR: 42
STATE-OWNED ENTERPRISES: 33
INTERNATIONAL INSTITUTIONS: 70

GENERAL FINDINGS:

The 2015 National Integrity System country report analyses three dimensions – the *capacity* of an institution to function, its internal *governance* in terms of integrity, transparency and accountability, and its role in contributing to the overall integrity of the state governance system. It seeks to provide a detailed and comprehensive assessment of the national integrity system, and to present relationships between individual institutions or “pillars” that make up the integrity system, allowing comparison with the findings of the 2004, 2007 and 2013 NIS studies as well as providing appropriate recommendations.

On the whole, as was concluded in the 2013 NIS study, the national integrity system in BiH rests on very shaky political, social and economic foundations. This has effectively prevented any significant progress from being made compared to the state identified in the previous studies.

The complex constitutional structure in the country, deep ethnic divisions and the dreadful state of the economy, as a result of the armed conflict that took place in the early 1990s, remain despite the robust and long-standing engagement of the international community.

KEY FINDINGS OF THE NIS STUDY

The key finding, which characterised all previous studies and which is very much true of the present study is the huge difference between law and practice, i.e. the yawning gap between what is required by law and what happens in practice when the law is applied. The general trend of stagnation in the functioning of the national integrity system has continued. Reforms that have been

undertaken have proved largely fruitless, suggesting that the political will to improve the system’s functioning continues to be merely declaratory in nature.

POLITICAL INSTITUTIONS

Lack of internal democracy within political parties (score 32) and unwarranted interference practiced by political parties have a strong negative impact on the effectiveness of accountability and integrity mechanisms in the legislature (score 43), the executive (score 29), the judiciary (score 29) and the public sector (33). Despite a minimal drop in score compared to the 2013 study (from 49 to 43), the legislative branch still received a significantly higher score than the executive and judicial branches. Along with political parties, the executive branch, which has seen the biggest drop in score compared to the previous study, dominates, the other two branches of government, indicating an absence of clear separation of powers and ineffective system of checks and balances. Responsiveness and openness of all three branches of government to the public is very limited, resulting in very poor citizen participation in decision making and very low public confidence in institutions in general.

In practice there is a lack of effective mechanisms to monitor the integrity and accountability of public officeholders in all three branches of government. There are numerous examples of appointments to the highest executive offices of persons who have been convicted of, or are under investigation for, corruption. Also, it is quite common for high-ranking executive officeholders, including ministers, to be involved in verbal as well as physical confrontations in public places. Nepotism and clientelism are extremely widespread, as evidenced by the examples of senior executive officeholders, including presidents and prime ministers, who have abused their office to secure favours or preferential treatment for their relatives, friends and party supporters. Despite

widespread media reporting on all the above cases, no one has ever been called to account.

JUDICIAL INSTITUTIONS

Pillars that are supposed to form the backbone of repressive action in the fight against corruption such as the prosecutor (score 26), the judiciary (score 31) and law enforcement agencies (score 32) consistently demonstrate multiple weaknesses, including unwarranted interference and inadequate transparency, accountability and integrity mechanisms, all of which have a negative impact on their functioning and role in the national integrity system. Political interference in the selection and appointment of management personnel, for example, leads to the capture of these institutions by the interests of their political patrons. As a result, numerous scandals involving the highest-ranking officials have never received a proper response by relevant institutions.

Another key problem facing the judiciary and law enforcement agencies is the fact that the country has four nearly completely autonomous legal systems (state, two entities and Brčko District). These systems are virtually detached from each other, as a consequence of the country's constitutional structure. Legislative activity that regulates the work of the judiciary and law enforcement agencies takes place within those jurisdictions without adequate harmonisation. All of these factors open up room for uneven judicial practices, inconsistent application of laws and unequal treatment of the same factual and legal situations.

Financing of the judicial sector is even more complicated as funding comes from fourteen different budgets, following the administrative division of the country, which does not provide a completely stable and predictable funding base for judicial institutions. Also, this makes the judiciary vulnerable to political interference

through budgeting and funding processes.

OVERSIGHT INSTITUTIONS

Generally, the pillars that make up the so-called fourth branch of government such as CEC (score 40), SAIs (score 58) and Ombudsman (score 46) have scored above average compared to other NIS pillars. Attempts by other pillars to limit their role and subordinate them to the influence of the executive and political parties continue to prevent them from fully exercising an important role in the national integrity system. Similarly, the fact that their activities and findings are routinely ignored by the executive prevents them from achieving their full effect within the integrity system.

NON-STATE INSTITUTIONS

The effective functioning of non-state actors such as business sector (score 42), civil society (score 40) and media (score 37) is still severely hampered by poor legal framework and/or inadequate practices of state institutions, which greatly limits their scope for action and prevents them from playing a stronger role in the overall social integrity system. As a result, these pillars have not seen any significant changes in their scores compared to the previous study. Press freedoms and the power of civil society have generally seen a decline in the last few years. Threats, attacks and pressures against media and civil society organisations and activists, particularly those involved in investigating human rights violations and corruption, are still very common.

International actors (70), which for years represented the most powerful pillar of the integrity system, continue to play an important, albeit considerably changed, role in the country. However, a very high score shows their great potential in terms of playing a positive role in the country's reform processes. The country's commitment to EU integration still represents the framework

for overall reform processes in the country.

CONCLUSIONS

Overall, the vast majority of pillars have made no progress since the release of previous NIS studies; moreover, some of the pillars have even seen a drop in their scores, with the executive branch experiencing a particularly marked drop. This situation suggests a continuing lack of political will for reform. When we add to this the broader systemic problem of state capture, which has been observed consistently since the release of the first NIS study in 2004, it becomes clear that the country is facing a long and challenging reform path.

Stalled on the path to European Union membership, BiH needs to find ways to limit, without delay, the predation of its politicians, unburden its entrepreneurs, and prosper its people.

The required stimulus, however, can no longer come from international intervention of the sort practiced in recent times. The European Union expects BiH to fully meet its requirements, which means that the ownership of reforms must rest with the institutions of BiH. Bearing in mind that reforms are inherently political processes, and that there is currently no adequate political will for their implementation because of the political elite's primary interest to preserve the status quo, an important stimulus and demand for reforms must come from civil society, free media and the fourth branch of government reinvigorated by international support. Ultimately, the success of the fight against corruption will be a critical factor in determining the future of the country, given that no reforms can be implemented in a satisfactory manner without significant progress in this area.

Based on a detailed analysis of all NIS pillars, **five crucial recommendations** have been formulated as follows:

- Governments at all levels (including political parties) should undertake efforts to ensure that decision-making processes are more democratic, transparent and inclusive;
- The judicial system needs to become more independent and professional, and focus on addressing the widespread cases of grand corruption;
- Appointments in the public sector should be free from political interference, merit-based, open to the public, and subject to scrutiny by civil society organisations;
- The highest ethical and integrity standards should be applied across the public sector, including conflict of interest regulations and asset declarations, and these should be monitored and enforced by independent bodies;
- Governments at all levels should ensure that non-state actors (media, civil society and the business sector) are protected from political interference and pressure.

III COUNTRY PROFILE

POLITICO-INSTITUTIONAL FOUNDATIONS

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

SCORE: 25

Despite almost 20 years of strong internationally-driven state-building, BiH still resides on weak politico-institutional foundations. The institutional context of the country was largely shaped by impositions or direct pressure from the High Representative, leading to the formation of institutions that were non-viable and, as such, unable to significantly improve the quality of government, rule of law and protection of basic human rights and freedoms¹. Following the reduction of the OHR's interventions, the institutions have become easy prey for political parties, which have used political appointments and fiscal blackmail to subordinate institutions to their own particular interests. There is a noticeable stagnation and backsliding in most of the Balkan countries, which, according to the "Nations in Transit" annual report by Freedom House, continue to make only fitful progress on democratisation indicators. Furthermore, there are still no consolidated democratic

regimes in the region, and Bosnia and Herzegovina is among the three countries in the region that have worse democracy scores now than they did five years ago.²

The country's complex institutional framework provides many avenues for corrupt behaviour among politicians. Enforcement of legislation designed to combat corruption is weak due to the lack of strong and truly independent anticorruption bodies and a dearth of political will to address the issue. When corruption probes are actually opened, they rarely result in convictions.

Effective governance has been prevented by veto mechanisms built into the policymaking system, while abuse of constitutional mechanisms designed to ensure fair ethnic representation within state institutions has led to ethnically motivated behaviour by elected officeholders. Furthermore, inadequate coordination among numerous levels of government and between the institutions of individual governments leads to a lack of policy coherence.

The public service in BiH remains fragmented. The legal framework is not consistent, with different laws applying to the civil service at different levels of government. Moreover, the laws are all amended over time in an uncoordinated fashion.³

As a result of a complicated and cumbersome constitutional structure, characterised by a high level of asymmetry, BiH has an oversized, ethnically divided and inept state apparatus which consumes around 45% of GDP, burdened with administrative shortcomings which are reflected in the government's policymaking, public finance management and human resource management functions. The government has a poor management of public expenditures which results in chronic underfunding⁴, and poor targeting of the sectors, especially education and health service provisions.

In recent years relevant national and international studies have registered virtually no progress in the fight against corruption; on the contrary, there has been a decline. According to the latest Corruption Perception Index (CPI) for 2014, BiH is ranked 80th among 174 countries in the perceived level of corruption, together with Benin, El Salvador, Mongolia and Morocco.⁵ BiH received a score of 39 on a scale of 0 to 100, where 0 represents absolute corruption, and 100 no corruption. This means that, compared to 2013, BiH experienced a decline by 3 index points, or 8 positions – from 72nd place in 2013 to 80th place in 2014. Compared to other countries of the former Yugoslavia, BiH is behind Slovenia (39th), Croatia (61st), Macedonia (64th), Montenegro (76th), Serbia (78th), while only Kosovo is ranked lower than BiH, occupying the 110th position.⁶

Despite minimal levels of centralisation of law implementation, the multi-levelled governance system complicates the implementation of the rule of law. According to the European Commission's 2014 Progress Report for BiH, despite intensive facilitation efforts by the EU, agreement on a definition of an effective coordination mechanism could not be reached.⁷ The continued use of divisive rhetoric by some political representatives and questioning of Bosnia and Herzegovina's capacity to function as a country had a negative impact on cooperation between the Entities and the functioning of the State. Also, implementation of the Sejdić-Finci judgement remains to be ensured.⁸

In recent years the country has experienced a decline in anticorruption activities. According to a report by Transparency International BiH, in 2013 there was a slight decline in the number of investigations by the Prosecutor's Office of BiH compared to 2012. Also, there was a decline in the share of investigations conducted for corruption offences in the total number of investigations, from 5.4% in 2012 to 2.9% in 2013. In addition to the decline in the number of investigations,

what causes even more concern is the fact that in 2013 as few as 3 court judgements in corruption-related cases were rendered in the country, more than a fivefold decrease compared to 2012, when 16 court judgements were passed. Year 2013 saw the worst results in the previous five-year period when it comes to the number of court judgements for corruption offences.⁹

Political parties are the most corrupt segment of the society in Bosnia and Herzegovina, according to the 2013 Global Corruption Barometer, with 77% of respondents feeling that political parties were corrupt/extremely corrupt.¹⁰ After almost 25 years since the first multiparty elections in the country, the political parties remain predominantly authoritarian. For example, newly formed political parties include the name of their president in the name of the party as it appears on electoral lists (e.g. SBB – Fahrudin Radončić or DF – Željko Komšić) and have very limited intra-party democracy. Over the years the ruling political parties have established effective control over the majority of state resources and institutions, including economy, law enforcement, the media, the judiciary, etc. Such dominance has mainly served to allow the reaping of illegal benefits and to ensure protection of the party elites. High-ranking officials suspected of involvement in corruption offences are usually not removed from public office, despite efforts at reform and institution-building. In recent years there have been a lot of arrests of high-ranking political actors, but none of the investigations and arrests have seen a judicial conclusion in the form of conviction for corruption.

There is also a general lack of confidence in the transparency of the public service. Inadequate capacities of public officials and bureaucrats undermine the implementation of anti-corruption provisions. In BiH there exist three laws on freedom of access to information, adopted at the state and entity levels. However, their implementation has not met the international standards

of transparency. Chief obstacles include the still inadequate capacities of public institutions for their implementation, lack of knowledge among the wider public of the rights provided for under these Laws, and the fact that they are still not harmonised with other laws, such as the Law on Protection of Personal Data¹¹, which is an essential prerequisite for their full implementation. According to the annual report of the Ombudsman for Human Rights of BiH, public authorities continue to ignore their obligations under the LFAI. Thus, of 61 public authorities at the state level, 27 regularly submit statistical reports to the ombudsmen, and of 72 institutions, only three have appointed an information officer and submitted the guide and index register of information.¹²

As regards the public trust in government institutions, political parties and elected officials, the results are discouraging. The “vast majority of citizens do not have too much confidence or any confidence whatsoever in government institutions: as many as 79.9% do not trust the national government, 79.1% do not have confidence in the national parliament, 74.4% do not trust the entity parliaments, 71.2% have no confidence in the entity governments, while 68.7% have no confidence in local elected officials, and 60.2% in local government.”¹³

According to a perceptions survey on recruitments in public administration, which was conducted by TI BiH in 2014, 67% of respondents said they had had a personal experience or knowledge that someone they knew got a job in an illegal manner. Even though nearly 60% of respondents reported being exposed to different types of inconvenience and unprofessional conduct in dealing with public administration and 67% reported having knowledge of corruption in recruitment procedures, as many as 80.5% of those surveyed said that they had never complained against a member of public administration staff. This points to the conclusion that citizens do not have trust in institutions, i.e. do not believe that

their complaints and grievances can eliminate the reasons for their dissatisfaction. Almost 80% of those surveyed believed that the government was not expending enough effort in combating corruption.¹⁴

Communication between citizens and elected officials is almost inexistent, mainly due to the insufficient channels of communication, inadequate organisation of the representative authorities, and weak citizen participation culture. Civil society, with no foothold in tradition, practically began to develop after the war, with strong support of international donors. NGOs and CSOs have thus had a leading role in fostering such communication. However, despite the sustained and significant support from the international community, CSOs remain unable to impose themselves as an important factor influencing the decision-making process.

SOCIO-POLITICAL FOUNDATIONS

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

SCORE: 25

The current socio-political situation in the country suffers from a lack of a myriad of critical aspects that are conducive to realising a sustainable national integrity system.

BiH citizens have the lowest level of trust in their political leaders and state institutions. Only 14,1% of citizens have trust in political parties. Also, almost 80% of citizens in BiH do not trust the institutions.¹⁵ In this general atmosphere of apathy and disillusionment with democracy and its structures, expressions of nation-

alism and ethnic division often fill the public space, frequently engineered from the top down by self-serving politicians. Integration of society across ethnic lines, or even simply encouragement of interaction between different communities, has not been promoted by elites in power, and has often been actively discouraged by them.¹⁶

On the other hand, there are studies that show that the people in Bosnia and Herzegovina are ready to build trust. According to a study conducted by the Centre for Empirical Research of Religion and the University of Edinburgh in 13 cities in BiH on a sample of 2,606 respondents¹⁷, 77% of respondents gave support to building mutual trust and reconciliation, despite the terrible consequences of the war in Bosnia and Herzegovina. As many as 75.4% of the total sample indicated that a serious attempt to build relationships among religious and ethnic groups in Bosnia and Herzegovina would have an impact on the future of the country. This strong support was repeated across a number of questions about reconciliation asked as part of this study, while a much smaller proportion of respondents saw trust-building or reconciliation initiatives as unimportant or very unimportant. When it comes to the main drivers of the reconciliation process, politicians and religious leaders were seen as important by significant proportions of the sample (48.6% and 54.3%). Also, most of the respondents (60.8%) indicated that improvements in economy are the greatest priority for the country. Furthermore, 68.2% of respondents said it was important or very important for a process of trust-building to reach agreement on the historical facts.¹⁸

Protection of minority rights in Bosnia and Herzegovina remains a question that lies at the heart of state institutions. Legal framework for protection of minorities is largely in place, but its implementation needs to improve.¹⁹ Formal citizenship is generally not withheld from minority groups, but there is a continuing

constitutional discrimination against individuals who do not belong to the three constituent peoples – Bosniaks, Serbs and Croats, who participate in the country's power-sharing arrangements. The concept of "affiliation" and the ability to participate in political, social and economic spheres of influence is assigned only to the identities that fall into one of the three constituent groups.²⁰ There is further territorial-based discrimination, as the Serb member of the Presidency of BiH is elected by voters in Republika Srpska, and the Bosniak and Croat members by the electorate of the Federation of BiH. The same rules apply to indirect elections to the House of Peoples of the Parliamentary Assembly of BiH. In accordance with Annex IV of the Dayton Peace Agreement, only the members of one of the three constituent peoples are allowed to stand for election to the Presidency of BiH and House of Peoples of the Parliamentary Assembly of BiH, while members of other minority groups are excluded from this process. The European Court of Human Rights (ECHR) ruled in 2009 in the case of *Sejdić and Finci vs Bosnia and Herzegovina* that the Constitution and the Election Law of Bosnia and Herzegovina contain provisions that discriminate against citizens on the grounds of ethnicity, and ordered that these discriminatory provisions be deleted from the Constitution and the Election Law. A parliamentary committee was established in late 2011, tasked to draft constitutional and legal amendments to comply with the ECHR ruling. As the *Sejdić- Finci* ruling has not yet been implemented²¹, minorities continue to be excluded from representation in the House of Peoples and the Presidency of Bosnia and Herzegovina.²²

Bosnia and Herzegovina's political rights rating declined because the government largely ignored a significant civic movement protesting against corruption and calling for reforms in early 2014, and proved generally unresponsive to the population's concerns. Civil society is thus involved mainly in monitoring governments' activities and reporting on their performance.²³

Politically, BiH citizens are represented almost exclusively along ethnic lines, i.e. Bosniak voters are represented by Bosniak political parties, Serbian voters by Serbian parties and Croatian voters by Croatian parties. "The rhetoric of nationalist political leaders dominates the political space. This marginalises the EU agenda, as well as any other democratising/ liberalising agendas."²⁴

Cooperation and mechanisms for dialogue with civil society remain weak.²⁵ Civil society as an integral part of the democratic process does not have a long tradition in Bosnia and Herzegovina. It remains weak and without major impact on the decision making process.

Finally, the attitudes of the political elites further widen the growing gap between private and public interests. Heavy international involvement in Bosnia and Herzegovina has been criticised for usurping the power of political elites, over-riding democratic procedures and creating a culture of dependency in BiH.²⁶ The international community has remained the main driver of the democratisation process in Bosnia and Herzegovina. Many of the institutions of liberal democracy, a market economy and the strengthened state-level government would not exist were it not for strong international intervention. However, BiH's political elites have often pursued "alternative agendas, while giving rhetorical support to democracy and economic reforms."²⁷ The conflicting interests between political elites and formal institutions and their legal foundations continue to hinder the advancement of democratic norms and practices across the country.

SOCIO-ECONOMIC FOUNDATIONS

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

SCORE: 25

Despite recent signs of attempts at improving the economic situation in the country, Bosnia and Herzegovina is not making any significant progress. In July 2015 a Reform Agenda was adopted with the aim of addressing the dire social and economic situation and improving the implementation of reforms in the judiciary and public administration.²⁸

Difficult labour market conditions have remained largely unchanged, unemployment remains high at 62.7% among young people, the number of people living below the national poverty line has increased, social services are poorly targeted, and the conditions for investment and business start-ups are still below the regional average. The World Bank ranks Bosnia and Herzegovina among the upper-middle-income economies,²⁹ while the United Nations report World Economic Situation and Prospects 2013 ranks Bosnia and Herzegovina among economies in transition.³⁰ According to the same UN study, Bosnia and Herzegovina is ranked among the upper-middle-income economies based on the per capita GNI.

According to the World Bank, as a consequence of the economic crisis that erupted in 2008, Bosnia and Herzegovina saw a substantial decline in GDP in 2009, by as much as 2.9%.³¹ Partial recovery was observed in 2010 and 2011, with GDP having increased by 0.7% and 1.3% respectively, only to shrink again by 0.7% in 2012. In 2013 BiH made a partial recovery and, according to the

World Bank, saw an increase in gross domestic product of 0.4%³²; however, in 2014 due to the damage caused by floods the growth fell to 1%.³³

A huge budget deficit left over from previous years, coupled with foot-dragging on implementation of political and economic reforms, has resulted in a rise in the country's borrowing from international financial institutions. According to the Central Bank of Bosnia and Herzegovina, the budget deficit in 2013 stood at KM 575 million, or 2.1% of GDP.³⁴ The European Commission's report states that the budget deficit increased in 2014 amid the persistently low quality of public finances. The suspension of disbursements of the last tranches under the IMF SBA and the emergency financing for the areas hit by flooding put heavy pressure on public finances in 2014, resulting in short-term financing solutions. The fiscal deficit in 2014 is estimated to have surged to close to 3% of GDP, nearly tripling the target of 1.1% of GDP set in the framework for fiscal balance and policies. Public expenditure remained broadly flat at 46% of GDP in 2014 and consisted mostly of current expenditure. Capital expenditure reached only around 4% of GDP.³⁵

The public debt of Bosnia and Herzegovina at the end of 2014 stood at KM 11.5 billion, of which foreign debt was about KM 8.2 billion and the internal debt about KM 3.3 billion.³⁶ Foreign debt at the end of 2014 rose by KM 809.45 million, or 10.9 percent, relative to 2013 due to the deployment of the contracted funds of the IMF, the European Investment Bank, the European Bank for Reconstruction and Development, and the International Bank for Reconstruction and Development in the total amount of about KM 1.1 billion, reduced by the amount of the paid principal.³⁷

Poverty is a major problem in Bosnia and Herzegovina. According to the World Bank data for 2011, as many as 17.9% of the country's population live below the

national poverty line.³⁸ This is largely due to the high unemployment and challenging business environment. While some small steps have been made in recent years towards improving the business environment in terms of reducing the length of time to start a business, there are still significant barriers to private sector development. The functioning of market mechanisms remains hampered, one of the reasons for this being the bloated public sector in Bosnia and Herzegovina.³⁹ According to the World Bank report “Doing Business 2015”, which ranks countries according to the ease of doing business and starting a business, Bosnia and Herzegovina is ranked 107th out of 189 countries.⁴⁰

The 2014 Human Development Index (HDI) report, published by the United Nations Development Programme, ranked Bosnia and Herzegovina 86th out of 187 countries according to comparable data that were included in this study. BiH’s Human Development Index (HDI) score is 0.731, placing the country below the regional average.⁴¹

As regards the state of the social security system in Bosnia and Herzegovina, the World Bank and other institutions point out that there are inadequate levels of social assistance provided to the most vulnerable groups in society, partly because of the large expenditure for war veterans⁴² accounting for as much as three fourths of the total expenditure for social security benefits. Generally, BiH spends over 4% of its GDP on social security cash transfers, but these benefits do not significantly contribute to poverty reduction, and the non-targeted programmes have reached their fiscal limits.⁴³ Due to the large expenditure for war veterans, only about 1% of GDP is spent on traditional social security functions. Expenditure on non-contributory social security benefits rose sharply during the crisis, with the share of total social benefits in the budgets increasing from 32.3% in 2010 to 37.1% in 2011.⁴⁴

SOCIO-CULTURAL FOUNDATIONS

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

SCORE: 25

Compared to the previous study, the situation in BiH in terms of the prevailing ethics, norms and values in society has not changed.

BiH citizens have low levels of trust in each other; though on some measures, there is greater interethnic trust in BiH compared to other countries in the region.⁴⁵ BiH citizens have generally low levels of trust in political leaders and institutions, and the political elites do not encourage or promote interaction between different ethnic groups. When it comes to the public confidence in governmental institutions, political parties and elected officials, the results are deeply discouraging. The “vast majority of citizens do not have too much confidence or any confidence whatsoever in government institutions: as many as 79.9% do not trust the national government, 79.1% do not have confidence in the national parliament, 74.4% do not trust the entity parliaments, 71.2% have no confidence in the entity governments, while 68.7% have no confidence in local elected officials, and 60.2% in local government.”⁴⁶ On the other hand, it is worrying that BiH respondents recorded the lowest levels of strong identification with their country (75% expressing strong identification, compared to 91% in Serbia).” Of these, respondents from Republika Srpska (RS) express the lowest level of strong identification, at 60%.⁴⁷

The country’s ethnically divided territory and governance system have spawned ethno-territorial-based

interest groups and CSOs. Cooperation between groups with similar mandates in different parts of the country is not typical, particularly as some may have different or even opposing agendas.⁴⁸

The legislative framework does not pose a barrier to citizen participation, but it does not encourage it either. Accordingly, the presence of citizens in decision-making processes is reduced to the good will and motivation of individuals in the government. Elected representatives still do not see citizens as their partners in public policy-making processes, and citizens' problems continue to rank fairly low on their priority list.

Civil society in Bosnia and Herzegovina is marked by a complete lack of social capital, i.e. lack of interest in voluntarism among most of the citizens.⁴⁹ There has been somewhat of an increase in the activities of civil society following the widespread socio-economic protests that took place across the country in February 2014. In several cities in BiH citizens organised themselves in citizens' assemblies, called plenums, putting forward a number of demands and addressing them to the governments. These demands relate in particular to measures to tackle unemployment, privileges of elected officials, and improvements in healthcare and social protection. However, the response from the authorities has been very limited.⁵⁰

IV CORRUPTION PROFILE

Widespread corruption throughout the public and private sector still remains a major problem in BiH. The country is affected by the most pernicious forms of corruption, which have enormous consequences for its overall socio-economic development and general lack of public confidence in BiH institutions.

Complex institutional structures, ethnic divisions and a general lack of transparency and accountability of public institutions is evident. Systemic and rampant corruption represents an obstacle not only to the implementation of reforms, but also poses a serious threat to everything that has been achieved so far in terms of state and institution-building.⁵¹ Lack of political will to enforce the legislative and institutional framework still remains a core issue in the country and causes dramatic levels of corruption in BiH.⁵² Due to the multi-level state structure of BiH, complex and contradictory legislative and institutional framework is often in place, which not only leads to arbitrary and inconsistent implementation, but also poses a major obstacle in

the fight against corruption. Moreover, recent reforms appear to show a regression trend as in some cases existing anti-corruption legislation has been weakened (most notably in case of conflict of interest legislation), thus undermining previously obtained achievements.

The country routinely performs very poorly on TI's Corruption Perceptions Index. In 2014 BiH ranked 80th out of 175 assessed countries, together with Benin, El Salvador, Mongolia and Morocco, with a score of 39 out of 100, and remains the third worst among the Balkan countries, ahead of only Albania and Kosovo. This is an even worse result than in 2013, when Bosnia and Herzegovina ranked 72nd out of 177 assessed countries with a score of 42 out of 100. The findings of Transparency International's 2013 Global Corruption Barometer also offer a rather bleak picture: 63% believed that corruption was a serious problem in the country, and 31% maintained that the government was very ineffective in the fight against corruption.⁵³

As in previous years, the European Commission Progress Report for Bosnia and Herzegovina for 2015 noted that Bosnia and Herzegovina had some level of preparation in the fight against corruption. Lack of political will to solve the problems that country is facing was emphasised as one of the main problems. The report also identifies weak and inadequate legal and institutional framework as well as the lack of enforcement of the law, which negatively affects citizens and institutions. The existing system of penalties does not constitute a sufficient deterrent against corruption. As concerns the rule of law, the report notes such problems as the inefficiency of the judiciary and excessively lengthy proceedings. As in previous years, there are concerns about politically motivated attacks against the judiciary. The track record of investigation and prosecution in high profile corruption cases remains unsatisfactory and the overall level of effective investigations, prosecution and convictions is low.⁵⁴

In BiH, political corruption remains a widespread and ongoing concern. Public sector institutions, including political institutions, remain weak and prone to the influence of corrupt patronage networks. Political party financing and expenditure lack transparency, while conflict of interest and assets declarations are not effectively implemented and monitored.⁵⁵

According to the Global Corruption Barometer 2013, respondents in BiH identify politicians as the most corrupt institutional actors, with a staggering 77% of those interviewed feeling that politicians are corrupt or very corrupt. These results are consistent with the findings of Global Corruption Barometer for 2010/11, where political parties and parliaments were flagged as the most corrupt institutions in the country. Also, findings for 2013 show that 65% of the respondents said that the level of the corruption in the past two years had increased, compared to the previous assessment (2010/11) where 59% of respondents said that the level of corruption had increased in previous three years.

V ANTICORRUPTION ACTIVITIES

Anti-corruption efforts in the country still remain mainly declarative as constant efforts are being made by ruling elites to erode the existing anti-corruption legislative and institutional framework. Political control over all sectors of society, the yawning gap between the laws and their implementation, inefficient institutions infected with nepotism and cronyism, all hamper results in preventing and combating corruption.

Since the publication of the NIS 2013, anticorruption activities have been largely undertaken with a view to establishing even greater political control over institutions, instead of improving the legislative framework and strengthening integrity and independence of institutions in charge of implementing anticorruption laws. More worryingly, attempts to amend very important laws through agreements between leaders of political parties, under urgent amendment procedures and without any public debate, have become the rule rather than the exception. Moreover, it has become com-

mon practice to exert direct influence and control over institutions which by law are independent.⁵⁶

The new Public Procurement Law of Bosnia and Herzegovina (PPL BiH) was adopted by the Parliamentary Assembly of Bosnia and Herzegovina in March and April 2014⁵⁷ and entered into force on 27 May 2014⁵⁸. Despite the fact that this Law has to some extent improved transparency and aligned with EU directives, effective mechanisms for successful prevention of corruption and sanctioning of irregularities in public procurement, as well as transparency, efficiency and rational use of public resources, have not been established.

The latest amendments to the Law on Conflict of Interest at BiH level were adopted in November 2013 and represent a significant setback in the legislation. The mechanisms for determining conflict of interest at the level of BiH and FBiH, and thus ensuring the integrity of public officials, have not been functioning since the new Law on Conflict of Interest of BiH came into force. With these amendments, the Central Election Commission is no longer responsible for the implementation of this law and instead a new Commission, established at the Agency for Prevention of Corruption and Coordination of the Fight against Corruption within the Department for Conflict of Interest, consisting of a majority of parliamentary members (6 representatives of Parliamentary Assembly and 3 members from the Anticorruption Agency) took over the implementation. FBiH has not yet adopted the amendments and thus has no institution in charge of determining conflict of interest. On the other hand, Brčko District amended its Law on Conflict of Interest in February 2015, giving the authority of determining conflict of interest to the Brčko District Election Commission. However, Brčko District BiH will need to amend the law again since it is at odds with the Election Law of BiH, which explicitly prescribes the authorities of all election commissions vertically⁵⁹. Another mechanism for overseeing the integrity of public officials –

asset declarations – is largely futile since declarations are not publicly available and there is still no authority in charge of verifying the accuracy of declarations.

In December 2013, Bosnia and Herzegovina adopted the Law on the Protection of Whistleblowers in the Institutions of BiH⁶⁰. The Anticorruption Agency and Administrative Inspectorate of the Ministry of Justice of BiH are in charge of implementation of this law, but only at the state level.

Also, when it comes to training activities and promotion of the protection of whistleblowers, the Anticorruption Agency has undertaken a few initiatives and contributed to the drafting of a manual for the application of the Law on Whistleblower Protection. However, laws at entity levels have not yet been adopted.

In May 2014 the Law on the Confiscation of Illegal Assets in FBiH was adopted, but its implementation has been delayed due to difficulties in establishing the Agency in charge of managing illegally acquired assets.

The establishment and development of an independent justice sector as an essential prerequisite for the rule of law was the primary purpose of judicial reform. This process started before all other reforms in Bosnia and Herzegovina. European standards in the area of independence and efficiency of the judiciary system demanded significant changes and reform of justice sector. In September 2015, the Strategy for the Justice Sector 2014–2018 was adopted which should in the forthcoming period ensure an efficient, effective and coordinated justice system in BiH which is fully in line with EU standards and best practices guaranteeing the rule of law⁶¹. Currently, however, the justice sector still faces the problem of a complex structure, as a consequence of the constitutional setup of the country. The fragmented judiciary system consisting of four separate judicial systems in BiH means that each level

of the legislature enacts legislation and regulations, which results in the above mentioned lack of coordination, different legal practices and unequal treatment of similar factual situations. Overall inefficiency is further compounded by the lack of a single, supreme judicial body and the existence of four separate court systems.⁶² Furthermore, politically motivated attacks against judiciary continue, as there are no formal procedures carrying penalties for undue influence or threats to judicial independence.⁶³

Prosecution of corruption in Bosnia and Herzegovina is even weaker compared with previous years. Transparency International BiH monitoring report of the prosecution of corruption published in July 2014 with data relating to years 2012 and 2013, indicates that prosecutors' offices and courts showed the lowest efficiency in the prosecution of corruption in the past five years, with the number of sentences and the investigation of crimes of corruption having severely declined. In addition to the decline in the number of investigations, what causes even more concern is the fact that in 2013 as few as 3 court judgements in corruption-related cases were rendered in the country, more than a fivefold decrease compared to 2012, when 16 court judgements were passed.⁶⁴ The results have shown that the judiciary in BiH continues to prosecute cases of corruption at lower levels of the government, given that the majority of cases have been delivered by the primary and municipal courts. In this way, the biggest corruption scandals, of which the media and civil society have warned, still remain uninvestigated and unprosecuted, further undermining the public confidence in the judiciary.

Additionally, the fact that the members of the High Judicial and Prosecutorial Council attempted to amend the Rulebook on Conflict of Interest in November 2014⁶⁵, not long after it was adopted, in order to avoid sanctions for situations when their close relatives apply for positions in the judiciary, shows that the highest judicial

body has not been willing to strengthen the integrity and prevention of corruption within its own institution. Had it not been for the pressure from the EU delegation and public condemnation by the international community and civil society, the Rulebook would have been amended. Moreover, the asset declarations of judiciary representatives are still not publicly available, and are basically not monitored, while the rules on conflict of interest have still not been broadened to include the whole judicial community.

In the Republic of Srpska, in October 2015 the Draft Law on combating corruption, organised crime and most serious forms of economic crime was introduced into the parliamentary procedure. This draft Law in no way contributes to the efficient fight against corruption and organised crime. On the contrary, it dramatically impinges on basic human rights and freedoms, encompassing also political crimes under the guise of protecting the constitutional order, which makes clear the intention to use the provisions of this draft law to fight the opponents of the regime, using anti-constitutional means.⁶⁶

One of the problems that continues to foster corruption is the lack of transparency and integrity in the work of public institutions. There is a general lack of confidence in the transparency of the public service⁶⁷. Inadequate capacities of public officials and bureaucrats undermine the implementation of anti-corruption provisions. In BiH there are three laws on freedom of access to information, adopted at the state and entity levels. However, their implementation has not yet met the international standards of transparency. Chief obstacles include the still inadequate capacities of public institutions for their implementation, failure to deliver information in an adequate form, lack of knowledge among the wider public of the rights provided for under these Laws, and the fact that they are still not harmonised with other laws, such as the Law on Personal Data Protection, which

is an essential prerequisite for their full implementation. According to the annual report of the Ombudsman for Human Rights of BiH, public authorities continue to ignore their obligations under the LFAI. Thus, of 61 public authorities at the state level, 27 regularly submit statistical reports to the ombudsmen, and of 72 institutions, only three have appointed an information officer and submitted the guide and index register of information.⁶⁸

New Anti-corruption Strategy and Action Plan for the Fight against Corruption for the period 2015-2019 was adopted by Council of the Ministers of Bosnia and Herzegovina in May 2015. The leading institution in the process of drafting new Anti-corruption Strategy was the Agency for the Prevention of the Corruption and Coordination of the Fight against Corruption. The Anti-corruption Strategy 2015-2019 and the accompanying Action plan have been drafted by using a participatory mechanism through the Inter-Ministerial Working Group for its development, which brought together representatives of 21 institutions from all levels of government in BiH, as well as representatives of non-governmental organisations active in the area of anticorruption. The baseline for the new Anticorruption Strategy was the evaluation analysis of the implementation of the previous Strategy.⁶⁹ The new Anticorruption Strategy was finalised and sent to the Council of Ministers of BiH for adoption at the end of January 2015. The Anticorruption Strategy 2015-2019 and Action plan are very comprehensive documents, which in themselves encompass a holistic approach to fighting and preventing corruption. The new Anticorruption Strategy and Action Plan are aimed at strategic measures relating to the area of corruption prevention, detection, prosecution, coordination, repression, improvement of the legislative framework, increasing the capacity of institutions, training, and raising public support for the fight against corruption. The Strategy pays special attention to corruption prevention and consists of five pillars: 1) Establishment and

strengthening of institutional capacities and improvement of the normative framework for the fight against corruption; 2) Development, promotion and implementation of preventive anticorruption activities in the public and private sector; 3) Improvement of effectiveness and efficiency of the judicial institutions and bodies for law enforcement in the area of fight against corruption; 4) Raising public awareness and promotion of the need for the participation of the entire society in the fight against corruption; 5) Establishment of efficient mechanisms for coordination of the fight against corruption, as well as monitoring and evaluation of the Anticorruption Strategy.⁷⁰

During 2015 an initiative was launched in the National Assembly of Republika Srpska, where the authorities in the Republika Srpska attempted to establish control over civil society organisations, particularly organisations that are financially supported by foreign entities. Following a strong public outburst and condemnation by international and civil society organisations, the draft Law was withdrawn. A major setback and a threat to civil freedoms for the work of civil society organisations and the media is the adoption of the new Law on Public Peace and Order of Republic of Srpska in February 2015, which threatens to establish censorship over content published on social media.

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

In recent years anticorruption activities have intensified at the local level, principally driven by CSOs. These activities are aimed at enhancing integrity in the work of local administrations by providing deep assessments of the transparency, accountability and integrity levels in the functioning of local administrations, but also at strengthening anticorruption capacities of local actors

to draft, adopt and implement their own integrity/anti-corruption plans.⁷¹

The role of civil society in anti-corruption activities is still limited in scope and is most visible through watchdog activities. The absence of civil society participation in decision-making remains the rule, with very few exceptions, such as during the process of drafting new Anti-Corruption Strategy and its Action Plan for period 2015-2019, where several CSOs were included in the process.

As in previous years, the role of international donors in anticorruption activities is still very significant, both in terms of support to public institutions, and through support to CSOs.

Overall it can be concluded that anticorruption activities continue to be largely uncoordinated and without significant results visible to citizens. There is still an evident lack of a holistic multi-stakeholder approach based on a sound National Integrity System. Lack of political will, as well as communication and cooperation between the parallel pillars continues to inhibit substantive systemic reforms.

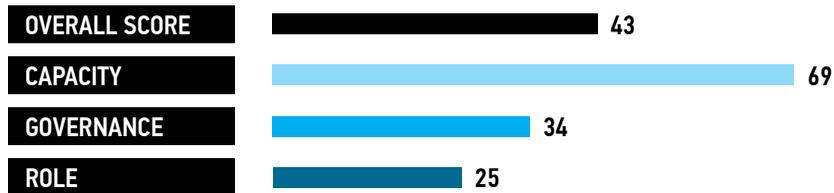
VI NIS PILLARS

- 6.1. LEGISLATURE
- 6.2. EXECUTIVE
- 6.3. JUDICIARY
- 6.4. PUBLIC SECTOR
- 6.5. LAW ENFORCEMENT AGENCIES
- 6.6. PUBLIC PROSECUTOR
- 6.7. ELECTORAL MANAGEMENT BODY
- 6.8. OMBUDSMAN
- 6.9. AUDIT INSTITUTIONS
- 6.10. ANTICORRUPTION AGENCY
- 6.11. POLITICAL PARTIES
- 6.12. MEDIA
- 6.13. CIVIL SOCIETY
- 6.14. BUSINESS SECTOR
- 6.15. STATE-OWNED ENTERPRISES
- 6.16. INTERNATIONAL ORGANISATIONS

6.1. LEGISLATURE

OVERALL PILLAR SCORE: 43/100

STATUS: MODERATE



SUMMARY

BiH has a very solid constitutional and legislative framework governing the work of the legislature in terms of spelling out its roles and providing for its independence, transparency and accountability, which was one of the general findings of the 2013 NIS Study. This solid legislative framework, however, is somewhat limited by the country's complex constitutional structure and built-in mechanisms for the protection of vital national interests of ethnic groups via the 'vital national interest veto'.

The 2013 NIS Study also pointed out that parliaments had sufficient human and financial resources to effectively carry out their duties. However, significant

problems were identified, including serious gaps in implementation of the legislative framework governing the work of parliaments and dysfunction of parliaments in performing their roles.

The key problem of the legislature remains the fact that the real power to enact laws and oversee the executive has been largely shifted away from parliaments and transferred to the executive branch and party leaders, while the role of parliaments has been reduced to mere verification of the deals made by political leaders.

In this respect, no significant improvements to the legislative framework and practices of parliaments have been identified in this updated NIS Study; rather, to the contrary, some negative trends have been observed in the changing of laws and practices. Moreover, during their 2010–2014 mandate period, the outgoing parliaments largely failed to fully exercise the role entrusted to them by the Constitution and relevant laws, and their work was effectively stalled for a major part of this period due to the continuing political crisis.

STRUCTURE AND ORGANISATION

The constitutional position of the Parliamentary Assembly of BiH, as well as of entity parliaments (the National Assembly of RS and the Parliament of FBiH), is regulated by the Constitution of BiH and entity constitutions, respectively. BiH has a bicameral parliamentary system, consisting of House of Representatives (42-member body elected from 2 constituencies (entities) (28-seat Federation of Bosnia and Herzegovina, 14-seat Republic Srpska) and House of Peoples (15 members (5 Serb, 5 Bosniak and 5 Croat) indirectly elected by the Federation’s House of Peoples and the RS National Assembly). The majority of the Bosniak, the Croat or the Serb delegates within the House of Peoples can veto a decision proposal by declaring it as destructive to the vital national interest of its respective people. Additionally, an entity veto can be imposed, as mechanism to protect entities interests. The main functions of the legislature in BiH

TABLE WITH SCORES

LEGISLATURE

OVERALL PILLAR SCORE 2013: 49/100

OVERALL PILLAR SCORE 2015: 43/100

DIMENSION	INDICATOR	LAW 2013	LAW 2015	PRACTICE 2013	PRACTICE 2015
CAPACITY 2013 75/100 CAPACITY 2015 69/100	RESOURCES INDEPENDENCE	100 100	100 100	50 50	50 25
GOVERNANCE 2013 46/100 GOVERNANCE 2015 34/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY MECHANISMS	75 50 50	75 25 25	50 25 25	25 25 25
ROLE 2013 25/100 ROLE 2015 25/100	EXECUTIVE OVERSIGHT LEGAL REFORMS	25 25	25 25		

are as follows: adopting and amending the constitution and laws, and adopting the budget. According to the Rules of Procedure of the House of Representatives⁷² of the Parliamentary Assembly of BiH, this chamber has seven permanent committees: Constitutional and Legal Committee, Committee on Foreign Affairs, Committee on Budget and Finance, Committee of Foreign Trade and Customs, Committee on Gender Equality, Committee on Transport and Communications, and Committee on Preparation of CoM Election. The House of Peoples of the Parliamentary Assembly of BiH, on the other hand, has three committees:⁷³ Constitutional and Legal Committee, Foreign Policy and Trade Policy, Customs, Transport and Communications Committee, and Financial and Administrative Affairs Committee. In addition to these, both chambers can establish various ad hoc committees, and there are currently six joint committees⁷⁴: Joint Committee on Defence and Security; Joint Committee on Oversight of the work of Intelligence and Security Agency of BiH; Joint Committee on Economic Reforms and Development; Joint Committee on European Integration; Joint Committee on Administrative Affairs; Joint Committee on Human Rights. Each of these committees has its secretary and other persons who are professionally employed in the parliament. In addition, each parliament has Expert Services which provide administrative support. At the state level, both chambers have their secretaries (who are not Members of Parliament), who head the Secretariats of the House and employ administrative personnel.

RESOURCES (LAW)

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

SCORE 100

The legal provisions on adoption of the budget are clearly defined in advance. One of the main functions of the legislature in BiH is adoption of the budget. The budget is adopted in the form of a law and along with it is adopted the law on budget execution. The legislature is also responsible for adopting budget revisions. The budget provides for the financing of the Parliament (Assembly) and its chambers, financing of Expert Services in the Parliament, and financing of parliamentary commissions and committees.⁷⁵

According to the Rules of Procedure of the House of Representatives⁷⁶ of the Parliamentary Assembly of BiH, this House has seven standing committees. The House of Peoples has three committees, which are listed above in the description of the organisation and structure. In addition to these, both Houses may establish various ad hoc and joint committees. Each committee has a secretary and other professionals working on a full-time basis. Additionally, there are the so-called Expert Services that provide administrative support to the work of parliaments. At the state level, both parliamentary chambers have their secretaries (who are not Members of Parliament), who head the Secretariats of the House and employ administrative personnel.

The budget proposal is prepared by the Council of Ministers of BiH at the state level and by entity governments at the entity level. The budget proposal is then submitted to the Parliament, i.e. parliamentary commissions/committees in charge of financial and budgetary matters. The commissions/committees discuss the proposal and give suggestions to the government. This means that parliaments participate to a significant extent in the procedure for approving the budget, including the part of the budget related to the work of parliaments themselves. Once the budget is passed in the legislative procedure, it is known exactly how much in resources is available to the parliament in a particular budget year. Also, if there is a need for

budget revision, the revised budget is approved by parliament in the form of a law, so that the parliament, on that basis too, has control over budget revision and allocation of funds from the revised budget. The budget is adopted in the form of a law and, as such, must be published in the official gazette. Each budget user can only spend the funds made available to it and within the relevant budget line. Upon the proposal of the government, resources may be redistributed between current and capital expenditures, and the redistribution of funds within a budget user is subject to the decision of the competent ministry.

RESOURCES (PRACTICE)

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

SCORE 50

As noted in the 2013 NIS Study, parliaments generally have sufficient financial and human resources to carry out their roles as defined by the Constitution, laws and rules of procedure, and since then there have been no significant changes in that regard. The only problem in this regard results from the lack of resources on the part of expert services that provide support to parliaments, as well as the lack of capacity for involving public in the decision-making process.⁷⁷ The Official Gazettes, which publish parliamentary decisions, are issued regularly in both written and electronic form.⁷⁸

There have been several technical assistance projects aimed at strengthening capacities of parliaments in Bosnia and Herzegovina, supported by EU and USAID. Project efforts have been mainly oriented toward enhancing capacities for legislative drafting and policy analysis, inter-parliamentary cooperation, consultation with civil society and constituent outreach, deliberative skills, and oversight.⁷⁹

Comparison of the budgets of the Parliamentary Assembly of BiH for 2014 and 2015 shows that the amounts allocated to the Parliamentary Assembly were to the tune of KM 16,040,000 (of which KM 9,900,000 for the salaries of all employees in the Parliamentary Assembly)⁸⁰ in 2014 and KM 17,096,000 (of which KM 11,000,000 for the salaries of all employees)⁸¹ in 2015. The total budget of the Parliamentary Assembly of BiH includes KM 950,000.00 under the budget item Caucuses, of which KM 285,000.00 (or 30%) is for the financing of political parties and KM 665,000.00 for the work of caucuses, as defined under the Law on Political Party Financing.⁸² The trend of this slight budget increase has not had significant implications on the overall work of the Parliament.

INDEPENDENCE (LAW)

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

SCORE 100

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

instructions.

The Constitution of BiH does not have a provision allowing the Presidency of BiH (the collective Head of State) to dissolve the Parliamentary Assembly of BiH. Unlike the state Constitution, Constitutions of entities, however, provide that the President of the Republic/Federation, may decide to dissolve the National Assembly/Parliament of Federation.⁸³ The Rules of Procedure of the parliaments in BiH stipulate that only parliaments may appoint the Speaker and his/her deputies, as well as members of the parliamentary committees and commissions and other (technical) personnel employed in the parliament. Also, the agendas for parliamentary sessions are set solely by the parliament itself and no other branch of government can impose an agenda on the parliament.⁸⁴

The Rules of Procedure of the parliaments in BiH stipulate that only parliaments may appoint the Speaker and his/her deputies, as well as members of the parliamentary committees and commissions and other (technical) personnel employed in the parliament. Also, the agendas for parliamentary sessions are set solely by the parliament and no other branch of government can impose an agenda on the parliament. The Government may ask the parliament to call a session to discuss a specific issue on which the Government wants to state its position with a view to having the Parliament take its position on the issue.⁸⁵ The police have no authority to enter the parliamentary buildings or perform certain investigative actions, unless they get the express permission from the Speaker of the Parliament.⁸⁶

In the system of parliamentary democracy such as exists in BiH, parliaments are the supreme authority. According to the constitutions of the entities, after adoption of a law in the parliament, the President of the entity may, when he/she considers that the law is inconsistent with the fundamental principles of the

functioning of the state, request the Parliament to vote again on the law. If the Parliament adopts the law with exactly the same text, the President of the entity has the constitutional obligation to promulgate the law and to issue a decree proclaiming the law.

INDEPENDENCE (PRACTICE)

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

SCORE 25

The 2013 NIS Study showed that the constitutional-guaranteed independence of the legislature was basically non-existent in practice. As had been the case in previous periods, during the 2010–2014 mandate period parliaments continued to be subordinated to the executive and in particular to party leaders, to an even greater extent.⁸⁷

Decision making processes in BiH are mainly carried out through negotiations between political leaders in an informal settings and behind closed doors. Negotiations among the leaders are focused on the most important state issues, such as reform of the constitutional system and harmonisation with the European Convention on Human Rights, issues related to state property, the census, and on the distribution of managerial positions in state institutions. Afterwards, parliaments only formally verify decisions. An example of the aforementioned was the process of negotiations on constitutional reform in accordance with the Judgment of the European Court for Human Rights in the so called Sejdić and Finci case. After almost five years of informal negotiations leaders failed to reach an agreement as to the reform of the Constitution and the Election Law which derives from the mentioned decision of the European Court.

For the most part the work of parliaments is dependent on the will and prior agreement of party leaders. This is especially true of the state parliament, which was blocked for the major part of its 2010–2014 mandate period due to political crisis and lack of will among the ruling parties and their leaders to come to a mutual agreement on the parliamentary agenda. Lack of parliaments' independence is also evident in the improper exercise of oversight over the executive branch. Very rarely have parliaments been able to perform this function satisfactorily. Some examples from everyday experience, such as the one when the director of the Intelligence and Security Agency (OSA) made explicit threats against lawmakers when presenting a progress report in parliament, best illustrate the current legislature's role in overseeing other institutions.⁸⁸

Generally, requests for interpellation are very often ignored by government, even when responses are obtained, the content of the responses to the posed questions are mostly unsatisfactory.

TRANSPARENCY (LAW)

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

SCORE 75

There is a clear legislative framework allowing the public to have access to the work of parliaments and obtain all relevant information in a timely manner and through easily accessible media (print media, television, the Internet, Official Gazette). The basic framework ensuring public availability of information consists of the state and entity freedom of information laws and has not changed since 2013. However, the provisions of the Election Law governing the collection and verification of

data in asset declaration forms remain imprecise. Parliamentary sessions (at the state and entity levels) are required to be either broadcast live on public television or the public can get information about the work of parliaments in plenary sittings through news broadcasts and special programmes on public television. Parliamentary sessions may be closed to the public only in exceptional cases. Public television broadcasters are not required to pay the parliaments for live coverage of parliamentary sessions. The press may attend sessions of the parliaments and parliamentary commissions/committees. The presence of other members of the public depends on the spatial features of the Parliament's assembly hall. Members of NGOs, foundations, trade unions and other associations may attend parliamentary sessions provided that they obtain accreditation.⁸⁹ The parliamentary agenda is required to be published in advance on the parliament's website. After the session, the Speaker addresses the public with a press statement, and if necessary, a press conference is called.

When the parliament, or the government acting as a proposer, believes that the adoption of a law is of major importance to the public, they may table the draft law for public consultation procedure, whereby the professional and general public are given the opportunity to present their views on specific legal provisions. When the House of Representatives of FBiH accepts a draft law, it may decide – if the law regulates matters of particular interest to FBiH and when the broadest consultation among interested authorities, scientific and professional institutions and citizens is deemed necessary – to table the draft law or a specific issue of the draft law for public consultation.⁹⁰ However, the rules of procedure of parliaments do not contain provisions requiring MPs to receive citizens and answer their questions.

Parliaments in BiH are politically answerable only to

their constituencies, and there is no other, constitutional way to replace one composition of the parliament with another, except through parliamentary elections.

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

TRANSPARENCY (PRACTICE)

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

SCORE 25

The 2013 NIS Study found that, in practice, the public generally had access to relevant information related to the work of parliaments, but with certain restrictions. Public broadcasting services did broadcast parliamentary sittings without having to pay any charges to parliaments, as required, and online coverage of sittings had also become a regular practice. The daily Order of Business for parliamentary sittings continues to be available to the public. Updated websites of the state and entity parliaments contain the majority of materials to be discussed in sittings. However, in some cases, these materials (draft laws, reports to be discussed by the legislatures) are not readily accessible and are

made available with a delay of several weeks.

The biggest problem, as pointed out by a number of NGOs and the EU Progress Report, concerns the transparency of the legislative process.⁹¹ This is best evidenced by the fact that during the 2010–2014 mandate period one third of the laws in the state legislature were adopted according to the speedy passage procedure, which should be used only in exceptional situations or as a measure of last resort since it is highly non-transparent and does not provide for subsequent addition of amendments. Public consultation was held in only five percent of the cases.⁹²

As noted above, depending on available space, citizens and members of NGOs can be granted free access to sessions and meetings of parliaments and their working bodies and often they attend, but they may attend the sessions only in the section of the assembly room that is provided for the audience.⁹³ In practice, however, there have been cases of NGO representatives being barred from attending parliamentary sittings. The last such case involved a representative of the Centres for Civic Initiatives who was barred from attending a session of the BiH Parliament because the management of the Parliament were not satisfied with his organisation's views.⁹⁴

The public also has access to the work of parliamentary committees and boards. Thus, for example, with regard to the Constitutional and Legal Committee of the Parliamentary Assembly's House of Representatives, the official web site of the PA BiH⁹⁵ provides information about the committee's responsibilities, contact persons, annual reports for 2012 and 2013, Committee's leaflet, and information about the committee's activities. A particular problem is the lack of public access to information on MPs' assets declaration forms. After the Agency for Protection of Personal Data issued the opinion that disclosure of this information represented

a violation of privacy, the Court of BiH, deciding on the appeal lodged by the CEC, which was in charge of collecting declaration forms, upheld the opinion. Such a ruling and interpretation of the law on the part of the court has practically prevented any access to information about parliamentarians' assets declaration forms. Despite this court ruling, some media outlets continued to publish such information.⁹⁶

Also, the BiH Parliament repeatedly refused to accommodate the Centres for Civic Initiatives' request for access to information about MPs' salaries.⁹⁷

ACCOUNTABILITY (LAW)

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

SCORE 25

The constitutional and legal frameworks in BiH stipulate that parliaments report to the public, but these frameworks have not been fully worked out – primarily in terms of the obligation to establish closer contact between the citizen/voter and MP/councillor, because there is still no mechanism for the citizen/voter to directly contact the MP/councillor he/she has voted for. Parliaments in BiH are only politically answerable to their constituencies. Since parliaments pass laws as general acts, there is no appeal mechanism in place for citizens to challenge a legal provision during a legal deliberation on their cases. Even when parliaments decide on individual issues relating to a particular person, no legal remedy is available against parliaments' decisions. Thus, Article 10 of the Law on Administrative Disputes of BiH⁹⁸ provides that administrative disputes (judicial reviews of administrative decisions) cannot be conducted in matters in which the Parliamentary Assembly of BiH directly makes decisions based on its

constitutional powers.

The Constitution of BiH, as well as the entity constitutions and Rules of Procedure of parliaments, provide that MPs/councillors enjoy both civil-law immunity (an MP cannot be criminally prosecuted or held civilly liable for any act carried out during the performance of his/her function) and criminal-law immunity. Generally speaking, the immunity of MPs/councillors applies to both the conduct of MPs/councillors in relation to their work in parliament and the conduct of MPs/councillors outside parliament. Additionally, MPs/councillors cannot be detained without the prior approval of the Parliament to which they belong,⁹⁹ unless they were arrested at the scene for a criminal offence carrying a prison sentence of five years or more (or where detention is mandatory under the provisions of the Criminal Procedure Code). Also, if an MP/councillor invokes immunity, no criminal proceedings can be instituted against him/her as long as he/she is not stripped of that immunity by a legislative body.

Reports on Parliament's performance are made publicly available. In addition to that, NGOs (such as CCI) publish their own reports in which they compare parliaments' work plans and passed laws, provide an assessment of parliaments' efficiency, and publish the activities of MPs/councillors.¹⁰⁰

ACCOUNTABILITY (PRACTICE)

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

SCORE 25

In terms of the accountability of parliaments, there is a very marked difference between what the law provides and what happens in reality. In this regard, the situation has only deteriorated, compared to the situation identi-

fied in the 2013 NIS Study.

For the major part of its 2010–2014 mandate period the state parliament was blocked and did not regularly meet due to the political turmoil created by the ruling parties. FBiH Parliament experienced similar problems, while situation in RS was somewhat better, given the monolithic ruling majority in the RS parliament. An illustrative situation regarding the accountability of parliaments took place in 2013, following the entry into force of the decision of the Constitutional Court of BiH declaring the Law on Unique Master Citizen Number unconstitutional. For more than two years the BiH Parliament failed to implement the decision of the Constitutional Court and bring the Law into conformity with the decision, causing a legal vacuum and creating tremendous practical problems for newborns, who were unable to obtain personal documents. Because they could not get the documents, several newborns were not able to receive proper medical care, and one newborn died as a result. Such irresponsibility of the Parliament galvanised citizens to take to the streets and stage angry protests outside the parliament building.¹⁰¹

Parliament's lack of accountability is also demonstrated by the fact that not a single budget of BiH during the 2010–2014 mandate period was adopted within the statutory period, and on several occasions the country had to operate on the basis of temporary financing for more than a year.¹⁰²

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

When complying with the decisions of the Constitutional Courts of BiH and the entities, parliaments in practice

pass laws after the Constitutional Court's decision declaring a law or a particular provision thereof unconstitutional, complying with the legal viewpoints expressed by the Constitutional Court. However, the European Court of Human Rights passed a judgement in the "Sejdić and Finci" case almost five years ago, finding that the Constitution of BiH limits the passive voting rights of members of national minorities to stand for election to the Presidency and the House of Peoples of the Parliamentary Assembly of BiH.

The European Court of Human Rights in Strasbourg¹⁰³ therefore ruled that particular provisions of the Constitution of BiH are in violation of the European Convention on Human Rights. Although the decision of the European Court of Human Rights in Strasbourg was delivered as far back as 22 December 2009, and although all members of the Council of Europe are bound to align their legislation or specific decisions with the positions of the Court in Strasbourg, the Constitution of BiH has not been changed to allow national minorities to stand for election to the Presidency of BiH and the House of Peoples of the Parliamentary Assembly in general election, nor has any agreement to that effect been achieved by the end of 2014.

INTEGRITY MECHANISMS (LAW)

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

SCORE 25

The period after the 2013 NIS Study has seen a marked deterioration in legal regulation of integrity mechanisms for legislators. Amendments have been introduced to the Conflict of Interest Law providing for the establishment of a Conflict of Interest Commission

to be responsible for implementing this law, as well as establishment of the Commission's Office for Expert, Administrative and Technical Tasks falling within the Commission's remit, which will operate under the Agency for Prevention of Corruption and Coordination of the Fight against Corruption.¹⁰⁴ This is a major step backwards from the previous version of the law, where the responsibility for implementation of the law rested with the CEC as an independent body. According to the amended Law, the newly-formed Commission will be composed of MPs and representatives of the Agency for Prevention of Corruption and Coordination of the Fight against Corruption. This means that the commission members, who are also MPs, will decide on the existence of conflict of interest situations for their fellow party members and other MPs.

Also, despite the repeated warnings by international institutions that the current fines for conflict of interest are extremely low and as such discourage compliance with the law, the fines remained the same (between KM 1,000 and 10,000; \$500 to 5000). Furthermore, the amended law allows elected officials, executive officeholders or advisors to eliminate their conflict of interest situation, in which case the Commission may terminate the procedure. This makes it possible to 'negotiate' with offenders and enables an entirely arbitrary application of the law.

Also, the ineligibility to stand for election has been replaced with a new sanction in the form of a 'proposal for dismissal from office', which the Commission submits to the competent authority that appointed the official in question. However, the very fact that the sanction is termed a 'proposal' means that the competent authorities are not bound to implement it, or that they may even reject it, in which case the elected official, executive officeholder or advisor in question could continue performing the function that puts them in a conflict of interest situation.

The Election Law of BiH stipulates that every candidate standing for elected office at the level of BiH or the entity level shall be obliged, no later than 15 days from the day of accepting his/her candidacy for the elections by the CEC BiH, to submit to the CEC BiH a signed statement on his/her total assets. After elections, all candidates elected at lower levels of government (cantonal, city, municipal) shall be obliged to submit to the CEC BiH, within 30 days from the verification of mandates, as well as within 30 days from the date of expiry of term in office, a signed statement on their assets. However, the main problem resides in the fact that no one checks this information.

In addition to the mandatory reporting of assets, there are certain legal restrictions prohibiting MPs or councillors in all parliaments in BiH from getting employed in state organisations or public enterprises after the expiry of their term of office. Thus, the Law on the Prevention of Conflict of Interest in Governmental Institutions of BiH stipulates that elected officials (MPs or councillors) shall not serve, within a year after the expiry of their term of office in a legislative body, on the management board or steering board, or act in the capacity of an authorised person for a public enterprise nor shall they serve on the management structures or as directors of a privatisation agency.¹⁰⁵ However, the same provision in the Law on the Prevention of Conflict of Interest in Governmental Institutions of FBiH applies for six months after elected officials leave office (Article 5), whereas in the Law on the Prevention of Conflict of Interest in Governmental Institutions of RS Articles 5 and 6)¹⁰⁶ this provision applies only three months after the expiry of term of office and applies only to the same level of government. Thus, for example, it is possible for a councillor in a municipal assembly in RS, immediately upon the expiry of his/her term of office, to become a member of the supervisory board in a public company founded by RS, but he/she cannot serve on the supervisory board of a public company established by

the municipality.

Lobbying is not regulated by law in BiH, which means that there are no registered lobbyists, so that MPs do not have any obligation to report on whether they have had contacts with persons who, in spite of the fact that they are not registered as lobbyists, lobby for the adoption of specific legislation in the course of the legislative process. Lobbying, i.e. professional advocacy of interests of others, is still not legally regulated in BiH. Although the adoption of the lobbying law was one of the commitments under the Strategy for Combating Corruption (2009-2014), it has not been adopted yet. This commitment was reaffirmed in the new Strategy for Combating Corruption (2015-2019). The formal deadline by which all levels of government in BiH should adopt this law is set for 2018, i.e. the fourth year after the adoption of the Strategy.

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

INTEGRITY MECHANISMS (PRACTICE)

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

SCORE 25

The issue of integrity, detection and prevention of conflict of interest in BiH is seen as a matter of marginal importance. Also, relevant legal regulations are found to be significantly worse than has been reported in the 2013 NIS Study, leaving room for MPs to find themselves in a situation that corresponds to a conflict of interest, while the law does not make a provision for such a situation.

Although the Conflict of Interest Commission has been established under the amended Conflict of Interest Law, it has not yet become operational and has not yet considered any conflict of interest cases. Problems occurred with the takeover of employees and cases from the CEC, which had been responsible for examining conflict of interest situations prior to the adoption of the amended law. This effectively means that in the last year or more there have been no procedures instituted to examine conflict of interest situations.

There are many examples of MPs who continued to perform their parliamentary duties even though they were wanted by the police in other countries or were convicted by domestic courts of the most serious crimes.¹⁰⁷

In practice, there are no known examples of any member of the House of Representatives having been suspended from the Parliament. In practice, in the work of the parliament there are lobbying or interest groups that make contact with the elected MPs, but the parliamentarians are not legally bound to disclose contacts

with these groups, and for two reasons: there are no rules on the registration of lobbying or interest groups, and there is no obligation on the part of MPs to declare their informal contacts with what could be considered lobbying or interest individuals or groups.

Other than occasional penalties in the form of reprimands or being barred from speaking, no fines are imposed in the parliaments of BiH, nor are there cases in practice of MPs being punished for violating the code of ethics.

EXECUTIVE OVERSIGHT (LAW AND PRACTICE)

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

SCORE 25

Parliament has legal mechanisms to oversee the executive (government), but given the fact that government is generally made up of members of the political parties that have a parliamentary majority, this kind of parliamentary 'pressure' on government is almost entirely absent. No major improvement has been observed in this regard compared to the situation identified in the 2013 NIS Study.

There are provisions allowing the creation of so-called inquiry committees,¹⁰⁸ which are formed in order to review the situation in a particular area or to establish facts about certain issues or events, especially in terms of the performance of individual government agencies, organisations, or holders of public office. However, these committees have no investigative or judicial authority. The government has the obligation to report regularly to the parliament, and MPs can use the institution of parliamentary questions or "question time"

to ask questions to government ministries, while the government has the obligation to submit the required information to the parliament in a timely manner. As a rule, the government proposes laws and the budget, and the parliament adopts them. The parliament fully participates in the adoption of the budget, especially in the amendment procedure, through parliamentary committees and in plenary sessions, and the government has the obligation to inform the parliament on budget execution. The Parliament of BiH elects the State Ombudsperson and Auditor-General as well as members of the Central Election Commission of BiH, further to the proposal of the commissions that implement the public competition procedure and give recommendation to the BiH parliament for the election of the State Ombudsperson and Auditor-General. The parliament has no power to directly check how the executive branch applies the rules concerning public procurement, but the entity parliaments can obtain reports on the work of the executive in relation to public procurement through reports of the public sector auditing offices.

As noted earlier, even though the constitution and relevant legislative framework provide otherwise, in reality there is marked dominance of the executive branch over the legislature. This is evidenced by the numerous examples of executive officeholders refusing to answer parliamentary questions, or situations when activity reports of some institutions were not tabled for parliamentary discussion. A common feature in all cases was the fact that executive officeholders were never called to account.¹⁰⁹ The dominance of other branches of government over the legislature is also evident in procedures for selecting managers of independent agencies, who, under the law, are selected by parliament. In the vast majority of cases parliament merely verifies appointments to the highest offices which were agreed beforehand among political parties, disregarding the ranking lists prepared by the parliament's expert

services.¹¹⁰

LEGAL REFORMS (LAW AND PRACTICE)

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

SCORE 25

All relevant studies, including the 2013 NIS Study and the European Commission's Progress Report, conclude that the legislature is not paying enough attention to the promotion of the principle of public accountability and the fight against corruption, despite the occasional parliamentary debates on corruption, in which the issue of corruption is used solely as a tool for blame game between political parties.

In the last nearly a decade, since the international community – personified in the OHR – withdrew from the operational governance of the country, there has been a clearly discernible trend of dismantling of the legislative framework imposed by the international community and undermining of the established institutions by bringing them under the control of political parties.

During the 2010–2014 mandate period a political agreement between SNSD and SDP resulted in the weakening of a few major anti-corruption laws, including the Conflict of Interest Law and the already amended Law on Financing of Political Parties. Both laws were amended, contrary to the recommendations of international organisations and civil society, such that they effectively legalised a great number of situations that had been sanctioned as illegal by the previous legislation.

Members of the legislature have showed the same

flagrant disregard for the judgements of the European Court of Human Rights and the Constitutional Court of BiH, whose implementation has been pending for years. Although the Law on the Agency for Prevention of Corruption and Coordination of the Fight against Corruption was adopted by the PA BiH as far back as 2009, and based on that Law the Agency was established, in practice very little has been achieved since then. A commission for monitoring and supervision of the Agency was established under the Parliamentary Assembly, but it took several years for it to obtain the basic funding for operation. The preparation of a new anti-corruption strategy for the next 5-year period is already under way even though, according to TI BiH, no more than about 20% of the measures envisaged under the previous strategy and action plan have been completed.¹¹¹

The utter lack of public trust in government's actions and true intentions regarding the fight against corruption is confirmed by the findings of the Global Corruption Barometer, revealing that 39% of respondents perceive government's efforts as fruitless and 31% as completely fruitless.

RECOMMENDATIONS

The vast majority of the recommendations from NIS Study 2013 have not been implemented, while in some areas there have been even aforementioned negative trends. Since no credible efforts have been shown toward implementation of the recommendations, all of them are still relevant. With slight adjustments, the recommendations are as follow:

- The parliamentary procedure for passage of laws should be made transparent. Also, it is necessary to ensure increased participation of professionals and civic society in the legislative process through broader use of the public consultation mechanism;
- The current legislative framework and practice should

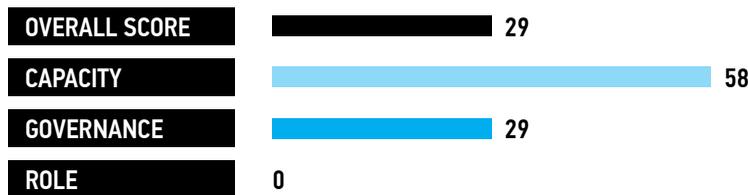
be changed such that the examination of conflict of interest situations and verification of asset declaration forms is entrusted to an independent authority;

- Parliaments should lead by example and get much more actively involved in the fight against corruption as well as take action through parliamentary procedures (committees and inquiry commissions) aimed at curbing corruption both systemically (legislative framework) and in individual cases (parliamentary inquiries);
- It is necessary to strengthen parliament's oversight of the executive and budget spending.
- It is necessary to strengthen the parliament's analytical and technical capacity, as well as the capacity for exercising oversight over the executive and over the budget planning and expenditure.

6.2. EXECUTIVE

OVERALL PILLAR SCORE: 29/100

STATUS: WEAK



SUMMARY

The executive in BiH has adequate legal powers and adequate resources for the execution of tasks within its remit. The country's constitutional structure, with overlapping responsibilities and lack of subordination between different levels of government, is a limiting factor for the implementation of coherent policies.

Inefficiency and lack of accountability, transparency and coordination between different levels of government

remain the key problems of the executive in BiH. These findings are equally true of both the 2013 NIS study as well as this 2015 NIS study. However, since the publication of the 2013 NIS study, the trends observed in the work of the executive in terms of its basic functionality have been even more discouraging. Another worrying trend has been weakening of the legislative and institutional framework for ensuring integrity within executive branch through.

STRUCTURE AND ORGANISATION

Executive power is concentrated at the state level (Council of Ministers, made up of nine ministries, and a tripartite Presidency), entity level (RS Government and FBiH Government, each having 16 ministries, a president and two vice-presidents and president and two vice-presidents of the entities), cantonal level (ten cantonal governments with a total of 95 ministries), and the level of the Brčko District. The Constitution sets out the division of competences between the State and the Entities.

The three-member state presidency and the RS president are elected by popular ballot, while the federation president is appointed by the federation parliament. It enumerates a list of attributions that come under the State and the Entities, and provides that the RS and the FBiH have competence in all the fields that are not

expressly assigned to the central Government. There is no subordination between different tiers of government. The Constitution foresees mechanisms to ensure adequate ethnic representation in executive branch at all level of governance. Ethnic quota to ensure the participation of all three ethnic groups in executive branch is based on pre-war 1991 census data.

In addition to the state and entity constitutions, the work of the executive is regulated by special laws.¹¹² The executive is answerable to the legislature, which decides on its appointment and dismissal, and to which it is required to submit reports on its activities. As part of its responsibilities, the executive enacts decrees, decisions, instructions, conclusions and other subordinate legal regulations, which are subject to judicial review through appropriate procedures for the

TABLE WITH SCORES

EXECUTIVE

OVERALL PILLAR SCORE 2013: 38/100

OVERALL PILLAR SCORE 2015: 29/100

DIMENSION	INDICATOR	LAW 2013	LAW 2015	PRACTICE 2013	PRACTICE 2015
CAPACITY 2013 58/100 CAPACITY 2015 58/100	RESOURCES INDEPENDENCE	100	100	50 25	50 25
GOVERNANCE 2013 42/100 GOVERNANCE 2015 29/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY	50 75 75	50 50 25	25 25 0	25 25 0
ROLE 2013 13/100 ROLE 2015 0/100	PUBLIC SECTOR MANAGEMENT LEGAL SYSTEM	25 0	0 0		

resolution of administrative disputes.¹¹³ Dayton Peace Agreement (Annex 4 represents Constitution of Bosnia and Herzegovina) also established the Office of the High Representative (OHR). The Office's representative is the state's ultimate authority, responsible for implementation of Dayton and with the power to "compel the entity governments to comply with the terms of the peace agreement and the state constitution".¹¹⁴

RESOURCES (PRACTICE)

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

SCORE 50

As was noted in the 2013 NIS study, the executive branch in BiH has adequate financial and human resources for the performance of tasks within its jurisdiction. However, because of widespread clientelism and corruption, as well as the relatively high share of political appointments, the competence of executive personnel remains a major problem.¹¹⁵ No major changes have been observed in this regard since the publication of the previous study.

The share of public expenditures and expenses (consolidated for BiH including the following levels: FBiH with the cantons, RS, BD and BiH) in GDP in BiH is about 30%.

In terms of structure, public expenditures and expenses, consolidated data for BiH show that wage bill makes up a major share of the expenditures and expenses (35%). The wage bill share at other administrative levels (FBiH with the cantons, RS and BD) is similar to BiH (consolidated) and ranges between 30% and 33%. Put simply, about a third of the expenditures and expenses in BiH (consolidated) goes on public sector wages (gross salaries, remunerations and

contributions paid by the employer). Another third of all expenditures and expenses in BiH (consolidated) goes on various transfers (31%), and about 20% goes to debt repayment. Capital expenditures account only for 5% of total expenditures and expenses.¹¹⁶

Complex constitutional structure ranks BiH among countries with a very large public sector, with as much as 13.1% of GDP spent on the public sector wage bill in 2011 and the percentage growing continuously¹¹⁷, while other current expenditures of governments reached about 15% of GDP.¹¹⁸ About 70% of the overall budget goes for wage bill appropriations.¹¹⁹

Wages in the public sector, which employs 3.5% of the population, with public employees (excluding state-owned companies and health workers) making up relatively large shares of the labour force (around 11%) and total employment (19%), are significantly higher than average levels in the private sector.¹²⁰

What remains a key problem in the operation of the executive branch is the lack of vertical and horizontal coordination between the many levels and institutions of government, with nepotistic and clientelistic appointments exacting a heavy toll on the competence of the executive.¹²¹

INDEPENDENCE (LAW)

To what extent is the executive independent by law?

SCORE 100

The state constitution and the constitutions of the entities accept the principle of separation of powers, making the executive independent of the other two branches of government. In addition to the state and entity constitutions, the work of the executive is regulated by special laws.¹²² The executive is answerable to the

legislature, which decides on its appointment and dismissal, and to which it is required to submit reports on its activities. As part of its responsibilities, the executive enacts decrees, decisions, instructions, conclusions and other subordinate legal regulations, which are subject to judicial review through appropriate procedures for the resolution of administrative disputes.¹²³

INDEPENDENCE (PRACTICE)

To what extent is the executive independent in practice?

SCORE 25

In practice, the formally recognised independence of the executive and the principle of separation of powers deviates markedly from what is prescribed by the Constitution and laws. The independence of the executive is significantly weakened by the way in which political parties operate. The political parties with predominantly autocratic leadership style and with no internal party democracy enable enormous concentration of real power in the hands of their leaders (see political parties pillar). Thus, all important executive and legislative decisions are made in regular informal meetings between the leaders of the ruling political parties. These decisions are subsequently sent to parliaments for passage merely to meet the form, as is the case with the budgets.¹²⁴ During the 2010–2014 mandate period the executive's complete submission to the ever-changing mood of party leaders was particularly evident in the case of almost continuous crisis in the Government of FBiH and the Council of Ministers. The Government of FBiH was elected after the 2010 election in violation of the provisions of the Constitution of FBiH because it did not have a sufficient majority in the House of Peoples, only to lose a no-confidence vote two years later. However, the Government continued to operate in a caretaker capacity because political leaders were un-

able to agree on the formation of new government. The Council of Ministers was not formed until almost two years after the 2010 election. Also, its composition (i.e. members of the coalition) changed twice in a very short period of time, so that it remained effectively blocked for the greater part of its mandate.

On the other hand, there are situations where the executive obviously usurps the authority of the legislative branch. For example, the Government of RS adopted a decision stipulating that the construction of Andrićgrad, a project financed by the Government of RS, was not subject to the Law on Public Procurement of BiH.¹²⁵ Similarly, usurpation of the legislature's authority by the executive takes form of authorisations, without parliament's consent, of the use of funds from the special purpose account for the purposes of government spending, a situation repeatedly pointed out by the Supreme Office for Public Sector Auditing.¹²⁶ Examples of such practices are many. For instance, the latest such example, which also had the most serious effects, concerns the decision of the FBiH Government to transfer funds from the special-purpose disaster preparedness account to current budget spending, just before the devastating floods struck the country. Catastrophic floods of enormous proportions have had devastating consequences across the country, but no one has ever been called to account for illegitimate spending of funds earmarked for flood protection and defence.

TRANSPARENCY (LAW)

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

SCORE 50

BiH has freedom of access to information laws (at the state and entity levels), which provide that "all infor-

mation in the control of public authorities is a public resource” and thus available to the public. The laws define a small number of exemptions from disclosure pertaining to “the interests of defence, security, crime prevention and detection of crime, the protection of the deliberative process of a public authority”, or “protection of confidential commercial information” and “protection of privacy of third persons”, with a proviso that the decision not to disclose information must be made on a case-by-case basis by conducting a public interest test, which must take into account both any harm and benefit that may result from such disclosure.¹²⁷

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

In another instance of overstepping its authority, the Government of RS adopted a conclusion determining that the provisions of the Freedom of Access to Information Law shall not apply to the minutes of meetings of the Government of RS, thus exempting these minutes from disclosure.¹²⁸

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

Pursuant to Article 15.7, paragraph 1, of the Election Law of BiH,¹²⁹ every candidate standing for elected office at the level of BiH or the entity level shall be obliged, no later than 15 days from the day of accepting candidacy for the elections, to submit to the CEC BiH a signed statement on his/her total property situation.

Pursuant to Article 15.8, paragraph 1, of the same Law, candidates elected at the state and entity levels shall, upon election, be obliged to submit a statement on their property situation no later than 30 days from the publication of the verification of mandates in the Official Gazette. The obligation to submit assets declaration form also exists after the expiration or termination of the term of office.

In recent years there have been frequent attempts to downplay the significance of the right of access to information through proposals for legislative changes that would significantly restrict freedom of access to information. In 2013 Ministry of Justice initiated change of the Freedom of Information Act in Bosnia and Herzegovina. The draft amendments were proposed by the Agency for Protection of Personal Data and aimed at introducing changes to the law that would severely limit access to information for citizens and especially for media in Bosnia and Herzegovina. The draft included several modifications of the existing law. The first one was related to protection of private data, limiting access to information in all cases in which the request endangers ‘the right to privacy and other legitimate private interests’. Although some exceptions to this rule were also defined, it basically meant that any kind of information – name, address, information related to property issues, etc. would be considered ‘private’ and therefore could be unavailable to the public. However, numerous CSO’s, led by TI BiH joined forces and managed to prevent these changes that would have severely derogated freedom of information in BiH.

TRANSPARENCY (PRACTICE)

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

SCORE 25

As emphasised in the 2013 NIS study, in practice there are many problems related to the implementation of the right to access information.

According to the findings and reports of TI BiH's Advocacy and Legal Advice Centre (ALAC), access to information related to public procurement, privatisation, budget execution and operation of public enterprises remains an issue of particular concern. Problems with access to information are also very common in procedures related to employment.¹³⁰

There are vivid examples of deliberate, almost systematic concealment of information which is required by law to be publicly available, relating to contracts made in the process of privatising state enterprises. In many cases (for example, privatisation of the Boska department store in the centre of Banja Luka), TI BiH was not given access to privatisation contracts even after several years of litigation.

The CEC published the assets declaration forms for years on its official website in accordance with this Law. However, following the decision of the Agency for the Protection of Personal Data, the Court of BiH, deciding on the appeal lodged by the CEC, ruled that the assets declaration forms could no longer be publicly available, on the grounds that that constituted a violation of the Law on the Protection of Personal Data.¹³¹ This decision of the Court sparked off numerous reactions by NGOs and experts.¹³²

A recent TI BiH's survey into the observance of the

right of access to information shows that only 53% of institutions fulfilled their obligation to provide access to information in due time, so the procedure to access information takes on average over a month. An issue of particular concern is the fact that only 20% of institutions delivered the requested information in the form of a decision (administrative act), which is required by law, and without which citizens cannot seek further judicial protection of this right.¹³³

ACCOUNTABILITY (LAW)

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

SCORE 50

The powers and position of the executive are defined in the state and entity constitutions and special laws on the Council of Ministers and entity governments, based on the principle of separation of powers, which provide that the executive is primarily answerable to the legislature. Thus, the Council of Ministers is bound to submit, at least annually, annual reports to the Parliamentary Assembly regarding its work, and the Parliamentary Assembly may also request that the Council of Ministers submit special reports on other issues of interest.¹³⁴ The Constitution of BiH stipulates that the Council of Ministers shall resign if at any time there is a vote of no-confidence by the Parliamentary Assembly (Article 5, paragraph 4). Also, Article 15 of the Law on the Council of Ministers provides that the Parliamentary Assembly must confirm the decision of the Chair of the Council of Ministers on individual dismissals in the Council of Ministers.

In addition to the aforementioned methods, the parliament exercises its control function over the executive through the institution of parliamentary questions or

interpellations (see legislature pillar). These institutions are defined by the Rules of Procedure of the House of Representatives and House of Peoples of the Parliamentary Assembly of BiH, and allow lawmakers to ask specific questions to the Council as a whole or individual ministers for issues that fall within their remit, while in the case of interpellations MPs raise questions on general topics which are then debated in parliament.¹³⁵

Pursuant to the Law on Council of Ministers, the Council of Ministers enacted Regulations on Consultations in Legislative Drafting. According to the Regulations, when draft legislation is submitted to the Council of Ministers for adoption, the institution shall provide the rationale for the decision on the selected form of consultation and describe the consultation that it conducted.¹³⁶

ACCOUNTABILITY (PRACTICE)

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

SCORE 25

In practice, there is effectively no form of oversight of executive activities, such as provided for by the constitution and the applicable laws. Negative trends manifested in a total lack of accountability and oversight of executive activities have also continued since the release of the 2013 NIS study.

There are numerous examples of appointments to highest executive offices of persons who were convicted of or are under investigation for corruption. Also, it is quite common for ministers and other executive officeholders to be involved in the disruption of public peace and order, in the form of physical confrontations in public places or driving under the influence. Nepotism and clientelism is widespread, as evidenced by the examples of two Entity Prime Ministers who employed

their closest relatives in public enterprises. Despite the fact that all the above cases were widely reported in the media, no one has ever been called to account.¹³⁷

According to the reports of the state-level public audit office for the year 2013, institutions that consume 55% of the budget received an adverse opinion or qualified opinion. So far there have been no procedures for establishing the responsibility of persons heading the institutions that received adverse audit opinion. According to the 2013 reports, only about 50% of audit recommendations were carried through.¹³⁸ Pressure of the executive on the audit offices is a frequent and common occurrence, and its manifestations range from public accusations against auditors to various attempts to bring the auditors under the control of the executive.¹³⁹

There is evidence that executive officeholders have used direct budget transfers as incentive payments to their own private firms or firms owned by their relatives or fellow party members. One such example, which was extensively reported in the media, is the Ministry of Agriculture of FBiH, which granted agricultural subsidies largely to the Minister's party colleagues.¹⁴⁰ A similar situation is true of RS, where the Investment-Development Bank, which is under the direct administration of the Government of RS, performed recapitalisation of companies and gave soft loans to firms owned by senior officials or their relatives, or where contracts for major infrastructure projects were awarded to relatives and friends of the RS President.¹⁴¹

In these and similar cases investigations have never been launched and judicial institutions are mainly engaged in prosecution of corruption cases at lower levels of government.¹⁴²

INTEGRITY (LAW)

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

SCORE 25

Provisions of the conflict of interest laws apply, among others, to executive officeholders.¹⁴³ These laws stipulate that ministers and deputy ministers cannot serve on the steering board, supervisory board, management board, executive board, or serve as directors of a public company or privatisation agency. Also, they cannot perform these functions in private enterprises in which government institutions invested capital, or which contract or otherwise do business with government authorities, if the value of the business exceeds KM 5,000 (\$ 2900).

Conflict of interest laws exist at State, Entity and Brčko District levels. Implementation of the laws at the state level, in FBiH and in Brčko District was the responsibility of the Central Election Commission of BiH until 2013. Amendments to the conflict of interest law provided for the establishment of the Conflict of Interest Commission as well as establishment of the Commission's Office for Expert, Administrative and Technical Tasks Falling within the Commission's Remit, operating under the Agency for Prevention of Corruption and Coordination of the Fight against Corruption.¹⁴⁴ This is a major step backwards from the previous version of the law, where the responsibility for implementation of the law rested with the CEC as an independent body. According to the amended Law, the newly-formed Commission will be composed of MPs and representatives of the Agency for Prevention of Corruption and Coordination of the Fight against Corruption.

Implementation of the conflict of interest law in RS,

meanwhile, comes within the purview of the RS Commission for Establishing Conflicts of Interest, which has failed to identify a single case of conflict of interest even though it was established a few years ago. Non-harmonised legislative provisions, as well as recent changes to the law and establishment of a new institution responsible for implementing the law, which has remained non-operational for more than a year since it was established, leave ample room for executive officeholders to engage in a wide range of illegal activities.

INTEGRITY (PRACTICE)

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

SCORE 0

As emphasised in the 2013 NIS study, implementation of legal provisions on conflict of interest remains the exception, rather than the rule.

This is evidenced by the CEC 2013 Annual Report, which shows that in 2013 only one sanction was imposed for violation of the state-level conflict of interest law.¹⁴⁵ The CEC largely ignored conflict of interest cases at higher levels of government, while by sanctioning exclusively local officials it tried to create the illusion that it exercises its authority in accordance with the law.¹⁴⁶

As noted above, the Conflict of Interest Law, as amended in 2013, provides for the establishment of the Conflict of Interest Commission, which would take over the responsibility for determining conflict of interest from the CEC. The Commission has not yet become operational and has not examined any conflict of interest situations. Problems occurred with the takeover of employees and cases from the CEC, which had been responsible for examining conflict of interest situa-

tions prior to the adoption of the amended law. This effectively means that in the last more than a year there have been no procedures instituted to examine conflict of interest situations.

Although conflict of interest was very rarely sanctioned in practice even while the responsibility for identifying conflict of interest situations rested with the CEC, following the amendments to the conflict of interest law and transfer of responsibility from the CEC to the Commission, identification of conflict of interest situations has altogether ceased at the state and FBiH levels.

PUBLIC SECTOR MANAGEMENT (LAW AND PRACTICE)

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

SCORE 0

It took the Council of Ministers almost a half of its 2010–2014 mandate period to get established after the election, while in the second half of this mandate period its composition changed on two occasions as a result of political crisis. Such a situation made it impossible to engage in reform processes. EU Progress Reports and various NGO reports have noted a complete lack of progress in the country and blockage of all reform processes.

The Governance Indicators of the World Bank Institute show that BiH has made very little progress in terms of overall improvement in the quality of governance, while in certain categories, such as government accountability, it fared significantly worse in 2013 compared to 2008.¹⁴⁷ Something similar is also true of other indicators – from those measuring the quality of the business environment and the level of perceived corruption, to

economic indicators. In none of these areas has the country managed to implement the necessary reforms and improve the situation.¹⁴⁸

There is ample evidence that executive officeholders put their private and party interests before those of the general public. During their term of office most executive officeholders increase their wealth much beyond the regular income that they receive as members of the executive, an interesting phenomenon that is often looked into by some media outlets, but not by the official investigative agencies.¹⁴⁹

LEGAL SYSTEM (LAW AND PRACTICE)

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

SCORE 0

The general conclusion stemming from the EU Progress Reports as well as reports of non-governmental organisations is that the executive in BiH has so far failed to adequately come to grips with corruption. This is most clearly evidenced by the fact that only 10% of the measures envisaged under the 2009–2014 Strategy and Action Plan for the Fight against Corruption have been implemented in full.¹⁵⁰

Indeed, in recent years the executive has initiated changes to several important anticorruption laws, degrading the existing legislation, most notably the Conflict of Interest Law.

Although the Law on the Agency for Prevention of Corruption and Coordination of the Fight against Corruption was adopted in December 2009, it took the Council of

Ministers almost three years to adopt the Rules on the Agency's internal organisation, thus delaying the start of the Agency's work.

Reports of public sector audit offices have consistently identified systemic problems in relation to how budgets are spent, but the executive has not demonstrated a genuine willingness to act on the audit report recommendations.

According to the Global Corruption Barometer for 2013, 72% of citizens believe that the government is unsuccessful in fighting corruption.¹⁵¹

RECOMMENDATIONS

The vast majority of the recommendations from NIS Study 2013 have not been implemented, while in some areas there have been even aforementioned negative trends. Since no credible efforts have been shown toward implementation of the recommendations, all of them are still relevant. With slight adjustment recommendations are as follow:

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

6.3. JUDICIARY

OVERALL PILLAR SCORE: 31/100

STATUS: WEAK



SUMMARY

Although it was strongly financially supported and prioritised by the international community, judicial reform has not resulted in an independent and efficient judiciary. Despite the strengthening of technical and organisational capacities, strong political pressures and lack of integrity and accountability prevent the judiciary from exercising its constitutional and statutory powers. Inadequate relationships and cooperation with other pillars of the national integrity system further hampers the functioning of the judiciary. The prosecution of corruption is more of an exception than the rule, and negative trends have been seen in this regard since the publication of the NIS 2013 study.

STRUCTURE AND ORGANISATION

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

RESOURCES (LAW)

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

SCORE 50

The constitutional and statutory position of judicial institutions has not changed since the release of the 2013 NIS study. The judiciary is financed from different budgets, depending on which administrative unit established a particular court under its laws. The justice system in the country is currently financed from 14 different budgets. The Court of BiH is financed from the budget of the joint institutions of BiH, all courts in RS from the RS budget, and the courts in the Brčko District from the District budget. In FBiH, the Supreme Court of FBiH is financed from the FBiH budget, while the cantonal/municipal courts are financed from the ten cantonal budgets.

TABLE WITH SCORES

PRAVOSUĐE

OVERALL PILLAR SCORE 2013: 29/100

OVERALL PILLAR SCORE 2015: 31/100

DIMENSION	INDICATOR	LAW 2013	LAW 2015	PRACTICE 2013	PRACTICE 2015
CAPACITY 2013 44/100 CAPACITY 2015 50/100	RESOURCES INDEPENDENCE	50 75	50 75	25 25	50 25
GOVERNANCE 2013 42/100 GOVERNANCE 2015 42/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY MECHANISMS	50 100 50	50 100 50	25 25 0	25 25 0
ROLE 2013 0/100 ROLE 2015 0/100	EXECUTIVE OVERSIGHT CORRUPTION PROSECUTION	0 0	0 0		

Budget proposals for courts are developed by court presidents and submitted to the High Judicial and Prosecutorial Council (HJPC) for comment, the respective Ministries of Justice and finally the respective Ministries of Finance, before being adopted by parliaments in the form of a law. Although courts earn substantial revenue from court fees, these are fed into the general budget. There is no legal restriction on either the amount of the budget in absolute terms, or the percentage thereof which is used to finance the judiciary relative to other users of the budget.

Judges' salaries are governed by a special law (Law on Salaries and other Compensations for Judges and Prosecutors)¹⁵², but this law only applies to the salaries of judges (and prosecutors) and not to the salaries of other administrative staff.

RESOURCES (PRACTICE)

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

SCORE 50

Overall budget allocations for judicial institutions have seen a continuous moderate increase in both absolute and relative terms in relation to GDP. In 2013 budgets for the judiciary increased by 4.2% compared to 2012, totalling €110 million or 0.82% of the country's GDP. Despite continuing growth in budgetary allocations for the financing of the judiciary, a report by the High Judicial and Prosecutorial Council (HJPC) stresses that these allocations are on average 20% lower than the actual needs. Due to budgetary constraints, 13% of the envisaged positions for regular and reserve judges, as well as prosecutors, remained unfilled across the country in 2013.¹⁵³

Judges' salaries remain on average 50% higher than those in the rest of the public sector. Thus, judges in first-instance courts have a basic salary of KM 2,400 (\$ 1,390), judges in second-instance courts KM 3,000 (\$ 1,740), judges of the Supreme Courts KM 3,800 (\$ 2,200),¹⁵⁴ and judges of constitutional courts up to KM 4,500 (\$ 2,650). This means that the positions of judges are very competitive, with a note that the above amounts are only basic salaries, in addition to which judges also receive length of service bonuses. The court staff, on the other hand, are relatively poorly paid.

In the process of judicial reform international donors have provided funds for the implementation of reform activities. This is supplemented by continued implementation of technical assistance projects for the judiciary, which are funded by bilateral and multilateral international donors. In 2013 six such projects were implemented, with the majority of financial support coming from the governments of Norway and Sweden and the EU. The total value of the projects was somewhat above €5 million.¹⁵⁵

The entities also have the Judicial and Prosecutorial Training Centres.¹⁵⁶ Mandatory training for judges is four days a year, while courts' administrative staff are under no legal obligation to undergo regular training.

INDEPENDENCE (LAW)

To what extent is the judiciary independent by law?

SCORE 75

The formal independence of the judiciary has not been compromised by legislative amendments in the period after the release of the 2013 NIS study, despite some initiatives to that end.

The Law on High Judicial and Prosecutorial Council

(HJPC) of BiH governs the procedure for appointment and removal of judges and prosecutors. HJPC is an independent body and has the exclusive responsibility for appointing judges and prosecutors, except for judges of the Constitutional Court of BiH and Constitutional Courts of the Entities.

The Social Democratic Party (SDP) sent to the parliamentary procedure an initiative to amend the Law, based on an agreement with the Alliance of Independent Social Democrats (SNSD). The proposed changes envisaged that judges and prosecutors were to be selected by the Parliament instead of HJPC. After strong criticism from the international community and civil society, the bill was withdrawn from procedure.¹⁵⁷

INDEPENDENCE (PRACTICE)

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

SCORE 25

The widespread practice of exerting political and other forms of pressure and influence on judicial institutions, identified in the 2013 NIS study, has intensified.

There are numerous examples of overt and direct pressure being exerted on the judiciary in BiH. One flagrant example of direct pressure from the executive branch was a threat of sanctions made by the Council of Ministers against the President of the Court of BiH, the Chief Prosecutor and the President of the High Judicial and Prosecutorial Council because of their participation in the structured dialogue on justice with the EU. Apart from the fact that BiH officially participates in the dialogue as part of the EU integration process, the Council of Ministers was also dissatisfied with the fact that the said judicial office holders perform their duties in accordance with the principle of judicial independ-

ence as guaranteed by the Constitution and the relevant legislation.¹⁵⁸

The practice of political influence and direct interference in judicial proceedings is very widespread. The most intense political pressure on the judiciary came from the President of RS, who has repeatedly demonstrated such behaviour. Following a ruling of the court in Bijeljina freezing the bank account of a company that had been taken over by the government after its disastrous privatisation, President Dodik threatened to abolish the court in Bijeljina and said that the government would not comply with the ruling.¹⁵⁹ Similar arrogance was displayed by the Minister of Justice of FBiH Zoran Mikulić, who refused to execute orders of the judiciary and made direct threats against the prosecutor in the proceedings against him and his associates.¹⁶⁰

The Chief Prosecutor of BiH and the President of the Court of BiH have repeatedly warned the general public and office holders in other branches of government of the tremendous political pressure and influence being exerted on the judiciary. However, these appeals and warnings have not met with the proper response, ultimately resulting in additional pressure.¹⁶¹ The EU Progress Report and the Department of State's Human Rights Report both note that the political establishment continues to exert pressure on the judiciary and interfere in its work.¹⁶²

TRANSPARENCY (LAW)

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

SCORE 50

A comprehensive legislative framework allows both the

general public and professionals to obtain information about the functioning of the judiciary and rulings made by the courts. In this regard there have been no attempts to weaken the legislative framework governing transparency of the judiciary. The general freedom of information legislation also applies to the judiciary, and procedural laws (criminal procedure and civil procedure codes) introduce the principle of transparency in the work of the judiciary. Public access to all court actions is established as a general rule. Legal restrictions on public access to proceedings exist in cases of criminal proceedings against juveniles, as well as marital and family disputes.

Candidates for judges, when they apply for vacant positions, are required by law to enclose the filled-in assets declaration form (a form with confidential personal information).

However, restrictions on transparency are evident from the adoption of various implementing regulations, as in the example of the Court of BiH's new rules on access to information, introducing additional restrictions on accessing information in the possession of the Court, including the names of persons accused of criminal offences.¹⁶³

TRANSPARENCY (PRACTICE)

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

SCORE 25

In practice, the transparency of the judicial authorities' deviates significantly from the principles and provisions laid down by the relevant legislation. The experience of the Advocacy and Legal Advice Centre (ALAC) indicates a very widespread practice of denying public access to information about the work of the judiciary.

There are numerous examples of courts having denied access even to verdicts, which are beyond doubt public documents, as laid down in the law.¹⁶⁴ Similar problems with denying access to information held by the judiciary, especially regarding the confidentiality of indictments, were pointed out by the Balkan Investigative Reporting Network (BIRN) and Association of Court Reporters.¹⁶⁵

It can be considered that the rules on public trials and envisaged exemptions are fully respected in practice. Courts report on their work to the HJPC BiH. Each year the HJPC publishes on its website the annual report for the previous year.¹⁶⁶ In addition, the courts have their own websites.

Despite the fact that the law makes it binding upon judges and prosecutors to submit assets declaration forms to the HJPC, these data are not publicly available. The HJPC does not have the authority to verify the authenticity of the data contained in the applications. TI BiH's Advocacy and Legal Advice Centre (ALAC) has repeatedly initiated legal action because of HJPC's refusal to make this information available to the public, but the courts refused to enforce legislation. This legal action is currently under review in the Constitutional Court of BiH.

Citizens can get also access to information about the work of the HJPC's Office of Disciplinary Counsel (ODC)¹⁶⁷, specifically about the work relating to disciplinary proceedings and sanctions imposed, but they cannot see the names of judges against whom disciplinary proceedings were conducted or the types of disciplinary measures that were imposed.

ACCOUNTABILITY (LAW)

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

SCORE 100

There are provisions in place providing for mechanisms of accountability for judges, as well as obligation to report on their work and to be held answerable for their actions.

There are two basic methods of control over the judiciary. The first method includes the appellate procedure and the procedure of extraordinary judicial remedies in proceedings conducted before the courts. As a general rule, parties in criminal and civil proceedings are allowed, without exception, to appeal against decisions that they are dissatisfied with. Also, in certain circumstances, the parties can seek extraordinary judicial remedies and, when all ordinary and extraordinary judicial remedies are exhausted, it is possible to lodge an appeal with the Constitutional Court of BiH. The second method of “controlling” the work of the judiciary is exercised by the HJPC and justice ministries. While justice ministries have the authority to exercise administrative supervision over the work of the courts, the HJPC has the authority, through ODC, to conduct disciplinary proceedings and impose disciplinary measures against judges who it finds responsible for disciplinary offences. Procedural laws (regulating criminal and civil proceedings) prescribe the mandatory content of judicial decisions. Every judicial decision should include a statement of reasons.

ACCOUNTABILITY (PRACTICE)

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

SCORE 25

Although a legal framework regulating the duties and responsibilities of judges is in place, there is still a negative trend of lack of accountability in practice. Key indicators of this situation are a huge backlog of cases and slow and protracted resolution of pending cases, making it difficult to access justice within a reasonable period.¹⁶⁸

In the period following the release of the previous NIS study in 2013, there has been an increase in the number of complaints lodged with the HJPC’s Office of the Disciplinary Counsel (ODC). The number of disciplinary cases opened ex officio due to the elapse of the statute of limitations has increased, making up 50% of all disciplinary proceedings. Out of 18 disciplinary proceedings conducted, 17 were completed and sanctions imposed. The case management system in courts and prosecutors’ offices covers over 3.9 million cases and can generate automated reports on judicial performance that contribute to policy and strategic planning decisions. In January 2014, a tool was introduced to enable all parties in proceedings to receive information on the predicted duration of their cases in court.¹⁶⁹

Despite the fact that the technical capacity for strengthening accountability has been enhanced in recent years, most notably through projects funded by international donors, there are numerous examples of cases showing a pervasive lack of accountability. One such example, which was widely reported in the media, was the trial against an alleged criminal organisation that had dragged on for years. In this case, the first-instance

conviction against members of the alleged criminal organisation who were sentenced to an imprisonment term of more than one hundred years was later quashed on appeal. However, the prosecutor in the said case is under investigation for accepting a bribe from the first defendant. The same prosecutor had already been known for his unethical behaviour and was repeatedly sanctioned.¹⁷⁰

Another case which indicates a complete absence of accountability concerns the election of the President of the HJPC in 2014. The media had previously widely reported on his ties to members of the criminal milieu while holding the position of President of the District Court in Banja Luka. However, instead of being met with disciplinary or preliminary investigation proceedings, he was promoted to one of the highest judicial offices in the country.¹⁷¹

It is therefore surprising that it was by none other than the HJPC that the recent heated public exchange of accusations between the Court of BiH and the Prosecutor's Office of BiH, in connection with the prosecution of a money laundering case, was characterised as damaging the reputation of the judicial institutions.¹⁷²

INTEGRITY MECHANISMS (LAW)

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

SCORE 50

The legal framework that provides for integrity mechanisms in the judiciary does not cover all aspects of the integrity of judges and the judiciary. The HJPC does not have the authority to verify judges' assets declaration forms, which prevents the HJPC from determining

whether judges provided accurate and complete information in their declaration forms.

When applying for a position of a judge, candidates are required to enclose a statement of their assets (assets declaration form). The applicants are asked to list their own property and that of their family (spouse and members of the family household), including real property, bank accounts and stocks. In addition, the applicants are required to state their financial obligations (receivables and liabilities) and provide an estimation of their total assets. The appointed judges are required, during their term of office, to automatically notify the HJPC of any changes in their personal income, personal property, family property, financial obligations and value of total assets as well as changes related to their spouse and members of the family household regarding their activities in public and private companies (see above). Appointed judges are also required, not later than 31 March each year, to file an annual financial statement with the HJPC, reporting, among other things, "the extra-judicial or extra-prosecutorial activities performed, including the amounts of remuneration".¹⁷³

The HJPC has adopted a Code of Ethics for Judges.¹⁷⁴ Under this Code, judges must act independently of the executive and legislative branches of government, perform their duties in an impartial manner and always act in a manner that is fair to all parties to any proceeding. Also, code includes rules on gift and hospitality and conflict of interest. The judge has an obligation to act ethically, with dignity and in conformity with the dignity of the function he/she performs (integrity and propriety), as well as maintain the highest standards of professionalism and execute his/her duties in a conscientious, diligent and efficient manner (competence and diligence).

INTEGRITY MECHANISMS (PRACTICE)

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

SCORE 0

There is a general consensus that the justice system in BiH is lacking in integrity. This observation has been repeatedly made in public by the holders of the highest judicial functions in the country – President of the Court of BiH and Chief Prosecutor of BiH,¹⁷⁵ and is shared by international and non-governmental organisations.¹⁷⁶

A report recently submitted to the European Commission by the EU Special Representative for BiH warns of a catastrophic situation in the country's judiciary, marked by systemic violations of the law by judicial office holders as well as self-will, mutual antagonism and complete absence of cooperation among judicial institutions.¹⁷⁷

One of the most flagrant examples of illegal conduct of the judiciary was the arrest of the President of the Federation of BiH Živko Budimir for alleged corruption. The arrest was made in a dramatic fashion by special police forces, following a prior announcement by the Prime Minister of FBiH, and in the presence of cameras set up outside the president's office. The Court of BiH ordered the President of FBiH be detained pending trial. Shortly thereafter, following the appeal lodged by the President of FBiH, the Constitutional Court ordered his release for lack of evidence and grounds for detention.¹⁷⁸

There is a general perception in the public that the judiciary is corrupt, on account of very few cases of criminal proceedings taken against a judge or prosecutor, or other judicial staff, for corruption offences.

According to the 2013 TI Global Barometer, the judiciary was ranked as the second most corrupt institution just behind political parties. As many as 67% of citizens think that corruption is present in the judiciary.

This perception is the result of considerable sluggishness in the judiciary, due to the huge backlog of cases. Of course, corruption in the judiciary is part of the general problem in society but corruption in the judiciary does not necessarily have the same characteristics as corruption in other walks of life (bribery, preferential treatment in public procurement and the like), but it takes a sophisticated form of achieving specific benefits in proceedings before the courts.

Also, in criminal proceedings with *ex officio* [court-appointed] defence, it is always the same lawyers who get appointed as public defenders, while most other lawyers have never had the opportunity to defend the accused. The point is that the *ex officio* defence is very well paid by the court. "According to data collected by CIN, between 2005 and 2010 at least KM 32 million was spent from the budgets of 41 courts in BiH for *ex officio* defences. The total amount of money spent is unknown, because 32 courts failed to submit the requested information, while 13 courts delivered incomplete information.

The best paid public defender over the said six-year period was Omar Mehmedbašić, with a total income to the tune of KM 864,000. He is followed by Izet Baždarević with KM 548,000 and Selman Zijadić with KM 530,000.¹⁷⁹

Of course, the inevitable conclusion is that the selected lawyers and the judges who appointed them as public defenders "share" the earnings generated by the lawyers while acting as public defenders.

There is no legal restriction preventing judges from

getting employed in the private sector after the termination of their term of office as judge. In practice, after the termination of their term of office, most judges go to work as lawyers, notaries or in companies.

EXECUTIVE OVERSIGHT (LAW AND PRACTICE)

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

SCORE 0

Although there is legislation in place providing for the judiciary's oversight of the executive, the judiciary does not exercise that role in practice. The implementation of the European Court of Human Rights' judgement in the case of discrimination of BiH citizens on grounds of ethnicity in connection with the exercise of passive voting rights has been pending for five years. In 80 cases judgements of the Constitutional Court of BiH have not been implemented, which constitutes a criminal offence.¹⁸⁰

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

Although the court decisions annulling final administra-

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

The Advocacy and Legal Advice Centre has received numerous complaints concerning failure to implement final court rulings. In a lawsuit brought by TI BiH against the Ministry of Finance of RS on the basis of the Law on Freedom of Access to Information, the District Court in Banja Luka issued the ruling¹⁸¹ ordering the Ministry of Finance to submit, within 30 days, the requested information to the plaintiff, but the Ministry failed to comply with the ruling.¹⁸²

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

of administrative enforcement is conducted by the same administrative authorities that failed to comply with the court ruling in the earlier proceedings.

CORRUPTION PROSECUTION (PRACTICE)

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

SCORE 0

The judiciary is completely inert and ineffective in the fight against corruption and unsuccessful in proceedings taken with the aim of sanctioning those who committed corruption offences. A recent TI BiH report *Monitoring the Prosecution of Corruption in the Courts and Prosecutors' Offices in BiH (2012–2013)*¹⁸³ indicates a continued downward trend in effective prosecution of corruption. The report notes the country's worst performance in prosecuting corruption in the last 5 years, with the number of verdicts and investigations for corruption offences falling several-fold.

In 2013 the Court of BiH delivered only three verdicts for corruption offences, one of which was a guilty verdict. Prosecution of corruption by courts in the Federation of BiH has also seen a decline compared to the previous four years – in 2013 a total of 78 verdicts were delivered for corruption offences, compared to 124 verdicts in 2012, 113 verdicts in 2011, and 91 verdicts in 2010 and 2009 each. A decline is also observed in the number of guilty verdicts: only 60 guilty verdicts were delivered in FBiH in 2013, fewer than in the preceding year.

Discouraging statistics are also true of courts at all levels in the Republic of Srpska, which in 2013 delivered a total of 60 verdicts for corruption offences, a decrease

of almost 50% compared to 2012. The number of guilty verdicts for corruption offences in RS has been in continuing decline in the last five years. The worst performance was observed in 2013, when the total number of guilty verdicts issued by all courts in this entity stood at 37, which represents a decrease of 40%.

Overall, 147 verdicts for corruption offences were handed down in 2013 at all levels in BiH, of which 102 were convictions, 36 were acquittals and 9 were verdicts of abandonment. This is the worst recorded annual performance of the judiciary since TI BiH started conducting this study.

Furthermore, there is a noticeable tendency among judicial institutions at higher levels to ignore corruption cases altogether.¹⁸⁴ Even if investigations are launched against middle-ranking or higher-ranking officials, they generally drag on for years and end in acquittals.

RECOMMENDATIONS

The vast majority of the recommendations from NIS Study 2013 have not been implemented, while in some areas there have been even aforementioned negative trends. Since no credible efforts have been shown toward implementation of the recommendations, all of them are still relevant. With slight adjustment recommendations are as follow:

- The judiciary should be financed from a single judiciary budget in order to reduce the possibility of influence being exerted from each of the 14 levels from which the judiciary is currently financed;
- The judiciary, along with the HJPC BiH, should continue efforts to reduce the backlog of cases and speed up access to justice, because the current backlog and long-drawn judicial procedures render the work of the judiciary pointless, especially in cases relating to the operation of business entities (commercial disputes,

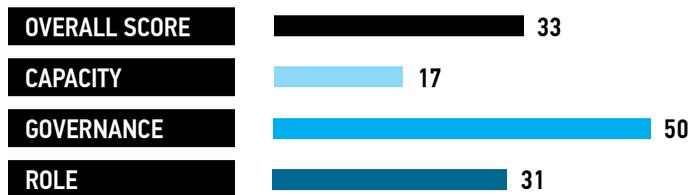
bankruptcy);

- Strengthen the Office of Disciplinary Counsel and ensure that it is separated from the HJPC, both formally and physically;
- Transparency of the judiciary should be enhanced, particularly in relation to asset declaration forms of judicial office holders;
- Courts must demand that the legislature change the concept of administrative dispute proceedings (judicial review of administrative decisions) because practice shows that administrative authorities ignore or fail to comply with the court decisions quashing administrative acts in appellate proceedings or refuse to accept legally binding positions of the courts. The concept would have to be changed such to ensure that court decisions entirely supersede administrative acts and that citizens can realise their rights based on court decision without having to re-institute administrative proceedings.

6.4. PUBLIC SECTOR

OVERALL PILLAR SCORE: 33/100

STATUS: WEAK



SUMMARY

There have been no changes in the number and structure of ministerial responsibilities at the state, entity and cantonal levels in relation to what was found in the 2013 NIS study. The only changes introduced concern the status of some local administration units in both entities, as well as merger and abolition of some smaller institutions in the Republic of Srpska. Unlike the situation presented in the previous study, the current budgetary funds are found to be no longer sufficient for the operation and needs of the public sector.

The legislative framework regulating the independence, transparency and accountability of the public sector is relatively good; however, in practice there are

numerous omissions in the application of defined legal provisions. The current legal provisions do not require public sector employees, with the exception of individuals standing for office in the executive and legislature, to make the information regarding their personal assets and income available to the public. The Law on Freedom of Access to Information is still poorly used and a special problem is posed by the lack of provisions for proactive transparency of organisations and institutions.

In early September 2014 Bosnia and Herzegovina was admitted to the global initiative "Open Government Partnership" as its 65th member. The first action plan is currently being prepared, containing measures to im-

prove the situation in the areas of Fiscal Transparency, Access to Information, Disclosure of Information about the Assets of Public Officials, and Citizen Participation.

The new Public Procurement Law of Bosnia and Herzegovina (PPL BiH) entered into force on 27 May 2014 and its application was envisaged to start six months thereafter. The new PPL BiH was drafted in accordance with the fundamental principles and procedures of the EU public procurement system but it still only partially addresses the problems of lack of transparency, accountability and efficiency besetting almost ten years of implementation of the old law.

STRUCTURE AND ORGANISATION

The public sector in BiH comprises all public institutions, organisations and companies at all levels providing certain public services to citizens and other entities. Looking at the findings of the 2013 NIS study, it can be concluded that there have been no significant changes to the structure and organisation of the public sector. There have been no changes in the number and structure of ministerial responsibilities at the state, entity and cantonal levels. The only changes introduced concern the status of some local administration units in both entities, as well as merger and abolition of some

TABLE WITH SCORES

PUBLIC SECTOR

OVERALL PILLAR SCORE 2013: 35/100

OVERALL PILLAR SCORE 2015: 33/100

DIMENSION	INDICATOR	LAW 2013	LAW 2015	PRACTICE 2013	PRACTICE 2015
CAPACITY 2013 25/100 CAPACITY 2015 17/100	RESOURCES INDEPENDENCE	25	25	50 0	25 0
GOVERNANCE 2013 46/100 GOVERNANCE 2015 50/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY	50 75 75	50 75 75	25 25 25	25 25 50
ROLE 2013 33/100 ROLE 2015 31/100	PUBLIC EDUCATION COOPERATION WITH PUBLIC INSTITUTIONS, CSOS AND PRIVATE AGENCIES IN PREVENTING/ADDRESSING CORRUPTION REDUCTION OF CORRUPTION RISKS BY SAFEGUARDING INTEGRITY IN PUBLIC PROCUREMENT OVERSIGHT OF STATE-OWNED ENTERPRISES	50 25	25 25		
		25	50		25

smaller institutions in the Republic of Srpska. Thus, the city status was given to former municipalities of Bijeljina, Prijedor, Doboj and Trebinje in the Republic of Srpska¹⁸⁵ and municipalities of Bihać, Široki Brijeg, Tuzla and Zenica in the Federation of BiH¹⁸⁶. However, the new status of these local administration units is still not accompanied with changes in the existing structure of their responsibilities, or greater financial and fiscal autonomy. Also, a new local administration unit was formed in the Republic of Srpska, namely the municipality of Stanari, as a result of separation of part of the territory which had previously belonged to the City of Doboj¹⁸⁷.

Looking at the findings of the 2013 NIS study, it can be noted that a large number of public sector employees are still not covered by specific legislation on public administration/service. This primarily concerns employees in public companies, some employees in local governments, and health and educational institutions. Their work is regulated by sectoral laws and implementing regulations, as well as internal documents of these institutions.

A common feature shared by all public sector institutions remains their obligation to follow the single state-level Public Procurement Law of BiH. The new PPL BiH, whose application starts in late November 2014, provides a detailed list of organisations and institutions under obligation to apply this law.

RESOURCES (PRACTICE)

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

SCORE 25

Unlike the situation presented in the 2013 NIS Study, we can say that the current budgetary funds are no lon-

ger sufficient for the operation and needs of the public sector¹⁸⁸. The overall budget deficit, which includes the budgets at all levels, amounted to 2.7% in 2012 and 1.9% in 2013. The main reasons for this situation are seen in reduced public income due to decreased inflow of indirect taxes, delays in the distribution of dividends from state electricity transmission company, less proceeds from the sale of military assets, and delays in securing funding from abroad¹⁸⁹.

Given the fact that the public sector employs nearly 1/3 of the total number of employees in BiH, it is not surprising that the salaries for public sector employees still make up almost 50% of total public expenditure.¹⁹⁰ In the last two years several rounds of amendments have been made to the relevant RS legislation regulating salaries in the public sector, but this has not significantly affected the share of wages in public expenditure. According to data from the entity bureaus of statistics for October 2014, the average salaries in public administration were still higher than those in industry and the service sector, with the exception of the salaries in the financial sector and the information and communication sector.¹⁹¹

There is still a glaring disparity between the level of salaries and service delivery. According to the 2015 "Doing Business" study¹⁹², BiH still ranks at the bottom among European countries in terms of the attractiveness of the business environment, particularly because of the slow issuance of construction permits and inefficient administration in connection with the registration of companies or paying taxes.

That there are problems in connection with the financing of the public sector is indicated by the decline of the total value of public procurement in 2013. The total value of contracts concluded between 1 January 2013 and 31 December 2013 in Bosnia and Herzegovina was KM 2,736,346,294.96 (€ 1,399,071,644.75),

representing a decrease of 23.15% compared to 2012, when the total value of concluded contracts was KM 3,560,468,418.94 (€ 1,820,438,595.86)¹⁹³. The largest decrease was seen in procurement relating to works, which indicates a reduction in public investment.

INDEPENDENCE (LAW)

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

SCORE 25

In the last two years no significant changes have been made to the legislation regulating the functioning of the public sector in BiH. The Law on Civil Service in the Institutions of BiH¹⁹⁴ is still in force, regulating the legal status of civil servants in the ministries, independent administrative organisations and administrative organisations operating under ministries, as well as other institutions in BiH. This law provides that the recruitment and the professional career advancement of a civil servant shall be based upon open competition and professional merit. The organisation and operation of civil service bodies in RS are defined by the Law on Ministries and the Law on the Civil Service in the Republic of Srpska Administration. In FBiH, similarly, recruitment in public administration is regulated by the Law on Civil Service in FBiH¹⁹⁵, whereas in the Brčko District it is regulated by the Law on Civil Service in Administrative Bodies of the Brčko District¹⁹⁶.

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

Finally, it is important to note that there has been a change in the conflict of interest legislation at the state level. The Law Amending the Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzego-

vina¹⁹⁷ provided for the establishment of a Conflict of Interest Commission operating under the Agency for Prevention of Corruption and Coordination of the Fight against Corruption.

INDEPENDENCE (PRACTICE)

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

SCORE 0

The 2013 NIS study indicated that any change of government at any executive level in BiH carries with it a change of managers in the executive branch of government, public institutions and public companies. This practice continues to the present day. At the same time, this is also a consequence of regulations in which the procedures for recruitment and work in the public sector do not directly apply to a number of advisory and managerial positions. The local elections held in October 2012 were followed by the change of a large number of managers in local authorities, as well as in institutions and companies whose founders are local governments, in the municipalities and cities where there was a change of political parties in power. A large number of dismissed managers brought lawsuits before the competent authorities with a view to determining the legality of the said decisions of newly formed governments. Generally, such lawsuits are resolved positively in favour of employees and large compensations are awarded for unfair dismissals¹⁹⁸.

In open competition recruitments it is difficult to ensure political impartiality because the commissions for evaluation of candidates are given an indication of the favoured candidate in advance. Also, a large number of job competitions are advertised for the vacancies that have already been filled by the persons for whom the competition was advertised in the first place. What

continues to be a problem of particular concern is the institutionalised “ethnic representation” principle in the recruitment process, which prevents recruitments from being based on the professional merits of the candidates rather than their ethnic origin.¹⁹⁹ Although legal regulations do not allow politicisation in the public sector and partisan activities of employees working in it, what is observed in reality is a strong informal influence of political parties on recruitment in the public sector. This is particularly true of the local government, where a huge number of people were recruited ‘through partisan artifice’ following the 2012 local elections²⁰⁰.

Findings of the state-level Supreme Audit Office reveal problems in recruitment as well as in defining salaries of employees in the institutions of BiH.²⁰¹ This is further confirmed by the findings of entity audit reports,²⁰² which point to practices such as avoiding advertising competitions for certain jobs and hiring individuals for a fixed term based on service contract or temporary service contract.

TRANSPARENCY (LAW)

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

Score 50

There have been no changes to the legislative provisions stipulating that public sector employees are not required to publicly disclose data in respect of their personal assets and income, with the exception of individuals standing for office in the executive and legislature at any level, who are required to provide the CEC BiH with the data on their income and assets at the beginning and end of their term in office.²⁰³ Also, the decision abolishing the practice of public disclosure of asset declaration forms on CEC BiH’s website continues

to remain in force. This decision is based on the ruling of the Appellate Division of the Court of BiH, which found the practice of publishing scanned assets declaration forms to be in conflict with certain provisions of the Law on Personal Data Protection.²⁰⁴

It should be noted that the practice of public vacancy announcement is used in most recruitments in the public sector with the aim of ensuring fair and open competition. State and entity civil service agencies advertise for jobs in institutions that are under their direct jurisdiction, which is in accordance with the statutory rules.

That transparency regarding disclosure of information has not significantly improved is shown by the continuing failure to comply with the obligation to publish all decisions rendered by the second-instance control authority, namely the Procurement Review Body (PRB), on the Public Procurement Portal. At the same time, some positive effects in terms of increased transparency have been observed after the Public Procurement Agency of BiH introduced the obligation of electronic publication of procurements by contracting authorities.

Increasing transparency in financial management is a task that BiH authorities intend to take on in the coming period. This is confirmed by the fact that in early September 2014 Bosnia and Herzegovina was admitted to the global initiative “Open Government Partnership” as its 65th member²⁰⁵. Open Government Partnership is a global multilateral initiative for transparency and openness of public authorities, and its members are countries which commit to take concrete measures and actions to promote transparency, empower citizens, fight corruption and harness new technologies to strengthen governance. The first action plan is currently being prepared, containing measures to improve the situation in the areas of Fiscal Transparency, Access to Information, Disclosure of Information about the Assets

of Public Officials, and Citizen Participation.

Bosnia and Herzegovina was the first country in the region to adopt legislation that ensures the right of access to information. However, access to information laws in Bosnia and Herzegovina continue to regulate the purely reactive dimension of this right, namely the disclosure of information on request, while the proactive dimension of the right of access to information is completely overlooked in these laws.

Implementation of the freedom of access to information laws remains a major challenge (see below), although the 2013 amendments to the state-level law introduced tougher sanctions for its violation. The Law Amending the Law on Freedom of Access to Information of BiH²⁰⁶ introduced heftier monetary penalties for the responsible person in a public authority if the contracting authority fails to comply with the statutory provisions relating to the undertaking of actions in accordance with the submitted requests, publication of information register, appointment of information officers, etc.

Proactive transparency²⁰⁷ is not comprehensively regulated in either state or entity freedom of access to information laws. The Law on Freedom of Access to Information of BiH²⁰⁸ does not contain the majority of widely accepted elements of proactive disclosure. It is therefore not surprising that some organisations and institutions take an *ad hoc* approach to this type of transparency. These deficiencies are also found to exist in the entity-level laws, i.e. Law on Freedom of Access to Information of FBiH²⁰⁹ and the Law on Freedom of Access to Information of RS²¹⁰.

TRANSPARENCY (PRACTICE)

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

SCORE 25

The majority of public institutions are still under obligation to produce annual activity reports, which are subject to review by the competent authority. Only a fraction of these reports are published and made available to the public, usually once they are reviewed and approved by the competent authority. As noted above, disclosure of assets, income and financial interests of public sector employees is not a required practice in BiH, except for the officials appointed in accordance with the Election Law of BiH. Another problem is the fact that there are no public registries of members of management and supervisory boards (and, since recently, audit committees), and consequently no way of detecting any interrelated financial interests within the public sector and influence of political parties on them. In practice there are examples of appointments of individuals who do not have the required qualifications or who have been or are being prosecuted for malfeasance.²¹¹

The principle of transparency in public procurement procedures calls for consistent and timely availability of relevant information to all interested parties, via an accessible and prevailing medium, at no cost or at reasonable cost. However, practice shows that there are frequent violations of this principle in the form of failure to distribute tender documents to all interested potential bidders or failure to prepare and make available public procurement reports.²¹²

Job vacancies continue to be often published in local and regional newspapers that are not read in places where the vacancy is to be filled, which is clear eviden-

ce of unfair and inner-circle recruitment competition procedures. There is no list of officially recognised media outlets in which to advertise job vacancies.

There has been no progress in introducing e-governance in state and entity institutions. E-governance still represents a big challenge given the unsettled issues within the legislative framework.

ACCOUNTABILITY (LAW)

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

SCORE 75

Public sector institutions (public companies, agencies, etc.) are still required to report on the results of their work to the parliaments, while the results of local governments are summarised in periodic reports on the work of Mayor and administrative services, which are regularly submitted to the local assemblies/councils. The political culture reflecting primarily the values of decision makers mainly boils down to a lack of accountability, especially when it comes to vertical accountability to citizens and other interested parties. The legislation in Bosnia and Herzegovina defines citizen participation mechanisms, but fails to provide for compulsory feedback in relation to the issues raised. Involvement of citizens and civil society in enhancing government accountability is increasingly institutionalised in the laws of developed countries, while in Bosnia and Herzegovina this process is only in its initial stages.

Answerability of public sector employees continues to be generally manifested as vertical answerability to superiors, while answerability to the public for performance and actions is seen as less important. The recruitment system is not based on merit and achieve-

ment, but on loyalty and affiliation (to a political party, ethnic group, interest group, etc.)²¹³. The protection of whistleblowers is regulated only in the state-level legislation. At the same time, the Criminal Procedure Code provides that the ‘witness collaborator’ who has been granted immunity shall not be prosecuted except in case of false testimony. Corruption is still a punishable offence for both bribe giver and bribe recipient, which makes bribery difficult to detect.

Few public sector institutions have elaborate mechanisms in place for dealing with complaints, while in most cases this mechanism boils down to a “complaint letter-box” or “book of complaints and objections”, with no feedback from the public sector to citizens/service users, although the establishment of two-way communication in connection with complaints from citizens and interested parties, especially regarding corruption, was one of the obligations under the 2009–2014 Strategy for Combating Corruption.

The last two years have seen an increase in the number of individuals and organisations reporting irregularities observed in the work of the public sector. Also, it is noteworthy that there is an increasing number of organisations which have established an internal ‘watchdog’ function, thus contributing to increased accountability of contracting authorities for performance of public works. At the same time, heavier penalties for responsible persons in public institutions were introduced in the amended Law on Freedom of Access to Information of BiH.

An increasing number of organisations and institutions, especially at the state level, approach the preparation of integrity plans/anti-corruption plans in accordance with the obligations imposed under the 2009–2014 National Strategy for Combating Corruption. Problems, however, arise from the fact that no other level of government, except the state level, perceives the current 2009–2014

Strategy for Combating Corruption as a binding document, which then affects the pace of implementation of planned activities at the entity, cantonal and local levels.

ACCOUNTABILITY (PRACTICE)

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

SCORE 25

The existing mechanisms to control the work of public sector employees are effected through regular reporting to senior managers and performance appraisal of employees on an annual basis. Civil service agencies provide guidelines and instructions for appraisal of employees, as well as templates of survey forms to be used for the appraisal. The appraisal score obtained is included in the personal record of each employee. However, performance appraisals are still not used for enhancing the accountability of civil servants through promotion and demotion.

There is still no independent authority in place charged with conducting investigations relating to corruption. The Agency for Prevention of Corruption and Coordination of Fight against Corruption is an independent body which has primarily preventive, educational and coordinating role, and is charged with developing the corruption prevention policy and monitoring its implementation, but also plays an active role in maintaining databases and statistical monitoring of corruption situation and trends. Under the Criminal Procedure Code of BiH and the corresponding entity laws, criminal proceedings may only be initiated and conducted upon the request of the competent prosecutor, while the parties that may participate in the investigation include the police authorities, courts, SIPA and other legally-defined control

institutions. Past practice shows that this mechanism was ineffective in prosecuting corruption cases.

Existing mechanisms for complaints relating to the implementation of public procurement procedures are very ineffective, and there have been no significant instances of those responsible within the contracting authorities being called to account. Between 1 January and 31 December 2013, the Procurement Review Body (PRB) received a total of 2,052 complaints, of which 2,044 were resolved during 2013. Of the total number of complaints handled that year, 1,086 (about 53%) were admitted. However, in most cases complaints led to the cancellation of the procurement procedure/contract, but without calling those responsible within the contracting authorities to account.

So far, few persons have been prosecuted for abuse of authority. The most common penalties are disciplinary measures such as reduction of salaries and suspension, while dismissals are rare. So far, there have been only a few cases of imprisonment. Some institutions, such as the police, have introduced institutional mechanisms to promote accountability. These primarily include committees for public complaints, as bodies that review reports about irregularities observed in the work of employees.

INTEGRITY MECHANISMS (LAW)

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

SCORE 75

The conflict of interest laws at the state and entity levels and in the Brčko District continue to regulate the prevention of conflicts of interest, accepting gifts,

use of services, etc. for elected officials, executive officeholders and advisors in government institutions who exercise public duties. However, these laws do not define the prevention of conflicts of interest, acceptance of gifts and use of services for public sector employees. Conflict of interest is regulated by sector-specific legislation such as the Public Procurement Law of BiH (PPL BiH). The new PPL BiH²¹⁵ provides for disqualification of bidders in cases where the bidder has given or is willing to give a bribe with the aim of influencing an action, decision or course of the public procurement procedure.

The conduct of civil servants is still governed by the codes of ethics of the entity civil service agencies. The code of conduct for state-level civil servants was adopted in June 2013.²¹⁶ According to the state and entity codes, the civil servants shall, in the performance of their duties, respect the law and represent solely the interest of the public. The aim of these codes is to ensure that civil servants protect the public and legal interest based on the Constitution and laws, and contribute to strengthening the role and reputation of the civil service. In the exercise of their duty they will use the funds entrusted to them with due diligence (*bonus pater familias*), and will not use the information available to them for private purposes. Also, when making decisions and exercising discretionary powers, civil servants must ensure that their own private interests do not conflict with the public interest. The codes also prohibit the soliciting and receiving of gifts, and impose a ban on participation in steering committees and bodies of political parties.

Another mechanism that should ensure the integrity of public sector employees is the Law on the Protection of Whistleblowers in the Institutions of Bosnia and Herzegovina²¹⁷. On the basis of this Law, a number of instructions were adopted to define the conditions and manner of filing internal complaints by the employees.

Evaluation of the 2009–2014 National Strategy for Combating Corruption and the accompanying Action Plan indicates that the fight against corruption requires primarily the political will and willingness to make significant breakthroughs in combating corruption. The slow establishment of the Agency for Prevention of Corruption and Coordination of the Fight against Corruption, delays in approving the financial and human resources, and problems in the appointment of the management testify to the lack of political will and the existence of political obstruction.

In public companies and local governments the area of integrity has not yet been defined in a clear and systematic way.

INTEGRITY MECHANISMS (PRACTICE)

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

SCORE 50

There have been no significant changes with regard to the discrepancy between the defined rules and existing practices in respect to the integrity of civil servants. Although trainings are organised on topics such as enhancing integrity and combating corruption, there are no adequate control mechanisms and institutions to regularly gather data and uncover irregularities. Civil servants continue to be appointed members of steering and supervising boards, as well as revision boards in institutions and public companies. Also, there is a common practice of deploying public resources and civil servants for the purpose of conducting political campaigns.²¹⁸ At the same time, the Administrative Procedure Law allows discretion in the speed of resolving individual cases, which opens the door to a potentially

corrupt behaviour.

Public sector employees are still not familiar with the provisions and principles of the Code of Ethics. Disciplinary proceedings are instituted very rarely, with the only exception of law enforcement authorities. A particular problem in terms of integrity in public procurement procedures is posed by the fact that there are no mechanisms in place to prevent associated persons from participating in these procedures. Thus, it is not so uncommon for contracts to be awarded to persons who are related to the representatives of the contracting authority through family or other connections.²¹⁹

Although it was adopted in late 2013, the Law on the Protection of Whistleblowers in the Institutions of Bosnia and Herzegovina has yet to be implemented in practice. Internal implementing regulations aimed at operationalisation of provisions of this Law are currently being prepared and adopted.

The newly-adopted practice, used in SAIs' audit reports, of emphasising the need for preparation of integrity plans based on the Strategy for Combating Corruption 2009–2014 has enhanced the adoption of these plans in the public sector.

PUBLIC EDUCATION (PRACTICE)

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

SCORE 25

Although such mechanisms have been put in place as the 'offices for dealing with public complaints' in the police, 'phone hotlines' in health facilities, etc., citizens do not use them.²²⁰ The tradition of distrust due to lack

of response and feedback on the complaints discourages citizens from reporting corruption. The most successful examples of informative and educational corruption-curbing activities in the public sector are those by NGOs such as Transparency International BiH, CA Tender, anti-corruption network ACCOUNT, etc. However, the support of political figures is lacking even in these cases, leaving citizens disillusioned by the state of corruption in the public sector

Evaluation of the 2009–2014 National Strategy for Combating Corruption, which was conducted in early 2014²²¹, indicates that there no significant progress has been made in the Strategy's component pertaining to education, training and public awareness. The Strategy provided for preparation of anti-corruption curricula in primary and secondary schools and universities, as well as incorporation of anti-corruption education programmes into the regular programme schedules of public broadcasters. However, nothing has been done in connection with these envisaged actions. The only measure that was implemented sporadically was the preparation and implementation of several anti-corruption training sessions for civil servants by the Civil Service Agency of BiH.

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

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

SCORE 25

Given the recognised need for establishing institutionalised cooperation with government institutions, as well as effective mechanisms for monitoring and evaluation of activities planned under the Anti-corruption Strategy, Transparency International BiH initiated the signing of Memorandums of Understanding with the Ministry of Security of BiH and the Agency for Prevention of Corruption and Coordination of the Fight against Corruption. So far the cooperation has been good and based on partnership.

In the last two years, thanks to the support of the US Agency for International Development (USAID), there has formed a network for improving the situation and spurring the fight against corruption. ACCOUNT network comprises organisations, institutions and individuals from non-governmental, public and private sectors which work jointly and systematically to combat corruption in BiH. It uses advocacy and concrete actions to exert pressure on the authorities at all levels in BiH to step up anti-corruption reforms, which are one of the prerequisites in the EU integration process. Five working groups have been formed, covering the sectors of health, economy, education, justice and public procurement, with the aim of identifying and monitoring key problems that lead to increased levels of corruption.²²²

The experience of the NGO sector shows that in certain cases representatives of the public sector do get involved in anti-corruption initiatives.²²³ However, as was the case in the previous period, these activities are usually initiated by NGO projects, where, once the project is over, there are no institutional links established. What remains a matter of great concern is the conspicuous absence of high ranking civil servants and political figures in anti-corruption initiatives and efforts.

REDUCTION OF CORRUPTION RISKS BY SAFEGUARDING INTEGRITY IN PUBLIC PROCUREMENT

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

SCORE 50

After nearly ten years of implementation of the old Public Procurement Law of BiH, and several minor amendments to it, the new Public Procurement Law of BiH was adopted in 2014²²⁴. However, many suggest that the new law leaves even more room for corruption, and that it will not help adequately eliminate the identified irregularities. Irregularities in public procurement include the circumvention of mechanisms that ensure competitiveness, breaking up large procurements into a number of smaller ones so that purchasers could choose bidders themselves, the use of direct negotiated procedure without publication of the call for bidders, the lack of internal and external quality control of goods, services and works, changes in legislation that create room for corruption, and many other types of abuse²²⁵.

Institutions responsible for monitoring the implementation of the new Public Procurement Law and other implementing regulations are still the Public Procurement Agency of BiH and Procurement Review Body. The status, branches and role of the Agency have remained the same, while its responsibilities, in addition to the old ones, now also include the organisation and implementation of training for public procurement officers.

In legal redress procedures, under the new PPL BiH, PRB can: suspend the appeal proceedings; dismiss the appeal with a conclusion on the grounds of lack of jurisdiction, inadmissibility, irregularity, the appeal not being filed in a timely fashion, and the appeal being filed by a person who does not have right of action; dismiss the appeal for being unfounded; annul a decision or action to the extent that it violated the law or implementing regulations; and/or cancel a public procurement contract or framework agreement. Judicial protection also continues to apply to the public procurement system in BiH. This means that the contracting authority and the participants in a public procurement procedure may file an administrative dispute against the decision of PRB before the Court of BiH within thirty days of receipt of the decision. Administrative dispute filed by the parties in the procurement procedure is conducted in an expedited procedure. Along with the administrative dispute, the contracting authority or a participant in a public procurement procedure may also file a request for postponement of the final decision or conclusion of PRB.

Misdemeanour provisions provide that PRB is to file misdemeanour charges if it determines that there were violations of the public procurement procedure which constitute a misdemeanour under PPL BiH, while in cases where there were no appeal proceedings, the Public Procurement Agency of BiH files misdemeanour charges when it determines that there were violations of this law that fall within its jurisdiction. The new PPL BiH also provides for the right to reimbursement of expenses in the public procurement procedure, i.e. reimbursement of expenses for the preparation of bids and expenses for participation in the procurement procedure if the contracting authority violates provisions of the PPL or implementing regulations. Claims for damages are reviewed by PRB.

OVERSIGHT OF STATE-OWNED ENTERPRISES

SCORE 25

In the area of public internal financial control (PIFC), the Central Harmonisation Units (CHUs) operating under the ministries of finance of the state and the entities have prepared implementing regulations such as the framework financial management and control manuals, and internal control standards²²⁶. The Coordination Board of the CHUs has not convened in three years to coordinate the drafting of legislation and methodologies. As a result, the State, FBiH and RS have developed different approaches to internal control. Also, as noted above (transparency practice) internal audit function in state-owned enterprises is rather poorly developed.

Bosnia and Herzegovina seems to lack a clear vision or a strategic direction within which to define its policies that define and regulate the work of state-owned and public enterprises. Although the laws primarily rely on the provision of goods and services that are of public interest, the legacy of the former self-managed economy in which enterprises were socially owned is still very much alive today.

Entity, cantonal and local governments are institutions that manage the state-owned capital, and do so in accordance with their own policies. Under the Constitution, responsibility for structural reforms belongs to the entities. However, at the state level, for example, the law regulates the issues of non-discrimination and transparency of the privatisation process in the entire country, and in FBiH a significant share of responsibility for implementing the privatisation of enterprises belongs to the cantons. Furthermore, neither the state nor the entity level have an institution or body for managing state-owned property in a centralised way, except for enterprises that are the subject of sale through priva-

tisation. In FBiH privatisation is implemented by the Agency for Privatisation of FBiH and the cantonal agencies, and in RS by the Investment Development Bank of RS. The Agency for Privatisation of FBiH is a specialised agency in BiH for performing professional, advisory, promotional, educational and other activities related to the privatisation process. The Investment and Development Bank of RS is authorised to sell the state-owned capital in enterprises, as well as restructure enterprises with majority stakes of the state which are subject to privatisation. Most public enterprises (railways, telecommunications, airports, forestry management units, postal services, etc.) are managed by representatives of the relevant sectoral ministries in accordance with their sectoral policies (see independence practice). The capacities of institutions responsible for managing state-owned enterprises are generally very low. This is particularly true of civil servants, mostly assistant ministers or advisers in the ministries, who are specialised in setting up a regulatory framework rather than managing state property and state-owned enterprises.

Agency and the Procurement Review Body by improving the reporting policy and ensuring strict adherence to the existing disclosure of information rules;

- Redefine mechanisms for overseeing the implementation of the codes of ethics at all levels through the publication of regular reports and initiating public debate in the competent parliamentary committees.

RECOMMENDATIONS

- Create a public register of all persons holding public office, i.e. a register of all those who are part of the public sector, but are not employed on the basis of the public administration laws (including advisers, deputy managers, members of management and supervisory boards, and the like);
- Change the mode of appointment to recruitment commissions recruiting staff on the basis of public vacancy announcements;
- Enact laws and implementing regulations that make it compulsory for public sector employees (especially managers) to regularly submit data on personal incomes and property to bodies responsible for preventing conflicts of interest;
- Enhance the transparency of the Public Procurement

6.5. LAW ENFORCEMENT AGENCIES

OVERALL PILLAR SCORE: 32/100

STATUS: WEAK



SUMMARY

The current legislative framework governing the independence, transparency, accountability and integrity of law enforcement agencies has addressed these issues relatively successfully in the last few years. However, the problem lies in the lack of its consistent and effective implementation, caused by the complicated state structure which reflects on the structure and responsibilities of law enforcement agencies, as well as the ever present indirect political interference in

the selection of managers of agencies. These problems compromise the integrity of law enforcement agencies, often interfering with their professional work. Such circumstances lead to a situation where law enforcement agencies are significantly affected by the presence of criminal activities and unprofessional behaviour within the agencies themselves, due to inefficient mechanisms for internal and external control and oversight of their work.

STRUCTURE AND ORGANISATION

The system of law enforcement agencies in BiH consists of agencies at the state, entity and cantonal levels and the level of Brčko District. At the state level law enforcement agencies operate under the Ministry of Security of BiH as an administrative organisation with operational autonomy. These include: Border Police, State Investigation and Protection Agency, Department for Foreigners' Affairs, Directorate for Coordination of the Police Bodies of BiH, Agency for Forensic and Expert Examinations, Agency for Education and Professional Training, and Agency for Police Support. There are also the Intelligence and Security Agency (OSA), which reports to the Parliamentary Assembly of BiH, and the Indirect Taxation Authority (ITA), which reports to the Council of Ministers. At the entity level there are the Ministry of the Interior of the Republic of Srpska (MI RS) and the Ministry of the Interior of the Federation of BiH (MI FBiH). MI RS is composed of five organisational and

territorial units – Public Security Centres (PSCs) with centralised management structure under MI RS. District Police operates in the District of Brčko. At the cantonal level in the Federation of BiH there are ten cantonal ministries of the interior, which are not part of the hierarchical structure of MI FBiH, but operate under the cantonal governments and are financed from cantonal budgets. In addition to the abovementioned agencies, at the entity level there are tax administrations responsible for the collection of direct taxes. There is also the Financial Police operating as an independent administrative organisational unit under the Ministry of Finance of FBiH, which performs inspection and supervision of the execution of tax and other obligations in the territory of FBiH. The prosecutors are assessed under separate pillar in this study.

TABLE WITH SCORES

LAW ENFORCEMENT AGENCIES

OVERALL PILLAR SCORE 2013: 42/100

OVERALL PILLAR SCORE 2015: 32/100

DIMENSION	INDICATOR	LAW 2013	LAW 2015	PRACTICE 2013	PRACTICE 2015
CAPACITY 2013 50/100 CAPACITY 2015 50/100	RESOURCES INDEPENDENCE	75	75	50 25	50 25
GOVERNANCE 2013 50/100 GOVERNANCE 2015 46/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY	75 75 75	75 75 75	25 25 25	25 0 25
ROLE 2013 25/100 ROLE 2015 0/100	CORRUPTION PROSECUTION			25	0

RESOURCES (PRACTICE)

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

SCORE 50

The total budget allocations for law enforcement agencies and the number of staff have seen continuous growth, indicating that they are at a relatively satisfactory level. On aggregate, the allocations for law enforcement agencies at all levels of administration average about 10% of the budget.²²⁷

State-level agencies, on the other hand, are faced with inadequate staffing levels, ranging between 50% and 70%. There are also problems related to the lack of appropriate training for members of law enforcement agencies, as well as inadequate levels of material and technical equipment in agencies.²²⁸

Salaries and remunerations of state-level police officials are defined by the Law on Police Officials of BiH²²⁹. Compared to most police agencies at lower levels, as well as other state agencies, these salaries and remunerations can be considered satisfactory. The average monthly net salary of members of law enforcement agencies is approximately KM 1,200 (€ 600).²³⁰ In recent years law enforcement agencies have very often gone on strike, dissatisfied with salary levels and irregular payments. This was especially the case with agencies at the cantonal level. At the same time, the total number of members of law enforcement agencies at all levels is estimated to be almost twice as high as the EU average, standing at 650 members of law enforcement agencies per 100,000 of the population.²³¹

The police system in BiH is based on the principle of coordination rather than subordination. This means that

the Ministry of Security and state-level agencies have no formal power over entity-level Mols and agencies, and the Mol FBiH and Police Administration of FBiH have no formal power over the cantonal Mols. At the state level there is the Directorate for Coordination of the Police Bodies, which formally coordinates the work of all agencies and Mols.²³²

INDEPENDENCE (LAW)

To what extent are law enforcement agencies independent by law?

SCORE 75

As highlighted in the 2013 NIS Study, the legislative framework governing the operation of law enforcement agencies, their duties and work of their employees, provides a relatively sound basis for their independence.

Heads of police agencies are appointed by the Council of Ministers further to the proposal of the Minister of Security. The director and deputy director of a police body are appointed in accordance with the Law on Independent and Supervisory Bodies of Police Structure of BiH as well as the law establishing the particular police body. The procedures for selection of the entity police directors are identical in both entities: directors are appointed by the entity prime ministers further to the proposal of the interior ministers. The Independent Committee for the Appointment of Police Directors of BiH is an independent body of the Parliamentary Assembly of BiH which implements the process of selection of candidates, proposes dismissal of police directors and their deputies, announces open competitions and reviews candidates' applications²³⁴.

There are no laws or provisions in the existing laws explicitly preventing political interference in the activities of law enforcement agencies. The Law on Police

Officials of BiH, however, provides that “in performing his/her duties, a police official shall act in an impartial and legal manner, guided by the public interest to serve and assist the public, promoting the development and preservation of democratic practices consistent with the protection of human rights and fundamental freedoms”.²³⁵ Police agencies operate “solely on professional grounds and [are] not involved in furthering, protecting or undermining the interests of any political party, registered organisation or association, any constituent or other people in BiH”.²³⁶

INDEPENDENCE (PRACTICE)

To what extent are law enforcement agencies independent in practice?

SCORE 25

As concluded in the 2013 NIS Study, independence of law enforcement agencies in practice significantly departs from what is stipulated by the relevant legislative framework. The EU Progress Report highlights undue political influence along ethnic lines.²³⁷ A similar conclusion indicating the existence of strong political pressure was also expressed in the State Department’s Human Rights Report.²³⁸

It is common practice for individuals who have the support of political parties to be appointed to senior positions in law enforcement agencies before the formal job competition procedure is announced.²³⁹

There are numerous examples of overt expression of party affiliation by senior managers of law enforcement agencies. Thus, for example, the director of the RS Tax Administration was on the Alliance of the Independent Social-Democrats (SNSD) candidates list for the RS National Assembly in the 2014 election, although this practice is in contravention of the law.

Pressure and undue influence on policing structures were also discussed in the media by some of the senior managers of law enforcement agencies. For example, Dragan Lukač, director of the FBiH Police Administration, repeatedly stated in the public that he was being targeted by individuals from political parties.²⁴⁰

Opposition parties and NGOs have often criticised the actions of law enforcement agencies which were clearly a manifestation of political loyalty to the ruling parties. One such example was when the MI RS special police entered and took control of the municipal building in Skender Vakuf, without a court order. The reason behind this police intervention was allegedly the fact that SNSD, the ruling party at the entity level, was dissatisfied with losing power in the municipality and used a special police unit in an attempt to intimidate the municipal authorities.²⁴¹

Direct political control over the work of law enforcement agencies is exerted through a parallel command structure, usually located very close to political leaders, which issues orders that are executed directly by law enforcement agencies in contravention of the law or prosecutors’ orders.²⁴² Wide range of academic articles and local NGO’s report pointed out such practice, that despite the official restructuring of the Bosnian police forces, each political ethno-political elite keep informal parallel lines of authority.²⁴³

TRANSPARENCY (LAW)

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

SCORE 75

In general, LEAs are by law open to the public and the media, except where publication of certain data would

compromise the results of the operations or public security, or would be in contravention of the law. Article 12 of the Law on Home Affairs of FBiH stipulates that the Ministry of Interior FBiH and Police Directorate must, at least once a month, inform the public of the issues falling within their scope of duties as well as of the measures taken to solve these issues. The law does not regulate the SIPA's relations to the public, but in practice SIPA subsequently informs the public of some of its actions, through spokespersons. Police structures have their own rules of procedure concerning public relations and in particular relations with the media. General provisions of the Law on Freedom of Access to Information also apply to law enforcement agencies. The applicable laws contain provisions stipulating that the information about the assets of officials of law enforcement agencies are publicly available. The Law on Police Officials of BiH provides that every police official "shall disclose, in accordance with this Law, all information on functions or activities performed by him/her or by the members of the close family, as well as information on properties at his/her disposal and at the disposal of the members of the close family, when appointed as a police official".²⁴⁴ Laws at the entity level stipulate that candidates for directors of police agencies are required to provide, along with the application for open competition, a written statement of their property, which will be available to the public.²⁴⁵

Freedom of access to information about the activities of public authorities in BiH is regulated by the Law on Freedom of Access to Information in BiH.²⁴⁶

TRANSPARENCY (PRACTICE)

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

SCORE 25

In practice, transparency in law enforcement agencies is generally present to a very limited extent. The vast majority of law enforcement agencies do not publish annual activity or expenditure reports.

Information about the work of law enforcement agencies is mainly disseminated by agencies' PR services or spokespersons, although the managers or the staff can also give statements and information to the public through the media.

The experience of the TI BiH Advocacy and Legal Advice Centre (ALAC), as well as of citizens who lodged complaints with the Centre, indicates that law enforcement agencies rarely comply with the freedom of information laws. In some instances they failed to make the requested information publicly available even after a court ruling had been issued ordering them to do so.²⁴⁷

In practice the information about the assets of officials of law enforcement agencies are not accessible to the public. Several NGOs and news media entities tried to obtain information without success.

The reasons for this practice are twofold. On the one hand, there is the lingering legacy of the old totalitarian socialist regime and, on the other, there is very strong resistance to releasing information among agencies' staff for fear of angering senior managers and their political patrons.

ACCOUNTABILITY (LAW)

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

SCORE 75

Heads of the state-level police agencies report to

the Minister of Security and the Council of Ministers, whereas heads of entity-level police agencies report to their respective interior ministers and entity governments. Heads of police agencies are required to annually report to the Minister of Security, as well as the Council of Ministers to which they are answerable for the operation of the agencies, and, if necessary, to submit special reports as well as report to the Parliamentary Assembly and the Presidency of BiH upon their request.²⁴⁸

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

Citizens can lodge complaints and grievances about the work of police authorities or misconduct of individuals in several ways: (a) in writing, addressing them to the head of the police agency whose employee they are complaining against or directly to the agency itself; (b) orally in the police agency; (c) through offices for public complaints operating within the entity Ministries of the Interior; (d) to the Public Complaints Committee on Work of the Police Officers in Police Bodies in BiH operating within the Parliamentary Assembly of BiH; (e) to the Office of the State Ombudsman. Investigations based on these complaints are conducted by the internal control departments or professional standards units. The competences of these offices and investigation methodology are available to citizens via the website www.vasapolicija.ba. However, the functionality of these mechanisms can be called into question for several reasons. The departments for internal control/professional standards units that conduct investigations and act on complaints lodged by citizens operate within police agencies and cannot be considered completely independent. The Public Complaints Committee, albeit

not operating within police agencies, has no essential role because it does not have the authority to directly investigate citizens' complaints against the police.²⁴⁹ The Ombudsman Office, as an external body, can only make recommendations, but these, again, are not binding upon the institutions to which they relate.

Law enforcement officials do not enjoy immunity from criminal proceedings. Criminal proceedings are instituted after an indictment has been brought before the court, and bill of indictment is prepared by the competent prosecutor on the basis of the evidence submitted to him/her by investigators of police agencies. There is not a single piece of legislation requiring prosecutors to answer to the public or any other instances for their actions when it comes to the priorities of their work.²⁵⁰

According to the Law on Protection of Secret Data, security checks are run on high-ranking inspectors and managers, and are not run on those at lower levels, but who nevertheless may have contact with secret information. Practice has shown that there is a risk of non-compliance with the principle of secrecy in the investigation work. Indeed, investigations have often been obstructed by lack of professionalism in the work of inspectors who, intentionally or not, made confidential information available to suspects, thus violating the principle.²⁵¹ The police system in BiH is based on the principle of coordination rather than subordination. This means that the Ministry of Security and state-level agencies have no formal power over entity-level Mols and agencies, and the Mol FBiH and Police Administration of FBiH have no formal power over the cantonal Mols. At the state level there is the Directorate for Coordination of the Police Bodies, which formally coordinates the work of all police agencies.

ACCOUNTABILITY (PRACTICE)

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

SCORE 0

Accountability mechanisms provided under the relevant legislation operate very poorly in practice. Agencies' reporting to the relevant parliaments and governments mainly boils down to filling in forms, while parliamentary questions addressed to the agencies, especially those from the opposition MPs, may remain unanswered for months or often receive incomplete answers. Parliamentary commission for the oversight of the intelligence and security sector was not able to conduct planned visit to the agencies for several years, due to wide range of obstructions. As a result, the commission was not able to fulfil its obligation and draft any reports or opinions for further parliamentary procedure.²⁵²

On the other hand, internal control mechanisms in agencies are often too time-consuming and citizens who submit a complaint rarely get feedback on what has been done following their complaint.²⁵³

International organisations and NGOs have often pointed to numerous problems in law enforcement agencies. The report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which is part of the Council of Europe, warns of a widespread practice of ill-treatment of persons deprived of their liberty as well as the failure to implement previous CPT recommendations.²⁵⁴

The trial of the State Investigation and Protection Agency (SIPA) director is a highly illustrative example of how accountability mechanisms work in practice.

After a serious failure to prevent riots and the setting on fire of buildings of the highest state institutions during the mass demonstrations in early 2014, an investigation was launched and trial was ordered against the director of SIPA. Despite the fact that he had obstructed the investigation by filing criminal charges against the prosecutor and refusing to appear in court, the independent committee of the Parliamentary Assembly in charge of overseeing police authorities refused to suspend him.²⁵⁵

INTEGRITY MECHANISMS (LAW)

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

SCORE 75

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

The Law on Conflict of Interest in Governmental Institutions of BiH, which also applies to police officials and prosecutors, stipulates that officials "must not be in any relationship of dependence in respect of persons who might influence their impartiality" (Article 2, paragraph 3). The Law on Prosecutor's Office and the Law on Police Officials contain provisions on the incompatibility of police and prosecutorial functions. The Law on Police Officials (Article 38) expressly states that a police official shall not exercise a function, an activity or hold a position, which is in conflict with his/her official duties,

in particular: “shall not hold any public function; shall not perform any other additional remunerative activity, unless authorised by the Head; shall not be a member of a political party, shall not follow political parties’ instructions, and shall not attend neither party nor other political gatherings in a police uniform, unless on duty”. General provisions on the prohibition of accepting gifts contained in Article 10 of the Law on Conflict of Interest in Governmental Institutions of BiH apply to the officials of law enforcement agencies.²⁵⁶ However, these provisions are inconsistent as, following legal interpretation, it may be considered that it is allowed to receive such gifts from more than one person in any one year, since the number of such persons is unlimited. Accepting gifts and other forms of benefits is a criminal offence under the Criminal Code of BiH (Article 217). The law also criminalises the acceptance of promises and solicitation of gifts.

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

INTEGRITY MECHANISMS (PRACTICE)

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

SCORE 0

The 2013 NIS Study found that in practice law enforcement agencies failed to reach a satisfactory level of integrity. No further progress has been made in this re-

gard since then. The key obstacles to the functioning of integrity mechanisms are the political influence on the work of law enforcement agencies, which is achieved through clientelistic appointments, and ties between law enforcement agencies and organised crime.²⁵⁷

ALAC data and experiences show that the internal control mechanisms of law enforcement agencies are virtually non-functional in practice. It is very difficult to obtain data and information on the number of actions taken through these mechanisms, and their investigations usually end up finding that the members of agencies did not violate professional standards.

The media, on the other hand, widely reports on the involvement of members of law enforcement agencies in a variety of criminal offences. One flagrant example of this was when the media presented evidence and interviewed witnesses indicating that a whole department of the MI RS’s Public Security Centre in Banja Luka was involved in drug trafficking. The MI RS tried to cover up the case and prevent its prosecution. The case has not yet got its epilogue in court even though more than two years has passed since then.²⁵⁸

Because of such close ties between law enforcement agencies and criminal groups, persons who report criminal offences are often subject to intimidation and harassment by members of law enforcement agencies.²⁵⁹

CORRUPTION INVESTIGATION (LAW AND PRACTICE)

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

SCORE 0

Law enforcement agencies largely ignore corruption cases, especially those occurring at higher levels of government and cases of high-profile political corruption.²⁶⁰ Political influence on law enforcement agencies, which is effected through clientelistic appointments of senior managerial personnel, is certainly the single most important reason accounting for the lack of greater involvement of agencies in corruption investigations. Inadequate cooperation with the judiciary and other law enforcement agencies is also often cited as being an important factor hampering effective investigations of corruption.²⁶¹

On the other hand, public confidence in law enforcement agencies is virtually non-existent. Police structures are perceived by citizens as the second most corrupt pillar, immediately after political parties.²⁶²

The state in which law enforcement agencies operate remains a problem of particular concern. For example, media outlets have repeatedly published information about an alleged “mutiny” by certain units of law enforcement agencies.²⁶³ Such incidents are certain to affect the operational capabilities of law enforcement agencies.

Another problem is the involvement of the police in organised crime, which often takes place under the auspices of the highest political officeholders.²⁶⁴ All these factors explain why law enforcement agencies have had almost no noteworthy results in prosecuting corruption, especially at higher levels of government.

As mentioned in the chapter about the judiciary, TI BiH's data suggest that BiH is seeing an extremely negative trend in the prosecution of corruption and that, according to the latest TI BiH report from 2014, the current situation is the worst in the last five years.²⁶⁵ The number of charges for corruption offences handled by prosecutors' offices went down from 3,174 in 2012

to 2,363 in 2013, a decrease of 25%. Also, there was a dramatic decline in the number of investigations for corruption offences in 2013, which was almost halved compared to 2012, with only 747 investigations conducted in total. The largest decrease was seen in the Republic of Srpska, where in 2013 the number of investigations dropped by 60% compared to the previous year, whereas in the Federation of BiH the number dropped by 45%.

A great deal of responsibility for this situation certainly lies with law enforcement agencies.

RECOMMENDATIONS

- Introduce greater transparency in all aspects of work of the law enforcement agencies (asset declaration forms, reports on activities and financial reports, etc.);
- Increase cooperation between prosecutor's offices and police, particularly in terms of documenting corruption-related crimes;
- Establish effective internal control mechanisms, and strengthen mechanisms for external oversight of law enforcement agencies;
- Make necessary amendments to the CPC with the aim of ensuring more effective conduct of investigative actions and preparation of evidence;
- Introduce a legal obligation for the Intelligence and Security Agency (OSA) to perform safety checks of all inspectors, police officers, civil servants and employees in police authorities who work on more complex cases of organised crime and who have contact with classified information.

6.6. PUBLIC PROSECUTOR²⁶⁶

OVERALL PILLAR SCORE: 28/100

STATUS: WEAK



SUMMARY

Prosecutors' offices in BiH have at their disposal a sound legal framework and relatively sufficient resources to implement the laws falling within their jurisdiction. However, complex funding arrangements and political interference continue to pose major obstacles preventing prosecutors' offices in BiH from operating efficiently and prosecuting corruption cases.

STRUCTURE AND ORGANISATION

Prosecutors' offices in BiH are independent state institutions. The prosecutorial system in the country consists of: Prosecutor's Office of BiH, two entity Prosecutors' Offices – RS and FBiH, Prosecutor's Office of Brčko District BiH, 10 cantonal prosecutors' offices in FBiH, five district prosecutors' offices in RS, and a Special Prosecutor's Office operating under the District Prosecutor's Office Banja Luka charged with combating organised crime and most serious forms of economic crime. Entity-level prosecutors' offices are responsible for overseeing the work of lower-level prosecutors' offices, with the Prosecutor's Office of RS overseeing the work of district prosecutors' office and the Prosecutor's Office of FBiH overseeing the work of cantonal prosecutors' offices. The Chief Republic Prosecutor in RS and the Chief Federal Prosecutor in FBiH may issue general or individual mandatory instructions to lower-

level prosecutors' offices, resolve conflicts of jurisdiction between lower-level prosecutors' offices, as well as take over criminal investigation and prosecution of individual cases from lower-level prosecutors' offices if they consider it necessary. Prosecutors' offices also have lower organisational units specialised in different areas (war crimes, crime in general, etc.).

TABLE WITH SCORES

PUBLIC PROSECUTOR

OVERALL PILLAR SCORE 2013: /

OVERALL PILLAR SCORE 2015: 28/100

DIMENSION	INDICATOR	LAW 2013 ²⁶⁷	LAW 2015	PRACTICE 2013	PRACTICE 2015
CAPACITY 2013 / CAPACITY 2015 44/100	RESOURCES INDEPENDENCE		50 75		50 0
GOVERNANCE 2013 / GOVERNANCE 2015 38/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY MECHANISMS		75 75 50		0 25 0
ROLE 2013 / ROLE 2015 0/100	CORRUPTION PROSECUTION				0

RESOURCES (LAW)

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

SCORE 50

Prosecutors' offices in BiH are financed from the budgets of 14 different administrative-territorial units, which makes the capacities and resources of the prosecutors very unstable, unbalanced and susceptible to improper influence. This situation allows political influence to be exerted on the judiciary through budgeting and enactment of laws. Prosecutorial budgets are integral parts of the budgets of administrative-territorial units in which the offices have territorial jurisdiction. The Chief Prosecutor presents a budget proposal to the High Judicial and Prosecutorial Council of BiH (HJCP), after which the Chief Prosecutor has the right to defend the budget in further procedures before the Parliamentary Assembly.²⁶⁸ Salaries and compensation for prosecutors are governed by special laws. For example, at the state level these are regulated by the Law on Salaries and Other Compensations in Judicial and Prosecutorial Institutions at the Level of Bosnia and Herzegovina ("Official Gazette of BiH", nos. 90/05 and 32/07).

The salary of a prosecutor at the state level is KM 3,800 (€1,900) in line with the Law on Salaries and Allowances of Judges and Prosecutors of BiH. Under this law, in the event that the average monthly net salary in the country increases, the prosecutors' salaries are to be adjusted accordingly. Conversely, if the average monthly net salary in the country decreases, the prosecutors' salaries cannot be reduced.

RESOURCES (PRACTICE)

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

SCORE 50

Overall, budgetary allocations for prosecutors' offices are continuously growing. However, they have not yet reached the level deemed optimal by the HJPC for the proper functioning of prosecutors' offices (at the entity level the funding shortfall reaches up to 20%, while the total shortfall for all judicial institutions is around 4%). Salary of a prosecutor at the state level is KM 3,800 (€1,900) in line with the Law on Salaries and Allowances of Judges and Prosecutors of BiH. Under this law, in the event that the average monthly net salary in the country increases, the prosecutors' salaries are to be adjusted accordingly. Conversely, if the average monthly net salary in the country decreases, the prosecutors' salaries cannot be reduced. In 2014 the budget of the Prosecutor's Office of BiH was slightly more than KM 11 million (€ 5 million).²⁶⁹ Compared to the previous year, it saw an increase of more than KM 2 million due to the recruitment of 13 new prosecutors in the Prosecutor's Office of BiH.

Another significant source of funding comes from technical support projects implemented as part of the justice sector reform. On average, annually, the amount of these funds is around KM 20 million (€ 10 million).²⁷⁰

Generally, prosecutors' offices have a solid financial basis for normal day-to-day operation.

INDEPENDENCE (LAW)

To what extent is the public prosecutor independent by law?

SCORE 75

The Law on the Prosecutor's Office of BiH²⁷¹ and the Law on the High Judicial and Prosecutorial Council of BiH²⁷² contain many detailed provisions that provide for independence of the Prosecutor's Office. Prosecutors in BiH are appointed by HJPC and rules governing the manner of their appointment are based on clear and professional criteria and are defined in the Law on HJPC (Articles 29, 39–47). Also, under the Law on HJPC (Article 82, paragraph 1), prosecutors are expressly forbidden from engaging in any function that is incompatible with or could be seen to interfere with the fair and impartial execution of prosecutorial function.

However, one contentious issue is related to the procedure for election of prosecutors. In accordance with the Law on High Judicial and Prosecutor Council, members of the Nomination Panel are, among others, three lawyers. Objections raised with regard to the procedure concern situations in which the lawyers – members of the Nomination Panel – may appear in court proceedings as a counterparty to the elected prosecutors.

INDEPENDENCE (PRACTICE)

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

SCORE 0

Relevant international and national reports point to persistent flaws in the independence and impartiality of the

judiciary in general and in particular prosecutors' offices.²⁷³ One part of the problem is the highly fragmented funding for prosecutors' offices from the budgets of administrative-territorial units in which the offices have territorial jurisdiction, which leaves room for the executive to exercise undue interference in the work of prosecutors' offices. On the other hand, the executive openly exerts pressure on the prosecutors' offices by issuing demands, threats and blackmail in public. Also present is a kind of self-censorship where prosecutors' offices avoid undertaking investigations against high-ranking officials. Whether it is caused by fear or is simply a matter of returning favours to officials for their backing during appointment, this self-censorship has ultimately resulted in a virtually complete lack of prosecution of political corruption.²⁷⁴ There were numerous cases in which HJPC appointed prosecutors with clear political loyalties and affiliation.²⁷⁵

TRANSPARENCY (LAW)

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

SCORE 50

Freedom of access to information about the work of public authorities in the country is governed by the Law on Freedom of Access to Information in BiH.²⁷⁶ Article 11 of the Law on the Prosecutor's Office of BiH provides for the transparency of work and availability of information to the public, specifying in paragraph 2 of the same article that "within limits of and when the interest of procedure so requires, the Prosecutor's Office may inform the public and interested parties of individual cases upon which it takes action." All procedural laws lay down the principle of publicity as the basic principle.

TRANSPARENCY (PRACTICE)

To what extent does the public have access to information on the activities and decision-making processes of the public prosecutor in practice?

SCORE 0

Prosecutors' offices inform the public about their work via their web sites. All prosecutors' offices in the country have their spokespersons, who communicate with the media on a daily basis. Also, prosecutors' offices prepare regular activity reports and submit them to the HJPC, which then compiles an aggregate annual report and makes it available to the public. However, the experience of the TI BiH's Advocacy and Legal Advice Centre (ALAC) shows that prosecutors' offices very often refuse to make the requested documents publicly available, in violation of both the freedom of information laws and the Law on the Prosecutor's Office.²⁷⁷

ACCOUNTABILITY (LAW)

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

SCORE 75

The Prosecutor's Office is required to submit its activity reports - and is answerable for its actions - to the HJPC. The Prosecutor's Office is, upon its own initiative or upon request, entitled and required to provide the Presidency of BiH, Parliamentary Assembly of BiH and Council of Ministers of BiH with information on its operation and implementation of the Law.²⁷⁸ Under Article 13, paragraph 2, of the Law on the Prosecutor's Office of BiH, at the end of each budgetary year, on the basis of the statistical overview, the Chief Prosecu-

tor is required to submit a report to the Parliamentary Assembly of BiH and elaborate on the development of criminality in the country. If during the course of an investigation the Prosecutor finds that there is enough evidence for reasonable suspicion that the suspect has committed a criminal offence, the Prosecutor shall prepare and refer the indictment to the preliminary hearing judge (Article 226, paragraph 1). In applying the law, prosecutors act on the basis of the CPC, and are required to state in the bill of indictment all facts required by the law. In this respect, the only relevant instance is the competent court (Court of BiH), which evaluates the bill. This means that prosecutorial decisions may be contestable, because the Court accepts or rejects the prosecutor's bill of indictment and, finally, issues a formal qualification of the offence.

ACCOUNTABILITY (PRACTICE)

To what extent do prosecutors report and answer for their actions in practice?

SCORE 25

Accountability mechanisms are virtually non-functional in practice. Numerous and serious omissions in the work of prosecutors usually end in bitter accusations exchanged publicly between prosecutors' offices, courts and law enforcement agencies. In several instances such mutual accusations resulted in the filing of criminal charges against senior officials in prosecutors' offices and law enforcement agencies. According to the testimony of three State Investigation and Protection Agencies (SIPA) inspectors, the director of SIPA planned to arrest the Chief Prosecutor, but after this information leaked out, the arrest did not occur.²⁷⁹ Such practices create an atmosphere of distrust among the key stakeholders who are supposed to ensure consistent and functional application of the law.²⁸⁰

INTEGRITY MECHANISM (LAW)

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

SCORE 50

The Code of Prosecutorial Ethics elaborates the basic standards of ethical conduct of prosecutors in BiH. The Code provides that prosecutors must perform their duties based on the principles of independence, impartiality, equality, integrity, competence and responsibility. HJPC is competent to receive complaints against prosecutors, conduct disciplinary proceedings and determine disciplinary liability of prosecutors.²⁸¹ The Office of the Disciplinary Counsel (ODC) performs prosecutorial functions concerning allegations of misconduct against judges and prosecutors. The office is responsible for evaluating complaints for legal sufficiency, investigating allegations of misconduct against judges and prosecutors, and initiating and presenting cases of disciplinary violations before the HJPC disciplinary panels. The Office initiates investigations on its own initiative or upon receiving a complaint, which may be lodged by any person, institution or organisation and which must be submitted to the Office of Disciplinary Counsel in writing along with any supporting evidence.²⁸² However, it can be argued that Ethics codes and integrity standards, could be further improved by regulating misconduct in a more stringent manner with harsher sanctions.

INTEGRITY MECHANISM (PRACTICE)

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

SCORE 0

In 2013 the Office of the Disciplinary Counsel, which is responsible for handling complaints against prosecutors, received a total of 1,196 complaints against prosecutors and judges (there are no disaggregated data for prosecutors and judges).²⁸³ Disciplinary proceedings against prosecutors were initiated in only two cases.

ODC has a backlog of 743 cases, which gives rise to the question of whether the Office has enough capacity to perform its duties.²⁸⁴ The vast majority of complaints are those lodged by parties to legal proceedings and lawyers, while *ex officio* investigations make up about 15 percent of cases. There are numerous and widespread cases of violations of ethical standards and even criminal offences committed by prosecutors.

One such example was the illegal conduct of prosecutors during the arrest of the then President of the Federation of BiH Živko Budimir for alleged corruption. The arrest was made in a dramatic fashion in the presence of a large number of reporters. Soon after, following the appeal lodged by the President of FBiH, the Constitutional Court ordered his immediate release on the grounds of the lack of evidence. The case has not seen a court epilogue as yet.²⁸⁵

Moreover, the ODC's penal policy remains mild and mainly based on token penalties, even for gravest violations of ethical standards. The penalties generally consist of a 10 to 20 percent reduction in salary for a period of one to several months. In 2013, there were

only three disciplinary proceeding against prosecutors validly concluded.²⁸⁶

CORRUPTION PROSECUTION

To what extent does the public prosecutor investigate and prosecute corruption cases in the country?

SCORE 0

TI BiH's report made on the basis of official statistics obtained from the HJPC shows a continued downward trend in the number of investigations undertaken by prosecutors' offices in BiH. For example, in 2012 there were a total of 1,464 investigations into corruption cases, with the number declining to only 747 investigations in 2013 – an alarming decrease of 50%. The share of investigations undertaken for corruption offences in the overall number of investigations conducted for all criminal offences is also in decline, falling from 5.4% in 2012 to only 2.9% in 2013. What is particularly worrying is the fact that 2013 saw the worst results in the investigation and prosecution of corruption in the last five years.²⁸⁷

Furthermore, relevant studies and reports by international organisations in BiH indicate the existence of endemic corruption, particularly emphasising the acute problem of political corruption. At the same time, prosecutors' offices conspicuously ignore cases of corruption at the highest levels of government, which are widely reported on in the media.²⁸⁸ Investigations conducted by prosecutors' offices mostly concern cases of petty corruption. Very few investigations are undertaken into cases involving high ranking officials. Furthermore, subsequent court rulings show that some of the investigations conducted by prosecutors' offices are largely politically motivated. Such was the case with the arrest of the President of FBiH as part of an investigation into corruption, which the Constitutional Court of BiH

subsequently found to be completely unfounded and undertaken contrary to the law.²⁸⁹

RECOMMENDATION

- Restrict prosecutorial discretion, and introduce mechanisms to oversee prosecutors' unlimited discretionary powers to initiate/cal off investigations;
- Improve cooperation between law enforcement agencies and prosecutors;
- Centralisation of prosecution of the most complex cases in the BiH State Prosecutor's Office would provide stronger capacity and reduce the susceptibility to political interference and pressure;
- Strengthen the capacity of the prosecutors' offices to conduct complex financial investigations;
- Strengthen the capacity of the Office of Disciplinary Counsel and physically separate it from the HJPC.

6.7. ELECTORAL MANAGEMENT BODY

OVERALL PILLAR SCORE: 40/100

STATUS: WEAK



SUMMARY

The Central Election Commission of BiH (CEC BiH) is responsible for conducting elections, gathering candidates' assets declarations, and implementing the Law on Party Financing and the Law on the Council of Ministers. Until the end of 2013 it was also responsible for implementing the conflict of interest laws at the levels of BiH, FBiH and Brčko District. Other than this, there have been no major significant changes in the regulations governing the work of the CEC BiH or in the practical operation of this institution, compared to the situation found in the 2013 NIS Study.

However, the CEC BiH is facing increasingly daunting challenges, both in terms of reduced capacity and responsibilities as well as in terms of efficiency in the administration of elections, but also a lack of political will to improve the laws falling under the responsibility of the CEC BiH.

The recent period has been marked by the CEC BiH being stripped of its mandate to decide on conflicts of interests, having a portion of its staff transferred to the Office of the newly-established Conflict of Interest Commission and having the capacity of its Department for Auditing of Political Parties Financing reduced. It has also been marked by numerous mistakes in the administration of elections and manifest inefficiency of the election administration in the counting of votes and publication of election results.

STRUCTURE AND ORGANISATION

The authorities responsible for the conduct of elections in BiH are election commissions and polling station committees (PSCs), and their work is coordinated by the CEC BiH. The Central Election Commission (originally Election Commission of BiH) was established following the adoption of the Election Law of BiH in 2001. Other authorities responsible for the conduct of elections include local election commissions and polling station committees.

In addition to the Election Law, the CEC BiH is responsible for implementing the Law on Party Financing of BiH as well as, partially, the Law on the Council of Ministers of BiH. As of 19 November 2013, when the new Law on Conflict of Interest in Governmental Institutions of BiH entered into force, the CEC BiH is no longer responsible for the implementation of a set of anti-corruption laws, which included: the Law on Conflict of Interest in

TABLE WITH SCORES

ELECTORAL MANAGEMENT BODY

OVERALL PILLAR SCORE 2013: 45/100

OVERALL PILLAR SCORE 2015: 40/100

DIMENSION	INDICATOR	LAW 2013	LAW 2015	PRACTICE 2013	PRACTICE 2015
CAPACITY 2013 50/100 CAPACITY 2015 42/100	RESOURCES INDEPENDENCE	75	75	50 25	25 25
GOVERNANCE 2013 46/100 GOVERNANCE 2015 54/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY MECHANISMS	50 75 75	75 75 75	25 25 25	50 25 25
ROLE 2013 38/100 ROLE 2015 25/100	CAMPAIGN REGULATION ELECTION ADMINISTRATION			25 50	25 25

Governmental Institutions of BiH, the Law on Conflict of Interest in Governmental Institutions of the Federation of BiH and the Law on Conflict of Interest in the institutions of Brčko District BiH.

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

Administrative, technical and professional duties for the CEC BiH are performed by the Secretariat, headed by the Secretary General who is appointed by the CEC BiH. The Secretariat has separate units responsible for implementation of laws falling under the responsibility of the CEC BiH.

RESOURCES (PRACTICE)

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

SCORE 25

The funds for financing electoral activities, as well as for CEC BiH's regular operations, are provided from the budget of BiH institutions, as well as from various international donors. According to the 2013 audit report for the CEC BiH, in 2013 a total of KM 3,807,000.00 (ca. 2.240.000 USD) was allocated for the CEC BiH from the state-level budget, of which KM 3,064,274.00 (ca. 1.800.000 USD) for immediate consumption and KM 742,726.00 (ca. 437.000 USD) for building a single state-level electoral information system. Total adjusted budget of the CEC BiH in 2013, along with reserve funds, amounted to KM 5,013,422.20.

The internal organisation of the administrative section of the CEC BiH, i.e. the Secretariat, is regulated by the

Rules on Internal Organisation of the CEC BiH's Secretariat, which have been in force since June 2009.

Until recently, these Rules envisaged a total of 89 members of staff; however, as at 31 December 2013 there were only 69 members of staff employed. In early 2014 the Council of Ministers of BiH gave its approval to the new Rules on Internal Organisation and Staffing of the CEC BiH's Secretariat, which envisage a total complement of staff of 81. However, this latest staffing regulation will have to change too because, in the meantime, a new Law on Conflict of Interest in Governmental Institutions of BiH has entered into force, under which the CEC BiH is no longer responsible for the implementation of a set of conflict of interest laws, and the department responsible for the implementation of these laws is to be transferred into the Office of the newly-established Conflict of Interest Commission and will operate under the Agency for Prevention of Corruption and Coordination of the Fight against Corruption. The CEC BiH has thus lost an entire department that employs 8 people.

In addition to full-time employees in the CEC BiH, the Rules provide that in the election years the CEC BiH shall develop a plan on hiring staff for emergency, temporary or occasional work for the purpose of preparation and conduct of the elections.

The Department for Auditing of Political Parties Financing is also understaffed, when viewed relative to the number of parties and financial statements to be audited on an annual basis. For example, in 2013 financial statements were submitted by 94 parties and the Audit Department has only five auditors²⁹⁰.

Due to lack of resources, audits are conducted on the audit sampling basis, as is also highlighted in the reports on the audit of parties' financial statements. This means that only a limited number of organisational

units of political parties are captured by the audit. For example, the last published audit report for SDA, which consists of party headquarters, nine cantonal committees, five regional committees, SDA Brčko District BiH, Mostar City Committee and 117 municipal committees, shows that the audit covered only the party headquarters, Sarajevo Cantonal Committee and Bihać Municipal Committee²⁹¹. As a consequence of the lack of staff, it takes as long as two years for the audit reports to be released, so the reports for 2012 were not published until 2014.

INDEPENDENCE (LAW)

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

SCORE 75

There have been no changes in the legislation regulating CEC independence since the previous NIS study. The Election Law of BiH provides that the CEC BiH is an independent body which derives its authority from and reports directly to the Parliamentary Assembly of BiH. The members of the CEC BiH must be legal experts with experience in the administration of elections and/or electoral experts, and may not hold any office in the bodies of a political party, association or foundations organisationally or financially related to the political party, and may not be involved in any political party activity. However, the fact that, under the law, the CEC BiH members must be appointed by the Parliamentary Assembly of BiH (i.e. the ruling majority of political parties) may pose the obstacle to CEC BiH's independence, given that the appointment of its senior management depends entirely on the parties and officials to whom the laws that this institution implements apply.

Members of the CEC BiH are protected by the Election Law, which provides that they cannot be held criminally

or civilly liable for any acts carried out within the scope of their duties and obligations. The statutory seven-year term is also aimed to ensure a divergence between the term of the CEC BiH members and the terms of the executive and the legislature.

Also, CEC BiH members cannot be removed from office except in cases provided for under the law – i.e. if the members are no longer able to perform their duties.

The CEC BiH, as well as its internal departments responsible for implementation of specific laws, can initiate procedures independently and have the authority to conduct audits and investigations on an *ex officio* basis as well as on the basis of reports/complaints received, and can independently impose sanctions for violations of the law.

Local election commissions are appointed by local parliaments, on the basis of a public competition, subject to the approval of the CEC BiH. The Election Law provides for the independence of members of election commissions and polling station committees in terms of defining the incompatibility of functions for these persons.

The Secretariat's staff are mainly civil servants employed by the CSA and their rights and obligations stem from the Law on Civil Service in the Institutions of BiH, which provides for independence in their work and defines situations that can lead to termination of the civil service office.²⁹²

INDEPENDENCE (PRACTICE)

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

SCORE 25

As stated previously, the appointment of CEC members depends entirely on the parties and officials to whom the laws that this institution implements apply. The resumes of CEC BiH members show that the majority of current members used to occupy positions in the executive, i.e. positions that are associated with appointments by political parties: President of the CEC BiH, Stjepan Mikić, was the Head of the Cabinet of the Croatian Member of the Presidency of BiH; Branko Petrić was a minister in the Government of RS between 1996 and 1998, and later ambassador; Novak Božičković was a head of department in Doboј Municipality; Vlado Rogić was an assistant minister.²⁹³

The independence of the CEC BiH was called into question after the 2014 General Election due to the fact that the counting of votes and announcement of election results took much longer than is normal in international practice and previous practice in BiH. Opposition parties in particular expressed doubts about the whole matter, seeing this as an attempt to cover up the electoral fraud and irregularities.²⁹⁴ Also, following a large number of complaints lodged by political parties because of irregularities in the electoral process, media reported on alleged conflicts among the members of the CEC BiH because of how they handled the complaints as well as because of the decision to remove Slavko Vučurević, PDP candidate, from the candidate list just before the election.²⁹⁵

In terms of the implementation of the Law on Party Financing, the CEC BiH's independence in decision-making is compromised by the Court of BiH repeatedly

overriding its decisions to sanction political parties. In July 2013, although it had originally imposed fines on several political parties, following the ruling of the Court of BiH on appeal by Alliance of Independent Social-democrats (SNSD), ordering the CEC BiH to revisit the case, the CEC BiH fully suspended not only the sanctions imposed on the party that had appealed, but also the previously imposed sanctions on Democratic Action Party (SDA), Naša stranka, Social-Democratic Union (SDU), Croatian Party of Rights BiH (HSPBiH) and Democratic Activity Party (A-SDA).²⁹⁶

Civil society organisations and political parties continue to raise numerous objections to the work of local election commissions and polling station committees, due to numerous cases of influence by political parties, and even manipulation of the composition of PSCs and trading in PSC positions among political parties.²⁹⁷

TRANSPARENCY (LAW)

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

SCORE 75

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

The schedule of announcement of election results is defined by the Election Law. According to this Law, the CEC BiH announces preliminary, unofficial and incomplete election results for all levels of government.

The law also provides that the CEC BiH has to en-

able public access to all financial reports of political parties and take appropriate actions to ensure that all citizens have easy access to information contained in the reports. Some progress has been made since the adoption of the new Law on Political Party Finance in 2012 and its bylaws, which increased the scope of information from parties' financial reports published by the CEC.

Also, the CEC BiH used to be responsible for ensuring public accessibility of assets declaration forms of candidates for elections and elected candidates. However, following the ruling of the Court of BiH demanding the protection of personal data in the declaration forms, the CEC BiH has ceased to make these reports publicly available.²⁹⁸

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

TRANSPARENCY (PRACTICE)

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

SCORE 50

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

The CEC BiH website www.izbori.ba contains CEC BiH's announcements and decisions, activity reports and relevant regulations.

In election years special telephone lines as well as online and SMS applications are set up for voters to get information on their polling stations and the like. The website also provides guides and manuals for election administration as well as election results.

One of the obstacles to CEC BiH's transparency is the incomplete disclosure of documents which are relevant for the laws that are implemented by the CEC BiH. The CEC BiH has ceased to publish asset declaration forms of officials, interpreting the decision of the Agency for the Protection of Personal Data, which was confirmed by the Court of BiH, such that instead of simply protecting only the relevant data, it completely ceased to publish information from declaration forms.

Some progress has been made in terms of the amount of information that the CEC BiH publishes from financial reports of political parties²⁹⁹. However, the CEC still does not publish parties' complete reports, while the audit reports are still published with delays.

When it comes to electoral management bodies' transparency during the election process, election observers expressed concern as to the transparency of the Municipal Election Commissions, which met informally and failed to ensure transparency in the appointment of PSC members. While the CEC BiH held regular sessions open to the media, at times, the frequency of these sessions was not sufficient for the hearing of complaints. Prior to election day, the CEC BiH received over 100 complaints and appeals, the majority of which were rejected. Also, electoral disputes were not reviewed in public hearings, contrary to the OSCE Copenhagen Document.³⁰⁰

ACCOUNTABILITY (LAW)

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

SCORE 75

The CEC accountability requirements have not changed since the previous NIS study. In addition to annual activity reports which are submitted for adoption to the Parliamentary Assembly of BiH, the CEC BiH has the obligation to produce annual financial reports which are submitted to the Ministry of Finance and Treasury of BiH. Local election commissions submit their annual activity reports to their respective local parliaments, at the request of the CEC BiH.

The Audit Office of the Institutions of BiH conducts audits of the CEC BiH's financial operations. Audit reports, along with recommendations, are submitted to the Parliamentary Assembly of BiH and published on the website of the Audit Office. The law also provides that the CEC has to establish an internal control and audit system.

Candidates and parties to whom the decisions of the CEC BiH apply have the right to appeal to the Appellate Division of the Court of BiH, which may overrule CEC BiH's decision and order that the case be revisited.

The law also provides that the CEC has to establish an internal control and audit system.

ACCOUNTABILITY (PRACTICE)

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

SCORE 25

CEC BiH's annual activity reports, i.e. reports on the implementation of laws falling under the responsibility of the CEC BiH, are made publicly available upon approval by the Parliamentary Assembly of BiH. These reports include information about CEC BiH's activities and results in the implementation of the laws.

When it comes to audits and financial accountability, the CEC BiH generally receives unqualified opinion of the Supreme Audit Institution of BiH, along with accompanying comments and recommendations. The final audit report for year 2013 calls for improvements to the internal control system with regard to entertainment expenses and hiring staff based on temporary service contracts.

According to CEC BiH's statistics, more than 90% of appeals lodged against its decisions in 2013 were rejected by the Court of BiH.³⁰¹ Another matter of serious concern are the aforementioned examples of sanctions against political parties which the Court of BiH annulled and returned to the CEC BiH for revision (e.g. sanctions against SNSD for failure to report the donation in kind in the form of Svetlana Ražnatović's concerts at party's election rallies), after which the proceedings were stayed.³⁰²

According to information made available by the CEC BiH, election commissions received 705 complaints and appeals in connection with the overall electoral process for the General Elections 2014. Of these, the vast majority concern violations reported to local election commissions and/or falling within the purview of

these commissions (487), as follows: failure to observe electoral silence (204), violations in connection with election day (187), election campaign (49), appointment of PSCs (47). The CEC BiH itself received complaints relating to requests for a recount of votes (123), election campaign (17), registration of voters in the Central Voter Register (CVR) (13), violations in connection with election day (11), and 54 complaints on other grounds. After the announcement of the election results a total of 35 appeals against CEC BiH decisions were lodged with the Appellate Division of the Court of BiH. All appeals were dismissed as unfounded. Coalition of NGOs *Pod lupom* reported over 80 situations observed on the ground which were identified as critical and for which immediate action of the local election commissions was demanded. Also, *Pod lupom* received more than 370 complaints from citizens, concerning the following violations: exertion of influence on voters near polling stations, deceased persons registered in the voter register, vote-buying, distribution of copies of ballot papers with highlighted names of political entities, and distribution of promotional party materials around the polling station.³⁰³ Also, the CEC BiH failed to make the database of complaints publicly available and failed to comply with the statutory deadline for responding to complaints.

INTEGRITY MECHANISMS (LAW)

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

SCORE 75

Although there is no code of conduct for members of the CEC BiH, the Law on Conflict of Interest in Governmental Institutions of BiH, which the CEC BiH implemented until recently, also applies to the members

of the CEC BiH. The law defines the incompatibility of functions as well as the rules on gifts and services.

Also, the Election Law of BiH provides that “no member of an election commission or a polling station committee shall participate in the decision of a case in which the member and/or a close family member has a personal or financial interest or other conflict of interest, which may raise doubt as to the ability of the member to act impartially”.³⁰⁴

These regulations apply only to members of the CEC BiH, while persons employed in the CEC BiH Secretariat, who have the status of civil servants, are subject to the Law on Civil Service in Institutions of BiH, which also contains provisions on conflicts of interest.

INTEGRITY MECHANISMS (PRACTICE)

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

SCORE 25

The integrity of the Election Commission is associated with the problems highlighted in the analysis of its independence. Specifically, the compromised independence of the institution and its leadership, as manifested in political pressure and close links between CEC BiH’s members and political parties, has a negative impact on the integrity of the entire institution and its individual members.

As has been mentioned earlier, there are a number of objections to the susceptibility of CEC BiH’s decisions to political influence.³⁰⁵ This is particularly true of the lower levels of election administration, i.e. in local election commissions and polling station committees.

Numerous sanctions are imposed after each election on members of polling station committees for irregularities and irresponsibility in the conduct of the electoral process. Sanctions were also announced after the 2014 General Election, and a few cases were forwarded to prosecutors' offices for prosecution.³⁰⁶

Furthermore, delays and irregularities in the counting of votes and the consequent recount in a large number of polling stations following the 2014 General Election have eroded public trust in the election administration and the integrity of the election process.³⁰⁷

The audit report found a number of accounts claimed as personal entertainment expenses and reimbursed in cash, but which cannot be regarded as personal entertainment for business purposes. The report recommended that the internal regulations be reviewed and that a specific regulation be introduced to more precisely define the notion and purpose of 'entertainment expenses' in order to avoid compromising the basic principles of efficient and proper use of budgetary funds. There were also comments regarding the conclusion of temporary service contracts with employees and associates of the CEC BiH. The report emphasises that this is a non-transparent manner of employment-hiring, unacceptable in the public sector.³⁰⁸ The 2014 audit report expressed concerns regarding the implementation of public procurement as well as the instructions about manufacturers and product specifications which were seen as too narrow, suggesting bid rigging aimed at selection of specific bidders.

In 2014 the CEC BiH came under the spotlight of law enforcement agencies and the public due to irregularities in selection of the company for printing ballot papers. In June 2014 the Prosecutor's Office ordered SIPA to investigate the contract award process under suspicion that the elimination of the Croatian printing firm "Zrinski" constituted a violation of the law.

Specifically, the CEC BiH originally decided to award the printing and packaging of ballot papers to the printing firm "Zrinski" from Croatia, chosen through a bidding process as having the lowest bid of KM 907,517. However, the contract was later awarded to the second ranked bidder "Atlantic BB" from Banja Luka, which placed a KM 1,157,463 bid.³⁰⁹ This case attracted further media attention because of alleged ties between the selected printing firm and the authorities in RS.³¹⁰

CAMPAIGN REGULATION (LAW AND PRACTICE)

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

SCORE 25

The financing of political parties and election campaigns is regulated by the Law on Party Financing of BiH, Election Law of BiH,³¹¹ and regulations issued by the CEC BiH (rules, instructions, forms, and other implementing regulations). The laws set limits and determine the allowable sources of funding, allowed amounts and ceilings for the funding from private sources, obligation to report donations and do financial reporting, audit and control of financial statements, sanctions and other issues.

The shortcomings of the campaign finance regulations are discussed in more detail in the chapter on political parties. No significant progress has been made in this area since the previous NIS study.

The main shortcomings of these regulations are as follows:

- inadequate provisions relating to the control of expenditures of political parties, which allows parties

to avoid reporting significant amounts of their assets. The laws do not give the CEC BiH a clear power to audit the expenditures of political parties, leaving the public without detailed information about how the funds are used during and beyond campaigns;

- absence of the obligation to finance campaigns through single bank accounts, which prevents the CEC BiH from having a complete overview of parties' transactions, and therefore reduces the possibility of detecting fraud;
- due to the insufficient capacity of the CEC BiH's Audit Department, audit reports of political parties are produced too late to have a discernible impact on the accountability of campaign finance – the last audit reports, which were published in July 2014, concern the financial statements of political parties from 2012, when Local Election was held;
- lack of transparency of financial statements, in particular post-election financial statements, which should show the cost of the election campaign, but the reporting form does not allow for a detailed presentation of individual costs;
- imprecise and inadequate provisions relating to the misuse of public funds for campaign purposes; as a result, political parties finance their campaign activities from the budgets of the institutions they manage, while, at the same time, the CEC BiH has no power to impose sanctions for such behaviour;
- absence of a credible system of verification of property statements (assets declarations) filed by every candidate standing for elected office;
- lack of institutional cooperation between the CEC BiH and other law enforcement agencies;
- inadequate system of sanctions.

The problems caused by the shortcomings of the legislative framework, as well as forms of violations of campaign finance regulations are described in more detail in the chapter dealing with political parties.

ELECTION ADMINISTRATION (LAW AND PRACTICE)

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

SCORE 25

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

The last General Election, held in October 2014, was conducted by the CEC BiH together with 142 municipal election commissions (MECs) and 5,401 polling station committees, which were appointed by the MECs for this election. The CEC BiH certified a total of 98 political entities, i.e. 7,748 candidates in 50 political parties, 24 coalitions and 24 independent candidates, to compete in the 2014 General Election.³¹²

Prior to the elections, public attention was captured by irregularities in the delivery of ballots to home addresses of voters living abroad, where voters received packages with multiple ballots. This case is still being investigated by the Prosecutor's Office and has seriously dented public confidence in election administration.³¹³

The OSCE International Election Observation Mission and local CSOs participating in election observation activities concluded that the 2014 General Election was administered efficiently and generally in keeping with democratic principles. However, they also expressed some objections to the electoral process and pointed to numerous irregularities.

One of the biggest problems in election administration, as highlighted by election observers, is the trading of polling station committee positions to gain greater representation in areas of specific interest as well as the fact that the CEC BiH failed to address this concern. The OSCE International Election Observation Mission further noted that there were polling station committees where essentially only one political party was represented.³¹⁴

As explained under “accountability – practice”, election commissions received 705 complaints in connection with the overall electoral process, the vast majority of which concern violations reported to local election commissions, while those submitted to CEC mostly refer to issues such as requests for a recount of votes, election campaign, registration of voters, violations in connection with the election day, etc. Coalition “Pod Lupom” received a lot of complaints relating to exertion of influence on voters near polling stations, deceased persons registered in the voter register, vote-buying, distribution of copies of ballot papers with highlighted names of political entities, and distribution of promotional party materials around the polling station.³¹⁵

The last election revealed the election administration’s inefficiency in vote counting. The announcement of the election results was delayed more than in any previous election.³¹⁶ Due to major lapses in the counting of votes by polling station committees, a recount was ordered in 125 polling stations.³¹⁷

RECOMMENDATIONS

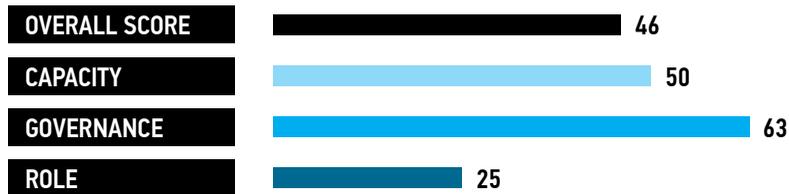
Given that there have been no significant changes in the regulations governing the work of the CEC BiH or in the practical operation of this institution, compared to the situation found in the 2013 NIS Study, the recommendations below remain largely in line with those made in the previous study:

- In order for the CEC BiH to perform its tasks and duties efficiently and in a timely manner, it is necessary to enhance its capacities and ensure that all the vacant positions envisaged in the internal staffing regulation are filled. This especially holds true for its Audit Department;
- It is necessary to introduce deadlines for conducting financial audits of political parties, particularly in connection with election campaigns, as the audit reports are produced too late to have any impact on the election results;
- In view of the growing number of irregularities and the eroding public confidence in the CEC BiH, it is important to ensure that this institution is politically independent and answerable to the public;
- As part of the control of political party and election campaign financing, it is important to ensure and precisely define CEC BiH’s coordination and engagement with other relevant authorities (particularly tax authorities, prosecutors’ offices, the Public Procurement Agency, audit offices, etc.);
- Establish greater control over the selection and operation as well as improvement of professionalism and accountability of municipal election commissions and polling station committees, in view of the electoral monitoring findings where precisely these segments of the election administration are identified as the weakest links;

6.8. OMBUDSMAN

OVERALL PILLAR SCORE: 46/100

STATUS: MODERATE



SUMMARY

The Ombudsman Institution formally operates as an independent institution. In practice, however, it faces a number of problems that substantially compromise its independence. These primarily relate to the method of electing the Ombudsman, lack of financial independence and self-censorship. At the same time, the Ombudsman does not have sufficient capacity and resources to carry out activities within his/her purview.

STRUCTURE AND ORGANISATION

The Human Rights Ombudsman of BiH is an independent institution set up in order to protect the rights of individuals and legal entities, as enshrined in the Constitution of BiH and the international treaties appended thereto. The institution is headquartered in Banja Luka, and has regional offices in Mostar, Sarajevo and Brčko District, as well as a field office in Livno, which is attached to the regional office in Mostar. Under the relevant Law³¹⁸ and the Rules on Internal Organisation, this institution has the following organisational units: Department for Monitoring Children's Rights, Department for Monitoring the Rights of Persons with Disabilities, Department for Monitoring the Rights of Ethnic, Religious and Other Minorities, Department for Monitoring Civil and Political Rights, Department For Economic, Social and Cultural Rights, Department for Monitoring Detainees/Prisoners Rights, and Department

for Elimination of All Forms of Discrimination.

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

The institution comprises three ombudspersons appointed by the Parliamentary Assembly of BiH from among the three ethnic groups.³¹⁹

TABLE WITH SCORES

OMBUDSMAN

OVERALL PILLAR SCORE 2013: 54/100

OVERALL PILLAR SCORE 2015: 46/100

DIMENSION	INDICATOR	LAW 2013	LAW 2015	PRACTICE 2013	PRACTICE 2015
CAPACITY 2013 50/100 CAPACITY 2015 50/100	RESOURCES INDEPENDENCE	75	75	50 25	50 25
GOVERNANCE 2013 63/100 GOVERNANCE 2015 63/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY MECHANISMS	75 75 75	75 75 75	50 50 50	50 50 50
ROLE 2013 50/100 ROLE 2015 25/100	INVESTIGATION PROMOTING GOOD PRACTICE	50 50	25 25		

RESOURCES (PRACTICE)

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

SCORE 50

The Ombudsman Institution does not have adequate resources to exercise its statutory powers. In 2014 the institution had a budget of KM 2.393 million (roughly € 1.2 million).³²⁰ In 2013, KM 33.200 was allocated from the budget reserve so that the institution could cover its liabilities. Budget allocations for financing the Ombudsman Institution have seen a gentle decline in the last five years. To some extent the expenses of the Ombudsman Institution have also been covered by international donors, through joint implementation of ombudsman-related projects.³²¹

The Ombudsman Institution has a total of 56 employees. Compared to the previous years, the number of employees has decreased by five. There are currently three unfilled positions for assistant ombudsmen.³²² In the meantime, the responsibilities of the Ombudsman Institution have further expanded even as the available financial and human resources continued to dwindle.

The European Commission's Progress Report for BiH also concludes that the Ombudsman Institution continues to face financial and human resource constraints that have a negative impact on its activities.³²³

Nevertheless, by participating in various international forums, projects and initiatives, personnel of the Ombudsman Institution have the opportunity for further education, international cooperation, exchange of experience, and adopting best practices from other countries.³²⁴

INDEPENDENCE (LAW)

To what extent is the ombudsman independent by law?

SCORE 75

The Ombudsman Institution was established by Annexes IV and VI of the General Framework Agreement on Peace for Bosnia and Herzegovina, and started to function in 1996. The Law on BiH Ombudsman was adopted in 2000. A new Law was adopted in 2002 and then amended in 2004 and 2006. The Law defines powers and competencies of the Ombudsman. Rules of procedure in following up of the work of organs and institutions according to allegations contained in a complaint and *ex officio*.

The independence of the ombudspersons is guaranteed by the laws on the ombudsmen, and further guarantees are provided by the provisions of the Constitution of BiH.³²⁵ Ombudspersons are appointed from the three constituent peoples (Bosniak, Croatian and Serbian), which does not preclude the appointment from among the ranks of others.³²⁶

The Law provides that the salary of the Ombudsman shall be equal to the salary of judge of the Constitutional court. The Ombudsman is appointed for the period of six years and may be re-elected. The Law also stipulates that Ombudsman shall be under no order and that shall act independently. In doing so, an Ombudsman cannot be prosecuted, subject to investigation, arrested, detained or tried for the opinions expressed or for the decision taken in the exercise of his powers.³²⁷

The legislative framework provides for functional and institutional independence³²⁸ of the ombudspersons with regard to the issues that they can investigate, their powers in the investigative process and formulation of

their decisions.

INDEPENDENCE (PRACTICE)

To what extent is the ombudsman independent in practice?

SCORE 25

Nothing has changed significantly since publishing NIS study 2013. There is a commonly held perception that the Ombudsman Institution exercises a kind of self-censorship, avoiding publicly and openly addressing issues and problems that could be seen as criticism of the highest office holders.³²⁹ The primary reason why the Ombudsman Institution engages in self-censorship is the fact that some ombudsmen used to be high-ranking officials of political parties or demonstrate strong party loyalty. Thus, one of the ombudsmen was a high ranking member of one of the ruling parties.³³⁰ Further proof of the presence of self-censorship in the Ombudsman Institution is the repeated failure to undertake *ex officio* investigations, which the institution has a mandate to do.

At the same time, inadequate role of the Ombudsman Institution in planning and approving the institution's budget threatens and undermines its independence, putting it in a position of subordination to the executive.³³¹

The lack of financial independence, i.e. continuous reduction of the institution's budget, is also recognised as a problem by Jasminka Džumhur, the current Ombuds-woman.³³²

TRANSPARENCY (LAW)

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

SCORE 75

The Law on the Ombudsman of BiH from 2002 provides for the requirement of publishing the ombudspersons' general recommendations in the "Official Gazette of BiH" and stipulated that all other recommendations are available to the public, except when they are related to confidential and secret matters or when the complainant requests so. Furthermore, the Law provides for the publication of the Institution's annual and special reports. The Institution's Rules of Procedure, which were adopted as far back as 2004 and are available online, provide that communication with citizens is to take place only in writing; however, the ombudsperson or staff working on the case may decide, for the sake of urgency, to use less formal ways of communication including face-to-face interviews. The above Rules also govern the confidentiality of communication with those who seek ombudspersons' assistance. There are no rules that regulate reporting and publications of the Ombudsman asset declarations.

TRANSPARENCY (PRACTICE)

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

SCORE 50

Nothing has changed significantly since publishing NIS study 2013. The public can access the information

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

The Ombudsman Institution of BiH has a web page where the following information is published: annual reports, special reports, recommendations, some of the internal rules and regulations governing the work of ombudspersons, and news related to their work. The Ombudsman institution has developed wide ranging cooperation with civil society organisations.

ACCOUNTABILITY (LAW)

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

SCORE 75

The relevant legislative framework provides that each year the Institution is to submit a report on the results of its work to the Presidency of BiH, Parliamentary Assembly of BiH, Parliament of FBiH, and National Assembly of RS, as well as that the report is to be made publicly available. The laws also stipulate that, as part of their duties, the ombudspersons are to make rules concerning disciplinary liability of the employees in the Ombudsman Institution.

Therefore, the ombudspersons, as well as the Institution as a whole, are answerable to the legislatures

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

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

In conclusion, the accountability of the ombudspersons is regulated only partially, through the legal obligation of drawing up an annual report. The laws fail to establish any framework or standards of the ombudspersons' social accountability.³³³ Also, the laws do not provide for any obligations of the bodies that consider their reports. This misses the opportunities for ombudspersons' reports to create an environment for strengthening the accountability of all government institutions, as well as raising awareness of human rights in general.³³⁴

The institution is also subject to regular financial audit by the Supreme Audit Institution.

ACCOUNTABILITY (PRACTICE)

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

SCORE 50

In practice the Ombudsperson regularly and thoroughly fulfils his/her obligation to submit an annual activity report to the Presidency of BiH, Parliamentary Assembly of BiH, Parliament of FBiH and National Assembly of RS, and makes the reports publicly available on the institution's website. However, the Ombudsperson's report does not contain information on disciplinary or other proceedings taken against the employees of the Ombudsman Institution, nor is such information made publicly available.

Reports on the financial audit of the Ombudsman Institution conducted by the Supreme Audit Institution have so far had no major objections, and recommendations presented in these reports were generally carried out in a timely manner.

In practice, when issuing recommendations, the Ombudsperson details the rationale and opinion regarding the recommendation. Ombudsperson's report does not contain information on disciplinary or other proceedings taken against the employees of the Ombudsman Institution, nor is such information made publicly available. Jasminka Džumhur, one of the three ombudspersons, has confirmed that the Institution's internal regulations contain no provisions concerning the time period within which complaints are to be resolved, because the lack of responsiveness on the part of other institutions reduces the efficiency of the Ombudsman Institution, but ombudspersons insist that every case should be completed within no more than two years. Also, there is the question of how efficient and timely the Ombudsman Institution is in resolving complaints. Ombudswoman Jasminka Džumhur links this problem to the institution's lack of capacity.³³⁵

INTEGRITY MECHANISMS (LAW)

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

SCORE 75

Provisions of the ombudsman laws relating to the appointment of ombudspersons require that ombudspersons should be persons who have a high moral stature and demonstrated experience in the field of human rights. The laws also stipulate which political positions are incompatible with the office of the ombudsperson, but do not regulate other ombudspersons' behaviours that could constitute a conflict of interest, as ombudspersons, being appointed officials, are not considered elected officials in terms of the Law on Conflict of Interest in Governmental Institutions of BiH.³³⁶

The Institution's internal rules and regulations that are available on the website do not show that the ombudspersons issued any special regulations relating to integrity, such as restrictions on involvement in politics, rules on gifts or assets declarations, etc.³³⁷ The Institution is currently drafting new rules, but whether these will address the outstanding issues related to integrity is yet to be seen.³³⁸

INTEGRITY MECHANISMS (PRACTICE)

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

SCORE 50

Ombudsperson's annual reports do not contain information about proceedings taken against employees of the Ombudsman Institution. Ombudswoman Jasminka Džumhur says that to date no such proceedings have been taken against any of the staff, because there was no need.³³⁹

Appointment of the Ombudsperson remains the weakest link, because what happens in practice is that, contrary to the law, individuals who have a pronounced party affiliation or have even held senior party posts are appointed as ombudspersons.

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

INVESTIGATION (LAW AND PRACTICE)

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

SCORE 50

According to the Rules of Procedure of the Ombudsman Institution³⁴⁰, the Institution acts solely on complaints made in writing, or *ex officio*. Despite this, the Ombudsperson's 2013 annual report contains information on the total number of citizens' complaints received (13,962).

Thus, in 2013 the Ombudsman Institution received 3,170 complaints made in writing – a 1.7% increase over the preceding year. The report contains no information on the number of investigations initiated *ex officio*, which suggests that no such investigations were undertaken taken at all.³⁴¹

The conspicuous absence of *ex officio* investigations is surprising given the numerous cases of systemic human rights violations occurring in practice.

Of the total number of complaints received in 2013, in 2,078 cases (65%) the investigation was completed in the same year. The Ombudsperson Institution is faced with a large backlog of cases. In the course of 2013 alone the Institution worked on 1,967 backlog cases built up from previous years. In 2013 the Ombudsman Institution managed to clear the backlog of cases from 2010, which means that there is still a huge backlog to catch up on. This situation cannot be attributed solely to the inefficiency of the Ombudsman Institution or its insufficient capacity, but also to the fact that state institutions largely ignore Ombudsman's work and recommendations, as noted in the EU's Bosnia and Herzegovina Progress Report.³⁴²

What remains an open question, however, is the conspicuous absence of *ex officio* investigations in numerous cases of systemic human rights violations occurring in practice.

Nevertheless, the Ombudsman Institution played an important role in preventing adoption of the amended Law on Freedom of Access to Information, which was proposed by the Ministry of Justice in an attempt to drastically curtail and relativise freedom of access to information. In this process, the Ombudsman Institution collaborated extensively with civil society and international organisations, which ultimately resulted in withdrawal of the proposed amendments.³⁴³

PROMOTING GOOD PRACTICE (LAW AND PRACTICE)

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

SCORE 25

The EU progress report pointed out that some progress has been made in increasing public awareness of the role of Ombudsman. On the one hand that is encouraging trend, but on the other hand, that means that public even two decades after establishing of the Ombudsman institution is still not aware of the role of institution.

As noted earlier, the Ombudsman Institution continues to be faced with financial and human resource constraints, on the one hand, and a kind of self-censorship with regard to the issues that have political weight, on the other. Self-censorship is also manifested in the repeated failure to undertake *ex officio* investigations, which the Ombudsman has a mandate to do. In this regard, the Ombudsman is not sufficiently recognised by the public as an institution that promotes standards of ethical behaviour.

On the other hand, Ombudswoman Jasminka Džumhur notes that the institutions to which the recommendations are given are not always willing to cooperate and are not consistent in implementing Ombudsperson's recommendations even though they are legally required

to do so.

RECOMMENDATIONS

The vast majority of the recommendations from NIS Study 2013 have not been implemented and majority of them are still relevant. With slight adjustment recommendations are as follow:

- When changing the Constitution of BiH, the chapter relating to human rights should contain a section relating to the Ombudsman Institution, which would give additional support and importance to this institution and its independence;
- It is necessary to set up stricter criteria that candidates must meet; the selection commission should comprise representatives of all political parties participating in the BiH Parliament as well as independent legal experts, e.g. those from the Constitutional Court and university; it is also necessary to establish rules of procedure for the selection commission and define the role and importance of the observers;
- The institution should adopt internal regulations to regulate conflicts of interest, ethical and other issues that involve obligations to officials, favours and the like. It is necessary to strengthen the institution by staffing it with professional high quality personnel;
- The ombudspersons should report more often on their work to the legislature and the public, as well as the non-governmental sector; in this regard, it is necessary for the Institution to significantly increase communication with the media and show more initiative;
- It is necessary to start producing analyses relating to the work of public institutions. Such analyses should be made public with the aim of increasing the authority and credibility of the Institution, on the one hand, and promoting good governance and the rule of law, on the other.

6.9. AUDIT INSTITUTIONS

OVERALL PILLAR SCORE: 58/100

STATUS: MODERATE



SUMMARY

Given its administrative set-up, Bosnia and Herzegovina has four Supreme Audit Institutions (SAIs), namely: the Audit Office of the Institutions of Bosnia and Herzegovina, the Audit Office for the Institutions of the Federation of Bosnia and Herzegovina, the Supreme Office for the Republic of Srpska Public Sector Auditing, and the Office for Audit of Public Administration and Institutions in Brčko District. The work of each of these institutions is regulated by a special law³⁴⁴ and corresponding implementing regulations. There are no significant variations among the four SAIs when it comes to transparency, accountability and integrity. However, the Audit Office of the Institutions of BiH lacks adequate offices.

All four audit offices apply auditing standards issued by the International Organisation of Supreme Audit

Institutions (INTOSAI) and international standards issued by the International Federation of Accountants (IFAC). Financial audit is conducted according to the established methodology. Subject to audit are always annual financial statements and financial audit is, therefore, conducted on an annual basis. Performance and compliance audits are still in the very early stages of development and need to be developed further. It is therefore very important to ensure that a sufficient number of auditors and an appropriate level of funding are available.

There are several instances of the independence and integrity of the SAIs being undermined. This calls for more attention from the relevant institutions – primarily parliamentary committees charged with overseeing the

work of audit offices. Additional elements essential for the future work of the SAIs in BiH include the definition of the SAIs in the State and Entity Constitutions, the need for improving the functions of internal audit within public institutions, and the maintenance and further improvement of the existing level of independence and integrity within each SAI.

As concerns the current situation, no major changes have been observed since the release of the 2013 NIS Study. The main problems remain, such as lack of capacity to implement performance audits and the need to enhance the capacity of existing staff. In the last two years the SAIs, especially those at the state level and in RS, have come under sustained political pressure. Furthermore, the RS authorities at all levels have repeatedly engaged in public denunciation and insults against the auditor as a result of their dissatisfaction with the audit report revealing irregularities in the spending of public money earned from privatisation and repeated violations of the Public Procurement Law.

STRUCTURE AND ORGANISATION

Given its administrative set-up, Bosnia and Herzegovina has four SAIs, namely: the Audit Office of the Institutions of Bosnia and Herzegovina, the Audit Office for the Institutions of the Federation of Bosnia and Herzegovina, the Supreme Office for the Republic of Srpska Public Sector Auditing, and the Office for Audit of Public Administration and Institutions in Brčko District BiH. Inter-office coordination is the responsibility of the SAI Coordination Committee consisting of the auditors general and deputy auditors general of audit offices in BiH. The most important tasks of the Coordination Committee are as follows: establishing harmonised standards on auditing, assuring consistent quality of audits, allocating responsibility for auditing, joint actions and determining representation in international bodies.

TABLE WITH SCORES

AUDIT INSTITUTIONS

OVERALL PILLAR SCORE 2013: 65/100

OVERALL PILLAR SCORE 2015: 58/100

DIMENSION	INDICATOR	LAW 2013	LAW 2015	PRACTICE 2013	PRACTICE 2015
CAPACITY 2013 58/100 CAPACITY 2015 58/100	RESOURCES INDEPENDENCE	75	75	50 50	50 50
GOVERNANCE 2013 88/100 GOVERNANCE 2015 75/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY	100 75 100	100 75 100	75 75 100	50 75 50
ROLE 2013 50/100 ROLE 2015 42/100	EFFECTIVE FINANCIAL AUDITS DETECTING AND SANCTIONING MISBEHAVIOUR IMPROVING FINANCIAL MANAGEMENT	50 75 25	50 50 25		

RESOURCES (PRACTICE)

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

Score 50

The audit offices in BiH secure their annual funding through application of specific procedures stemming from the four audit laws (procedures that ensure financial independence from the executive in BiH – parliamentary committees in charge of auditing, finance and budget directly approve the budget of audit offices for the next year). However, similar to other budget users, SAIs' budget requests are harmonised with the frameworks and criteria established in the Budget Framework Papers (BFPs).³⁴⁵ Data from the state and entity 2015–2017 BFPs indicate that the audit offices were provided with the requested funding for 2015, with the exception of FBIH, where the initial request of the Audit Office for the Institutions of FBIH was reduced by the FBIH Ministry of Finance from KM EUR 2.090.526 to EUR 1.921.555.

The Rules on Internal Organisation and Staffing of the Audit Office for the Institutions of FBIH envisage a total of 61 positions requiring 139 employees, including the Auditor General and the Deputy Auditor General. As at 31 December 2013, this institution had 60 employees.³⁴⁶ The Audit Office of the Institutions of BiH also remains understaffed at 57 employees,³⁴⁷ with the internal organisation and staffing rules envisaging a total complement of 75 employees.³⁴⁸ The Supreme Office for the RS Public Sector Auditing employs 67 people.³⁴⁹ The two entity-level SAIs can therefore be said to lack capacity to fully carry out the statutory scope of financial audit.

Unlike the state level, where the SAI covers only 73 budget users, in entities the number of institutions that are subject to audit exceeds a few hundred, which necessitates the employment of a selective approach to auditing annual financial statements. Thus, for instance,

the last audit in the municipality of Novi Grad Sarajevo was almost 10 years ago and was done for the period 1 January to 31 December 2003.³⁵⁰ A further problem relates to the performance audit because the capacities of all four SAIs for these audit tasks are still limited. Thus, between the beginning of 2007 and the end of 2014, a total of 22 performance audits were completed at the state level, 17 in RS, and 12 in FBIH. In the Brčko District BiH this type of audit has not been conducted³⁵¹.

In the last two years there have been no significant increases in the budgets for audit offices. This is primarily due to the fact that the staffing levels have remained unchanged, given that the salaries of employees account for as much as 70 to 80 per cent of the total budget.³⁵² At the same time, austerity measures continue to be enforced in the public sector due to the negative effects of economic crisis and decreased public revenues.

The offices of the SAIs in FBIH, RS and Brčko District BiH are satisfactory and in line with the existing organisation of foreseen tasks. However, the Audit Office of the Institutions of BiH still has problems with office accommodation because it is working in inadequate premises taken on a lease, with the rent reaching about EUR 100.000 year. As far back as April 2013 the House of Representatives of the Parliamentary Assembly of BiH issued a conclusion requiring that the issue of accommodation of the Audit Office be resolved permanently and as a matter of priority.³⁵³ However, no concrete actions to address this issue have been taken as yet.

SAI staff members have an adequate academic background and sufficient previous work experience as well as adequate career development and training opportunities. However, independent reports³⁵⁴ point to the need for providing more training to those involved in conducting financial audits, particularly in terms of implementation of international standards.

INDEPENDENCE (LAW)

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

SCORE 75

International Standards of Supreme Audit Institutions (ISSAI) consist of documents adopted by INCOSAI (International Congress of Supreme Audit Institutions – INTOSAI) which are aimed at managing professional standards of Supreme Audit Institutions (SAIs). The standards include recommendations on legal, organisational and professional prerequisites, as well as how to conduct audits and any other tasks that may be entrusted to the SAIs.³⁵⁵ However, in Bosnia and Herzegovina international recommendations are incorporated into domestic legislation quite selectively. Thus, the recommendation on laying down the establishment of SAIs and the necessary degree of their independence³⁵⁶ in the Constitution is still not incorporated in either the state constitution or entity constitutions. The Constitutional and Legal Affairs Committee of the House of Representatives of the Parliamentary Assembly of BiH adopted an amendment concerning the constitutional definition of the SAIs, which has yet to be incorporated into the Constitution of BiH in the future.

Generally, the SAIs have full autonomy in controlling and managing their resources. The relevant legislation provides that the audit offices at the state and entity levels, as well as in Brčko District BiH, are independent and are not subject to management or control by any other entity or institution, unless otherwise stipulated by the relevant law. What remains a matter of concern, however, is the as-yet unresolved issue of financial independence of all four SAIs.³⁵⁷

The establishment and operation of the SAIs is not laid down in the state and entity constitutions. State and

entity laws and the law in Brčko District BiH govern the legal status, organisation, competences, objectives, responsibilities, powers, certification of public sector auditors and other issues of importance to the SAIs in the country. Oversight of the SAIs is still the responsibility of the competent committee/commission, typically a budget and finance committee/commission and/or the committee for the auditing of the state and entity legislatures (assemblies/ parliaments).

Every year, after consulting with its Deputy, the Auditor-General adopts the SAI's annual audit plan for the next year and submits it to the competent parliamentary committee/commission before the start of the new fiscal year. However, all four laws governing the operation of the SAIs provide that the committee/commission responsible for the issue of audit may request the performance of specific extraordinary audits (i.e. special audits), while the Law on Public Sector Auditing of RS provides that special audits may also be requested by the RS Government, with the consent of the competent parliamentary committee. Only the Law on Auditing of the Institutions of BiH protects the independent position of the auditor by giving him/her a discretionary power to decide whether to accept or reject the special audit request. The laws governing the operation of the SAIs in FBiH, RS and Brčko District BiH do not make a provision allowing the SAI to reject a special audit request.

The SAIs are headed by their respective Auditors General and their respective Deputies. The laws³⁵⁸ governing the operation of SAIs at the state level and in Brčko District BiH provide that the proposal for the appointment of the Auditor General and his/her Deputy comes from the representatives of the respective legislative body – Election Committee. In FBiH and RS the proposal for appointment comes from the Entity Presidents based on the rank list prepared by the Election Committee. The tenure of the Auditor General and his/her Deputy is fixed by law and lasts seven years, without possibility of

reappointment. The Auditor General, his/her Deputy and staff are legally protected from arbitrary dismissal. The only exception to this is a legal provision in the Brčko District of BiH contained in Article 27 of the Law on Audit of Public Administration and Institutions in Brčko District BiH, which stipulates that the Auditor General and his/her Deputy may be dismissed if the quality of audits falls short of the expected standards. This, however, leaves ample room for manipulation.

Recruitment to the SAIs is based on clear professional criteria. Staff are recruited through the publication of a vacancy announcement, as provided for under the relevant laws.

According to the relevant legislation³⁵⁹, auditors cannot be held criminally or civilly liable for performing tasks within their remit while acting in line of duty, and are entitled to protection by the state authorities from any attacks, insults or unjustified actions related to the execution of their duties.

INDEPENDENCE (PRACTICE)

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

SCORE 50

In practice some state officials or representatives of political parties attempt to influence the audit process or its outcomes. Thus, for example, the election of the new Auditor General in RS in early 2013 was marked by political pressures and attempts to elect a candidate who is not qualified for the position.³⁶⁰ Also interesting is the fact that the person who was finally elected (Duško Šnjegota) was not among the top three candidates as ranked by the election committee.

That there is still strong pressure on the independence of the SAIs is evidenced by the scandal related to the opening of the Banja Luka-based Mühlbauer factory which manufactures ID cards and driving licences for BiH citizens. Auditors of the Audit Office of the Institutions of BiH found serious irregularities in the Agency for Identification Documents, Registers and Data Exchange of BiH (IDDEEA) in relation to the procurement procedure for manufacture of ID cards and driving licences. This was notified to SIPA and the Prosecutor's Office of BiH. After the media provided extensive coverage of the scandal, the director of IDDEEA started exerting overt and continued pressure by sending letters raising objections to the work of auditors and criticising them for having brought the whole affair into public focus. A precedent in the auditing practice was set by the Auditor General Milenko Šego, who requested that the members of the audit team submit written statements as to the allegations contained in the complaint, insisting that the statements be delivered directly to him. By writing a response letter and couching it in the language of servility, defence, apology and explanation, the Auditor General Milenko Šego trampled upon the independence of the Audit Office and placed the office in a subservient position in relation to auditees.³⁶¹

Furthermore, the authorities at all levels do not flinch from openly attacking and insulting auditors when they are dissatisfied with their negative assessment of how public money is spent and warnings of violations of the Public Procurement Law. In fact, more than two thirds of auditees at all administrative levels are found to be in violation of the public procurement legislation, but nobody has ever been sanctioned for these irregularities.

Nevertheless, it could be stated that some professional distance from political or other influence on the work of the SAIs has been maintained. The audited budget users and public enterprises meet with serious and professional criticism in audit reports.

TRANSPARENCY (LAW)

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

SCORE 100

Article 3 of the state and entity laws on public sector auditing, and of the corresponding law in Brčko District BiH, defines the goals of the SAIs in BiH as well as their obligation to inform the responsible authorities and the public about their findings and recommendations through timely publication of audit reports. According to the relevant legislation, which is consistent with international standards, the SAIs are first required to submit a draft audit report, and upon expiry of the deadline for comments to the revised report, the final version of the report is delivered to the competent parliament. Reporting to the parliament and public availability of audit reports serve the purpose of oversight, i.e. prevention of wasteful spending of public funds, as well as detection of fraud and abuse by giving recommendations to the management of institutions and the legislative level of public administration about how to improve financial management and strengthen control mechanisms. Under the provisions of the audit laws as well as the laws governing the areas of budgeting and public finance, the SAIs are required to submit annual activity reports to the competent parliamentary committees as well as quarterly, biannual and annual financial reports. In addition to information about the operations of the SAIs, annual reports contain key financial indicators of the SAIs' financial operation. The work of the SAIs may be subject to assessment by the relevant parliamentary committee, and legislative provisions regulating the manner of initiating the assessment procedure vary across different administrative levels. The legislation at the state level and in FBiH establishes the procedure for external assessment of the SAIs: the parliamentary

committee appoints an independent auditing firm or auditing commission consisting of five members, who are to be experts in the areas of auditing and accounting, to audit the SAIs' annual financial reports. The relevant parliamentary committees have the obligation to appoint a special commission consisting of three members with appropriate experience to review the SAIs' final reports. The Audit Committee of the National Assembly of RS initiates the procedure for professional assessment of the Supreme Audit Office every four years, and subsequently discusses the report of the institution that conducted the professional assessment. In Brčko District BiH the procedure for professional assessment of the Office for Audit of Public Administration and Institutions in Brčko District BiH is initiated by the Assembly of Brčko District BiH at intervals not exceeding three years.

Laws on public sector auditing set the deadlines for delivery of final reports to every institution audited and to the competent Ministry of Finance. Specifically, the SAIs are required to deliver the report within 90 days after the filing of the annual report by a given budget user. Also, the laws require that the audit report be submitted to the legislature within 90 days after receipt of the government's consolidated annual report on budget execution.

Recent amendments to the Law on Public Sector Auditing of RS have introduced the practice of delivering every adverse opinion report to the RS Chief Prosecutor, whereupon the "audit office's obligation ends".

TRANSPARENCY (PRACTICE)

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

SCORE 50

All four SAIs in BiH have high-quality websites which allow the public to obtain information on the SAIs' financial operations and activity reports in the same manner and to the same extent as the competent parliamentary committees do. This obligation is not laid down in the Audit Law, but any citizen or journalist can use the provisions of the Law on Freedom of Access to Information to obtain detailed information on the SAIs' operation. Additionally, the SAIs have presented and categorised information about their activities and developed instructional materials, as required under the Law on Freedom of Access to Information.

The SAIs in BiH actively respond to public demands in terms of reporting on issues within their remit, and at the same time meet the visible level of transparent communication about their operation and activities.³⁶²

SAIs' websites contain all relevant documents, ranging from the relevant laws and implementing regulations, to internal organisation and staffing regulations, to audit reports and annual activity reports. In RS public registers of recommendations arising from financial audits and performance audits have been in place since July 2014. All interested parties can use the registers to see the recommendations given to institutions as well as the extent of their implementation.

Problems have been observed with regard to the transparency of the Audit Office of the Institutions of BiH. Specifically, in 2014 the Deputy State Auditor Dževad Nekić³⁶³ gave dissenting opinions about four institutions, but these opinions were never published on

the official website of the Audit Office of the Institutions of BiH. Of these, three were adverse opinions and one was qualified opinion. Adverse opinions were issued for the Agency for Identification Documents, Registers and Data Exchange of BiH (IDDEEA), BiH Ministry of Finance for EUR 37 million worth of unregistered movable property, and BiH Border Police due to repeated failures to ensure fair competition in public procurement of official cars. A qualified opinion was issued for the BiH Veterinary Office due to lack of transparency and repeated recruitment based on temporary service contracts to positions envisaged under the internal staffing plan.

The SAIs are found to generally comply with their obligation to inform the competent parliaments and the public about their findings and recommendations through timely release and public disclosure of audit reports. The main objective of audit offices is public disclosure of audit reports. Any failure to make these reports publicly available would lead to complete politicisation of the audit function. Codes of Ethics require auditors to maintain their independence from political influence in order to discharge their audit responsibilities in an impartial manner. Therefore, the audit staff and management of audit offices must be professional and explicitly apolitical.

ACCOUNTABILITY (LAW)

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

SCORE 75

Evaluations of the SAIs' performance are conducted periodically on the initiative of the parliamentary finance and budget committee and are performed by a specially formed working group of auditors from other countries in accordance with the peer-review concept.

According to current legislation, the SAIs are required to apply INTOSAI³⁶⁴ auditing standards developed by the International Organisation of Supreme Audit Institutions and auditing standards of the International Federation of Accountants, i.e. International Standards on Auditing. In the meantime, “INTOSAI auditing standards” have become the ISSAI³⁶⁵ standards. The ISSAI auditing standards include four levels of standards and principles: founding principles (Level 1), prerequisites for the proper functioning of SAIs (Level 2), basic principles of auditing (Level 3), and guidelines on auditing (Level 4). The prerequisites for the proper functioning of the SAIs define, *inter alia*, principles of transparency and accountability, and a code of ethics.

Furthermore, the audited entities continue to be monitored after the audit period, and account is taken of actions taken to implement the recommendations contained in audit reports, new reports on compliance with the law are produced, and relevant information is prepared to be disclosed to the media and the public in annual audit reports. As has been mentioned earlier, the greatest progress has been made in RS, where a public register of financial audit recommendations and a register of performance audit recommendations have been set up.

The SAIs are required to capture the key findings and recommendations from financial audits, performance audits and special audits in their annual audit reports submitted to parliaments. Annual audit report must be submitted along with the report on the audit of the government’s consolidated annual budget execution report as its integral part.

Financial audit is the best developed component of public sector auditing. It implies a review, in accordance with adopted auditing standards, of financial statements and related accounts of institutions being audited to assess whether the financial statements are reliable

and whether the balances provide accurate indicators of budget execution. Performance audit, on the other hand, is in the early stages of development, and decisions on the appropriate model of organising compliance audit have yet to be made. Performance audits were introduced in RS and FBiH in 2007, while the first performance audit at the state level was not conducted until as late as 2012. Compliance audits are carried out only partially, and only as part of financial audits.

The relevant legislation on SAI does not prescribe the possibility for the audited public sector institutions to officially appeal against the audit results.

ACCOUNTABILITY (PRACTICE)

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

SCORE 75

There are no discrepancies between statutory obligations and practices when it comes to reporting on the work of the SAIs in BiH. All SAIs regularly submit annual activity reports to the competent parliamentary committees, as well as the quarterly, biannual and annual financial reports. The SAIs comply with the statutory requirements regarding the preparation of annual work plans and publication of reports on audits conducted in institutions at all levels. However, the criteria according to which the SAIs in RS and FBiH choose auditees when adopting their annual audit plans remain vague and opaque. As a consequence, some institutions in RS and FBiH get audited much more often than other institutions. It is to be mentioned here that in RS there is a statutory obligation requiring the SAI to conduct mandatory financial audits in nine institutions³⁶⁶. At the state level and in Brčko District BiH annual audits are conducted in all public institutions.

It is important to note that there are no translations of all parts of the relevant ISSAI framework available in B/C/S languages. Also, there is no systemically organised process of translating and ensuring availability of up-to-date translations of auditing standards for the audit staff as well as other interested users, including users of information in audit reports. Solving this problem is of special importance for the future development of the SAIs in BiH. The fastest, most efficient and most cost-effective way of achieving this is to rely on translations of the applicable auditing standards that are available in neighbouring countries (e.g. Serbia or Croatia). This is certainly an obligation which in the future should be addressed by the SAI Coordination Committee as a body representing BiH in the International Organisation of Supreme Audit Institutions.

As required by the provisions relating to the competences, deadlines and annual audit plan, contained in the Law on Auditing of the Institutions of BiH, the SAIs have established a very stable practice of public disclosure of annual financial audit reports with structured, consistent and comparable contents of audit reports. All reports are published and made publicly available on the four official websites.

Also, the SAIs regularly release annual activity reports and financial reports. Generally, independent financial audit of the SAIs is conducted following a request of the competent parliamentary commission/committee and is carried out by the parliamentary committee responsible for audit and/or an independent audit firm. The SAIs still do not have the mandate to independently initiate criminal and misdemeanour proceedings, nor do they do it in practice, but they are required to perform audits in accordance with the relevant legislation, international standards and generally accepted international practices in public sector auditing. However, if the SAIs find or document certain indications of major violations of law, they are required to inform law enforcement

and investigation authorities. There is also the already mentioned new practice in RS, where every adverse opinion report is delivered to the RS Chief Prosecutor.

Auditors are not liable for the acts of commission or omission committed in the course of their work, unless these constitute a criminal offence. At the same time, auditors are entitled to protection by the state authorities from any attacks, insults or unjustified actions related to the execution of their duties. It should be noted that none of the auditors in all four SAIs in the country has so far faced disciplinary and/or criminal liability.

What constitutes a matter of particular concern is the already mentioned case of issuing adverse opinions on the financial statements of the Agency for Identification Documents, Registers and Data Exchange of BiH (IDDEEA) and subsequent pressure from the IDDEEA director in the form of letters and objections to auditors' work. As there has been no appropriate response to the behaviour of the IDDEEA Director by the authorities, there are concerns that similar incidents may occur in the future.

INTEGRITY MECHANISMS (LAW)

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

SCORE 100

The SAIs in BiH, like most government audit offices around the world, have their own codes of professional ethics, which are based on the code of conduct for state auditors. Public sector auditors are required to follow the International Standards of Supreme Audit Institutions (ISSAI), including, *inter alia*, the Code of Ethics for Auditors in the Public Sector. The INTOSAI Code of Et-

hics is directed at the individual auditor, the head of the SAI, executive officers and all individuals working for or on behalf of the SAI who are involved in audit work. The International Standards of Supreme Audit Institutions (ISSAI), which are developed by the International Organisation of Supreme Audit Institutions (INTOSAI), aim to promote independent and effective audit performed by the supreme audit institutions.

Laws on public sector auditing and applicable codes of ethics impose an obligation on the auditor to be straightforward and honest in all professional and business relationships. His/her professional integrity implies honesty, fairness and truthfulness. He/she should not be connected with reports, responses, statements or other information if he/she thinks that they contain a material error or misstatement, or that they contain a statement or information that was obtained in a negligent manner. He/she must not omit, conceal or misrepresent information such as to mislead the users of that information.

In conducting recruitment procedures special account is taken of the integrity of each candidate through imposition of a number of general and special requirements to be met by a candidate in order to be employed in the SAIs. The Republic of Srpska went a step further with the recent adoption of amendments to the Law on Public Sector Auditing of RS introducing certification for public sector auditors. Under Article 38a of the said Law, a person who fulfils the requirements for the position of the public sector auditor is issued a certificate. This certificate is entered in the public register of titles, which is maintained and updated by the Audit Office and published on its website.

INTEGRITY MECHANISMS (PRACTICE)

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

SCORE 50

Although so far there have been no reported cases of misconduct or serious breaches of the Code in any of the four SAIs, this does not mean that such cases have not occurred. The Code applies to all employees, the audit and non-audit staff alike, as well as the management structures.

Appointment of Duško Šnjegota as Auditor General of the Supreme Office for the RS Public Sector Auditing was marked by strong public disapproval, particularly in terms of his objectivity and integrity, since he was appointed to this position directly from the office of the Assistant Minister of Finance. Thus, in the first year of his term of office, the Auditor General audited the budget in whose creation he himself had been closely involved. Also, the Law on Public Sector Auditing of RS seems to have been violated. Namely, this piece of legislation expressly prohibits the Auditor General and Deputy Auditor General from participating or deciding in audits of the institutions in which the Auditor General or Deputy Auditor General were members of the management during the previous two years.

As part of continuing professional development, the personnel and management of the SAIs receive regular training on issues of integrity.

EFFECTIVE FINANCIAL AUDITS

To what extent does the audit institution provide effective audits of public expenditure?

SCORE 50

Financial audit is conducted according to the established methodology. Subject to audit are always annual financial statements and financial audit is, therefore, conducted on an annual basis. On the other hand, the objective of performance audit is to assess the efficiency and cost-effectiveness of a specific process, the criteria are generally more subjective and reports are not standardised, plus the structure of the content is different.

Internal audit legislation³⁶⁷ imposes an obligation on the public sector institutions to establish an effective internal audit system as well as the obligations relating to a systematic review and assessment of risk management, internal controls and organisation's management. It also imposes the obligation to audit the adequacy and effectiveness of the financial management and control systems. Central Harmonisation Units operating under the ministries of finance at the state and entity levels are responsible for monitoring the implementation of internal audit regulations, coordinating the work of internal audit units in institutions, and reporting on internal audit activities.

According to some sources³⁶⁸, the cooperation between the Audit Office of the Institutions of BiH and the Central Harmonisation Unit operating under the Ministry of Finance of BiH is seen as adequate but not optimal. At the same time, the cooperation of the SAIs with the respective Central Harmonisation Units operating under the Ministries of Finance in FBiH and RS is still in very

early stages of development. The Audit Office of the Institutions of BiH, as well as the other three SAIs in the entities and in Brčko District BiH, could significantly enhance their work if the internal audit system in public institutions was to be improved. Better internal audits could certainly be used for improving audit planning as well as giving more specific recommendations for improving work in certain institutions.

The Audit Office of the Institutions of BiH has, since its inception, focused on financial audits, i.e. review of the financial statements and related accounts of institutions, with the aim of assessing whether the financial statements are reliable and fully reflect the results of budget execution. However, the links between the SAIs and the ministries of finance in relation to the control of public expenditure are only being established. It is expected that the efficient and effective internal audit will lead to improved external audit of the public sector, particularly related to the implementation of more complex forms of audit – performance audit and risk control.

DETECTING AND SANCTIONING MISBEHAVIOUR

Does the audit institution detect and investigate misbehaviour of public officeholders?

SCORE 50

Under the relevant legislation, the SAIs may require from the institution being audited to deliver the following within a specified period of time, in writing: any information; any document or information, including data in electronic form, which is kept by the institution or which is under the control of the institution. Also, the SAIs are entitled to request that the information or responses to questions be submitted in writing or

orally, that the information or responses to questions be verified by statement in writing or by certificate, as well as to examine, copy or take extracts from any document.

The audit institutions have adequate mandate and professional procedures with which to successfully identify financial operations which deviate from the current legal regulations. At the same time, the SAIs do not act in the capacity of inspection or supervision practiced by the financial police, investigative institutions or disciplinary boards.

Over the last ten years, the SAIs have developed and publicly released several hundred audit reports containing thousands of recommendations. The public sector has been very slow to grasp how important these recommendations are and that their implementation is the main mechanism for the promotion of transparency and accountability in the public sector. Of particular concern are the identified irregularities and breaches of the law indicating (potential) corruption and abuse of power in audited institutions. All four SAIs point to continued violations of the public procurement legislation by almost two thirds of the institutions audited. Analysis of the 2013 annual reports of the SAIs indicates that in the area of public procurement irregularities occur in a number of institutions to a greater or lesser extent. One of the most common complaints relates to the execution of public contracts (inefficient system of internal controls and lack of safeguards in contracts). So far, however, nobody has been sanctioned in connection with the identified irregularities and violations of the law.³⁶⁹

Overall, cooperation between the SAIs and the competent prosecutors' offices can be qualified as weak. There are no mutually defined rules relating to the determination of responsibility for failures identified in audit reports, and there is no adequate mechanism for

coordination of representatives of these institutions.

In recent years, however, the awareness of their importance has been growing, and the percentage of implemented recommendations has increased and now ranges from 55 to 60 per cent, with a continuing upward trend. The SAIs in BiH can be satisfied with the growing awareness and need for improvement through the adoption and implementation of the recommendations contained in audit reports, but still cannot be satisfied with the extent of their implementation, especially given the fact that in developed democracies, this extent ranges up to 95%.³⁷⁰

IMPROVING FINANCIAL MANAGEMENT

To what extent is the SAI effective in improving the financial management of government?

SCORE 25

The SAIs can be said to attach great importance to creating comprehensive, thorough and realistic recommendations with a view to promoting efficiency in the use of public funds. What is still missing, however, is an appropriate and supportive institutional framework, as well as support from relevant institutions and political establishment, for the implementation of recommendations.

Primarily, it can be said that the internal audit of institutions is still in very early stages of development. The importance of internal audit in respect of the implementation of SAIs' recommendations consists in the fact that it helps the institution to fulfil its objectives, ensuring a systematic and disciplined approach to assessing and improving the effectiveness of the risk management, control and management processes. Of particular

concern is the absence of a legal framework defining the aspects of financial management and control in FBiH³⁷¹ and its poor implementation at the national level and in RS. Hence the opinion that there has been little progress in the area of financial control.³⁷²

One of the tangible results of the state-level SAI over the last ten years is the fact that the finance and budget committees of the Parliamentary Assembly of BiH have adopted their own procedures for acting on financial audit reports.³⁷³ The committees are obliged to seek from audited institutions explanations for audit findings and opinions, and audited institutions are obliged to provide them with these. This also includes the “hearings” of the management of the audited clients. However, such practice does not yet exist in the entities and in Brčko District.

Unfortunately, the authorities often continue to disregard the recommendations addressed to them. Thus, each year the SAIs’ reports are repeated, and the institutions that spent their budgets inadequately continue to operate unchanged and with impunity. Audit reports and their findings and recommendations are usually subject to media attention and public debate for several days, after which the same are ‘filed away’ by the competent institutions. In recent years several think tank organisations have emerged which are primarily engaged in the issues of improving public finance management and expenditure of public funds. Thanks to their efforts, in September 2014 Bosnia and Herzegovina was admitted to the global initiative “Open Government Partnership” as its 65th member. Preparation of the first action plan is under way, along with measures to improve the situation in the areas of Fiscal Transparency, Access to Information, Disclosure of Information about the Assets of Public Officials, and Citizens Participation.

RECOMMENDATIONS

- Ensure that the SAIs receive appropriate treatment in the state and entity constitutions as well as an appropriate level of (financial and human) resources to conduct all types of audits in the public sector;
- Create public registers of recommendations from financial and performance audits at the state level, as well as in FBiH and Brčko District BiH;
- Improve the functions of internal audit in the public sector by improving the relevant legislative framework and expediting its implementation by the Central Harmonisation Units operating under the ministries of finance;
- Establish closer cooperation between the SAIs and competent prosecutors’ offices, by defining mutual rules on liability for omissions in audit reports, and through better mechanism for coordination of work of these institutions as well as closer cooperation with representatives of relevant ministries of finance with a view to establishing proper financial management and control in public institutions;
- Mainstream and standardise the procedures for parliamentary discussion of audit reports as well as establish mechanisms for corrective measures taken based on audit reports, in order to maximise the impact of public expenditure control.

6.10. ANTICORRUPTION AGENCY

OVERALL PILLAR SCORE: 56/100

STATUS: MODERATE



SUMMARY

Since the release of the previous NIS Study in 2013, the Agency for Prevention of Corruption and Coordination of the Fight against Corruption (hereinafter: the Agency) has enhanced its institutional and administrative capacity to carry out its statutory responsibilities. Hence the marked increase in the overall pillar score compared to the 2013 NIS Study. The Agency has resolved the issue of office space but continues to be understaffed with 23 of the envisaged full complement of 29 members of staff in place. However, this number is still below adequate to ensure effective discharge of all statutory functions. The legislative framework provides for the formal independence of the Agency, but in practice the Council of Ministers exerts considerable influence on the Agency affecting its organisational and financial independence, as is particularly evident from the process

of providing material conditions necessary for ensuring the Agency’s operability, most notably those related to staffing. The Agency’s transparency mechanisms have been improved following the launch of a website which contains information on the Agency’s activities and an online training course in ethics, and which features an option for anonymous reporting of corruption as well as forms for requesting the status of a protected whistleblower. Accountability and integrity mechanisms remain underdeveloped, mainly as a result of the lack of a mechanism for citizens to lodge complaints against the Agency and a mechanism to test the integrity of candidates applying for positions in the Agency. In the recent period, the Agency has been actively engaged in educational activities and has also focused on the implementation, monitoring and coordination of activities related to the implementation of the Action Plan for the Implementation of the Strategy for Combating Corruption (2009–2014) as well as the development of a new Strategy for Combating Corruption and its Action Plan (for the period 2015–2019).

STRUCTURE AND ORGANISATION

In accordance with the statutory responsibilities of the Agency for Prevention of Corruption and Coordination of the Fight against Corruption, its internal organisation is governed by the Rules on Internal Organisation. This implementing regulation provides that the Agency will have a total of 29 employees, three of whom will have the status of appointed persons (the director and two deputies), three managerial civil servants, a chief of staff, sixteen civil servants and six employees. The Agency currently employs 23 of the envisaged full complement of 29 members of staff. The Agency has four basic organisational units: Director’s Office, Corruption Prevention Sector, Sector for Coordination of the Fight Against Corruption, and Sector for Legal, Personnel, General and Financial Affairs. Sectors as basic organisational units are headed by Deputy Directors, while the Director’s Office is headed by the chief of staff.

TABLE WITH SCORES

ANTI-CORRUPTION AGENCY

OVERALL PILLAR SCORE 2013: 27/100

OVERALL PILLAR SCORE 2015: 56/100

DIMENSION	INDICATOR	LAW 2013	LAW 2015	PRACTICE 2013	PRACTICE 2015
CAPACITY 2013 31/100 CAPACITY 2015 50/100	RESOURCES INDEPENDENCE	50 50	50 50	0 25	50 50
GOVERNANCE 2013 33/100 GOVERNANCE 2015 67/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY	100 50 25	100 50 75	25 0 0	75 50 50
ROLE 2013 17/100 ROLE 2015 50/100	PREVENTION EDUCATION SANCTIONING			50 0 0	75 75 0

RESOURCES (LAW)

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

SCORE 50

The funds necessary for the work of the Agency are provided from the budget of BiH institutions. The Director legally represents the Agency and is authorised to draw up a budget proposal which is submitted to the relevant institutions (Ministry of Finance and Council of Ministers of BiH) for further procedure.³⁷⁴ Once budget funds have been allocated for its operation, the Agency has the funds at its disposal and utilises them in line with its annual work plan. Also, the procedures for the execution of the budget of BiH institutions allow the Agency to seek a restructuring of its revenues as well as a reallocation between budget users. This request must be supported by appropriate explanatory material that is based on cost estimates, cost-benefit analyses, analyses of priorities, as well as elements of expected outcomes and objectives (in the same way as for the proposed annual budget of the institution).³⁷⁵ There is no legal basis for the Agency to directly obtain additional financial resources for the financing of its work from funds raised through confiscation of material gain acquired through perpetration of a criminal offence.³⁷⁶ All this indicates that the current legal framework allows the executive to exert some influence on staffing issues and the overall work of the Agency through the procedure for approving and revising the budget.

The current legislative framework allows for a considerable influence to be exerted by the executive branch, via the budget approval and revision procedure, on the personnel policy and overall work of the Agency. Also, the Law on the Agency does not define the mechanisms to be used in case of violation of the Law or failure to

cooperate with the Agency.

RESOURCES (PRACTICE)

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

SCORE 50

In 2014 the Agency had an annual budget of KM 1,130,000 (EUR 577,759.83), as set by the Law on Budget of the Institutions of BiH and International Obligations of BiH. By 31 December 2014 the Agency spent 88% (EUR 500,509) of the approved amount because the recruitment of new personnel did not go as planned.³⁷⁷ The Agency's annual budget for 2015 is set at KM 1,321,000 (EUR 675,416.58).

In 2014, despite the moratorium on recruitments in the institutions of Bosnia and Herzegovina, the Agency obtained approval for recruitment of six additional civil servants, which helped increase the Agency's overall operability and created conditions for the Agency to carry out its main statutory responsibilities. In late 2014, the Agency had 23 of the envisaged full complement of 29 members of staff, which was insufficient for efficient operation. Agency continues to face a general lack of personnel with strong analytical skills, as well as legal and ICT experts.³⁷⁸

In September 2014 and again in April 2015 the Agency submitted to the CoM BiH the new draft rules on internal organisation and staffing. The new draft rules were prepared in order to fulfil the obligation to bring the rules of all BiH institutions in line with the Decision of the CoM BiH on the Principles for Determining the Internal Organisation of the Administrative Bodies of Institutions of Bosnia and Herzegovina. Additionally, following the adoption of the new Amended Law on Conflict of Interest in Governmental Institutions of BiH, which

provided for the transfer of the Commission for Conflict of Interest from the Central Election Commission to the Agency, further changes and amendments had to be made to the Agency's Rules to allow for the establishment of new positions and recruitment of new staff as required under the Amended Law. Also, following the adoption of the Law on Whistleblower Protection in the Institutions of BiH, according to which the responsibility for implementing the Law rests with the Agency and the Administrative Inspectorate of the Ministry of Justice of BiH, the Agency's rules on internal organisation had to be amended yet again so as to include a legal definition and job description for the new position. After more than a year since they were submitted to the CoM, the Rules were finally adopted on 23 July 2015.

The Agency has temporarily solved its accommodation problem by renting office premises in Istočno Sarajevo, which provide optimal working conditions. Funds have been provided in the budget for covering the costs of the rent and all other associated costs (water, electricity, utilities, telephone, etc.). Using donor funds (in particular from USAID) and budget funds earmarked for capital purposes, the Agency has equipped the leased offices with the necessary infrastructure to provide optimum working conditions for its staff and enable them to effectively carry out their responsibilities in practice.

Acting on the recommendation of the Audit Office of the Institutions of BiH, the Agency has adopted a HRM strategy.³⁷⁹ Also, the Agency has developed and adopted all the necessary internal rules concerning ethical behaviour and integrity checking of employees before they take up their duties.³⁸⁰ The Agency has adopted a training plan for its employees, and training of civil servants is also provided by the CSA BiH. The Agency also provides training to other civil servants from all levels of government in BiH, most notably on issues related to prevention of corruption.

Performance appraisal of civil servants is carried out in accordance with the law and the rules on the performance appraisal of civil servants.³⁸¹

INDEPENDENCE (LAW)

To what extent is the ACA independent by law?

SCORE 50

The law provides that the Agency is an independent and autonomous administrative organisation, which reports solely to the Parliamentary Assembly of BiH.³⁸² Pursuant to the Law (Art. 13 and 16), the director and two deputies are appointed by the Parliamentary Assembly of BiH at the proposal of a special Committee for Selection and Monitoring of the Agency, by way of open competition, for a term of five years.

The key mechanism for ensuring the Agency's independence from political and other influence is established by the fact that the law provides for a special body (the Commission) which reports to the parliament, and which is responsible for monitoring the Agency's work and informing the Parliament. The Commission has no authority to interfere in the daily work of the Agency, or to request information held by the Agency relating to individual cases.³⁸³ With a view to improving the relevant legislative framework, in particular insofar as it relates to defining the status of the Commission for Selection and Monitoring of the Agency, amendments have been made to the Law on Agency for Prevention of Corruption and Coordination of the Fight against Corruption further expanding the Commission's supervisory powers over the Agency, but the Agency's independence has remained largely unaffected by these changes. The amendments are primarily related to the capacity of the Commission, the selection and dismissal of its members, as well as administrative support to the Commission. Furthermore, they outline the procedures

for the appointment and dismissal of the Director and Deputy Director of the Agency.³⁸⁴

One of the issues affecting the Agency's independence is the contentious legal mechanism whereby the Agency's Rules on Internal Organisation and Staffing are passed by the director with the prior consent of the Council of Ministers.

INDEPENDENCE (PRACTICE)

To what extent is the ACA independent in practice?

SCORE 50

The legislative framework provides that the Agency is an independent and autonomous administrative organisation, which reports solely to the Parliamentary Assembly of BiH. In practice, however, the Council of Ministers of BiH exerts substantial influence on the Agency affecting its organisational and financial independence. This is particularly evident from the process of providing material conditions necessary for ensuring the Agency's operability, most notably those related to staffing.

Since the release of the previous NIS Study in 2013, the Agency has undertaken a series of activities to inform the public and institutions of its roles and responsibilities. There have been no reported cases of the Agency's competence and scope of remit being challenged by other institutions. Also, the Agency has enhanced its overall communication with all institutions, especially those at the state level.

TRANSPARENCY (LAW)

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

SCORE 100

The Agency has an obligation to make information about its work accessible to the public, and the key principles of the Agency's operation (in addition to legality, equal access, continuity, etc.) are transparency and openness to public scrutiny.³⁸⁵ Regulations define the Agency's obligation to inform the public about all aspects of corruption as well as publish reports, analyses and other documents. The law provides for two modes of reporting to the public: (a) via the website or (b) in another way.³⁸⁶ Public access is also provided for indirectly under the Law on Freedom of Access to Information, upon request made by any natural or legal person.³⁸⁷

Also, by taking part in various events dedicated to the broader context of anti-corruption efforts and reaching out to different target groups, the Agency aims to present all aspects of its work and relay key messages by mobilising all relevant stakeholders to proactively participate in the prevention of corruption.

TRANSPARENCY (PRACTICE)

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

SCORE 50

There are maximum provisions and mechanisms in place ensuring direct and efficient access to information

about the work of the Agency. The Agency has office premises equipped with all technical prerequisites necessary for the smooth running of its website, which is accessible to all interested parties. The website is regularly updated with information about the Agency's day-to-day work. It also offers an online training course on ethics for civil servants, which can be taken by any civil servant who wants to improve his/her knowledge. Also, the website has an option for anonymous reporting of corruption as well as forms for requesting the status of a protected whistleblower. The Agency has adopted all the necessary internal procedures to ensure the required level of transparency. The Agency's communications strategy envisages implementation of a series of measures and activities aimed at increasing transparency.

ACCOUNTABILITY (LAW)

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

SCORE 50

The mechanism of oversight of the Agency, which includes the submission of reports on its work, is set up in such a way to impose an obligation on the Agency to submit biannual reports on its work to an independent parliamentary commission.³⁸⁸ Although there is no legal requirement to make these reports public, there is a legal provision under which all sessions of the independent parliamentary commission are open to the public, which is an indirect mechanism for gaining access to the Agency's reports. Also, the law establishes the obligation of public disclosure of the Agency's annual reports.³⁸⁹ Annual reports are published on the Agency's website upon the approval and adoption by the Parliamentary Assembly of BiH.

However, individual cases are strictly protected by the provisions of the law which stipulate that even the Independent Parliamentary Commission for the Selection and Monitoring of the Agency's Work has no right to request information about individual cases.³⁹⁰

Following adoption of the Law on Whistleblower Protection, the Agency fulfilled in a timely manner all its obligations related to the implementation of the Law. This included development of a template for whistleblower protection regulation, which was shared with all institutions. Based on this template, the institutions have drawn up their own whistleblower protection regulations. The Agency has also adopted an internal regulation for the protection of whistleblowers in the Agency. The Agency is currently preparing Internal Regulations on Handling Corruption-related Complaints.

Citizens and legal persons are allowed to lodge complaints about the work of the Agency's employees, in a manner provided for under the Code of Conduct. There are no clearly defined procedures and mechanisms in place for judicial oversight of the Agency's work, with the sole exception of provisions for dismissal of the Agency's director. The independent Parliamentary Commission for Selection and Monitoring of the Agency is of mixed composition, being made up of representatives of both parliamentary chambers, academia and an NGOs representative. As MPs make up a relative majority in the composition of the Commission, the mechanism of civilian oversight of the Agency's work can be said to exist only partially. Influence of the Council of Ministers within the existing institutional framework remains substantial even though the Agency is defined as an independent and autonomous administrative organisation which reports solely to the Parliament of BiH. It is typically manifested as influence on the Agency's internal organisation, staffing and training of staff. As a result, the accountability system in the existing institutional framework remains ill-defined.³⁹¹

Being financed from the budget, the Agency is subject to regular auditing by the Audit Office of the Institutions of BiH.³⁹²

ACCOUNTABILITY (PRACTICE)

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

SCORE 50

The Agency has submitted to the independent parliamentary commission several performance reports, which were adopted and posted on the official website of the Parliamentary Assembly of BiH.³⁹³ The Office for Audit of Institutions of BiH released the findings of financial audits conducted at the Agency and made them available to the public.³⁹⁴ The Agency informs the general public about its daily activities using press releases, public appearances of Agency officials and other suitable methods of information dissemination.

Protection of whistleblowers' anonymity is guaranteed. When communicating with the competent institutions, especially with the competent prosecutors' offices, the Agency shall make sure that the anonymity of persons who report corruption is protected. Also, with a view to ensuring the best possible protection of whistleblowers, the Agency designates specific members of its personnel to have sole access to online complaints and be solely in charge of answering calls to the dedicated corruption reporting hotline.

INTEGRITY (LAW)

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

SCORE 50

The Agency has a code of conduct in place containing all the necessary mechanisms to ensure the integrity of its employees. It includes general rules and standards of behaviour for managers, general principles relating to communication with citizens, conflicts of interest rules and mechanisms for handling citizen complaints about the Agency's employees.

Using the methodology for preparing integrity plans, which was developed by the Agency for the institutions of BiH, the Agency has developed and adopted its own integrity plan with the aim of enhancing transparency and efficiency of its work as well as reducing and eliminating factors that cause corruption. Implementation of the integrity plan is expected to increase the amount of information that is vital for decision-making and elimination of possible corrupt behaviour. The integrity plan is a document that presents the results of the process of self-control and self-assessment of the Agency as a whole, as well as of each of its organisational units, with the aim of maintaining and enhancing integrity, transparency and professional ethics. The plan includes recommendations for improvement along with a list of corruption prevention measures to be taken, a list of responsible persons and a timeline for implementation of the recommendations. The recommendations are to be carried out on an ongoing basis and in compliance with the defined timeframes. Also, the integrity plan envisages the setting up of control mechanisms for the implementation of preventive measures aimed at reducing the risk of corruption in the Agency, as well as for the implementation of the integrity plan.

INTEGRITY (PRACTICE)

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

SCORE 50

Adoption of the Integrity Plan has created conditions for the implementation of integrity mechanisms in practice. The plan includes recommendations for improvement along with a list of preventive measures aimed at reducing the risk of corruption. The plan also lists the responsible persons and defines a timeline for implementation of the recommendations. Additionally, based on the Education Programme, a training seminar was organised for all employees related to the implementation of integrity plans. In parallel with this process, employees of the Agency provide training to other civil servants on topics relevant to the implementation of integrity plans as a mechanism for prevention of corruption. The Agency has a Code of Ethics that is enforced in practice, but so far there have been no cases of violation of its provisions, and consequently no sanctions.³⁹⁵

As the Agency does not follow the procedure for selection of civil servants, it cannot adopt additional internal rules for testing the integrity of candidates applying for positions in the Agency or testing prior to employment.

PREVENTION (LAW AND PRACTICE)

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

SCORE 75

In accordance with its statutory responsibilities, the

Agency started early preparations for the development of the new Strategy for Combating Corruption and the accompanying Action Plan for the period 2015–2019. To this end, the Agency created a strategy drafting methodology and initiated formation of an inter-ministerial working group charged with drafting the strategy and action plan. In late 2014 the inter-ministerial working group, headed by a representative of the Agency, prepared a draft Strategy and Action Plan, which the Council of Ministers adopted in May 2015. In the area of integrity improvement the Agency has developed a methodology and guidelines for developing integrity plans and made them available to all agencies that are under obligation to draw up their own integrity plans. Following bilateral meetings with representatives of BiH institutions, the Agency supported the development of integrity plans through training, instruction and advice and gave an opinion on the content of integrity plans for 47 BiH institutions.³⁹⁶ Another important segment of preventive anti-corruption efforts is preparation of institutional anti-corruption plans. The Agency has provided assistance and expert opinion to 67 institutions in the development of their anti-corruption plans. Furthermore, it performs regular monitoring and coordination of implementation of these anti-corruption plans. Special attention was devoted to the coordination of the fight against corruption by way of holding expert-consultative meetings with representatives of institutions at all levels of government in BiH.³⁹⁷

The Agency's website offers an online training course on ethics for civil servants. Also, the Agency has prepared and adopted a communication strategy with a view to enhancing the effectiveness of its communication mechanisms. This will help the Agency to perform one of its key functions and improve coordination of the bodies which have an anti-corruption component in their mandates, but also to enhance the overall coordination of activities aimed at the prevention of corruption.

Following its active participation in the drafting of the Law on Whistleblower Protection in the Institutions of BiH, the Agency has helped other institutions draft their own internal regulations on the protection of whistleblowers. With regard to GRECO's recommendations to the Council of Ministers, the Agency initiated formation of an inter-ministerial working group for drafting amendments to the Law on Party Financing.

In terms of human resources, the Agency needs to improve its capacity to carry out research and studies on anti-corruption efforts in Bosnia and Herzegovina.

EDUCATION (LAW AND PRACTICE)

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

SCORE 75

The Agency's main role is to develop educational programmes on corruption prevention and anti-corruption combat, and supervise their implementation. The Agency provided continuous training both for its own employees as well as on ethics and integrity for employees of other institutions in BiH. In 2014, with the support of several NGOs, CSA, OSCE, IPA, PAC and other organisations and initiatives, the Agency delivered over 70 training sessions on the prevention of corruption in the form of seminars, workshops, round tables or as part of working groups. The Agency also offers online training courses on ethics for all civil servants who want to improve their knowledge. Additionally, it provides training to other civil servants from all levels of government in BiH, most notably on issues related to prevention of corruption.

The Agency has signed memorandums of cooperation

with several NGOs³⁹⁸, and the Agency's management regularly attends events organised by civil society.

INVESTIGATION (LAW AND PRACTICE)

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

SCORE 0

Pursuant to the existing regulations, the Agency has no investigative powers with regard to combating corruption in BiH. In cases of possible receipt of reports containing indications of corrupt behaviour, the Agency forwards such information, in accordance with the law, to the relevant police or prosecutorial authorities responsible for criminal prosecution of perpetrators. In 2014 and the first ten months of 2015 the Agency received about 220 reports/complaints. Of these, over 90% have been forwarded to the competent authorities for further action, while a small number of complaints were found to be unsubstantiated or the competent authorities had already been informed of the same case. Investigative procedures have been initiated based on some of the complaints, while others were found to be unsubstantiated. In the context of a very complex constitutional structure in BiH, where there are several levels of government with different competences of security services, the Agency was established as a governmental body that will coordinate, in the domain of repression, the work of institutions having public authorities in combating corruption. This basically means that the Agency has no authority to issue binding orders to act repressively, nor can it urge other criminal prosecution institutions to apply repressive measures against any person.

RECOMMENDATIONS

- Improve the legislative framework, in particular by introducing mechanisms for handling violations of the Law or failure to cooperate with the Agency;
- Enhance the Agency's analytical and research capacities through provision of additional training for the personnel;
- Strengthen the Agency's coordination role and improve cooperation with all institutions with anti-corruption mandates as well as cooperation with institutions in the preparation, implementation and monitoring of integrity plans;
- Improve mechanisms to monitor implementation of the strategic documents falling within the Agency's scope of remit;
- Establish effective channels of communication between the Agency and institutions at all levels of government with the aim of informing the institutions of their obligations arising from the strategic documents, and provide technical and advisory assistance to institutions in the implementation of their obligations.

6.11. POLITICAL PARTIES

OVERALL PILLAR SCORE: 32/100

STATUS: WEAK



SUMMARY

Regulations governing the establishment and operation of political organisations vary across different administrative levels in BiH. Furthermore, regulations pertaining to budget allocations for the operation of political parties put parties in an unequal position, generally to the benefit of the ruling parties.

Although some progress has been made in improving the transparency of political parties in terms of eliminating the barriers to publishing the identities of individual donors to parties, there are many aspects of parties' operations that remain extremely opaque. The absence of detailed audits of parties' costs and limited public availability of parties' expenditures, due to the imprecisely defined mandate of Central Election Commission, leaves ample room for irregularities. Numerous violations of regulations on political party financing, as well as sanctions that are extremely soft compared to the potential benefits derived from violating the law, only go to show that the financial accountability of parties is low.

In addition to doing a very poor job of representing the interests of citizens and various social groups, political parties have turned into interest groups representing personal, financial and political interests of their own leaders, which is why, according to corruption perception surveys, they are perceived as the most corruption-prone segment of society.

STRUCTURE AND ORGANISATION

At the level of BiH there is still no single countrywide law on political parties, so the establishment and registration of parties takes place at the level of entities, under the relevant entity laws on political organisations.³⁹⁹ In October 2013 the Ministry of Justice of BiH prepared a Preliminary Draft Law on Political Parties in BiH⁴⁰⁰, but it has not been adopted yet.

The legislative framework has remained unchanged compared to the 2013 NIS Study, and is still unbalanced, consisting of entity laws on political organisations, the Law on Party Financing of BiH, the Law on Party Financing from the Budgets of the Republic, Cities and Municipalities of RS⁴⁰¹, the Law on the Party Financing from the Budget of Brčko District BiH⁴⁰², as well as the Election Law insofar as it concerns the financing of election campaigns.

TABLE WITH SCORES

POLITICAL PARTIES

OVERALL PILLAR SCORE 2013: 36/100

OVERALL PILLAR SCORE 2015: 32/100

DIMENSION	INDICATOR	LAW 2013	LAW 2015	PRACTICE 2013	PRACTICE 2015
CAPACITY 2013 63/100 CAPACITY 2015 63/100	RESOURCES INDEPENDENCE	75 75	75 75	50 50	50 50
GOVERNANCE 2013 33/100 GOVERNANCE 2015 33/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY MECHANISMS	25 50 75	50 25 75	0 25 25	25 25 0
ROLE 2013 13/100 ROLE 2015 0/100	INTEREST AGGREGATION & REPRESENTATION ANTI-CORRUPTION COMMITMENT			25 0	0 0

The CEC BiH is still responsible for implementation of the regulations on party financing and the Election Law of BiH. According to CEC BiH's records, as of the end of 2013 there were a total of 119 political parties registered in the country⁴⁰³, of which 98 took part in the 2014 election.⁴⁰⁴

RESOURCES (LAW)

To what extent does the legal framework provide a conducive environment for the formation and operations of political parties?

SCORE 75

Freedom of association and political organisation is enshrined in the Constitution of BiH. As there is no single law on political parties at the state level, parties are established and registered at the entity level, according to the same principles as identified in the previous NIS Study. The requirements for establishment of a political party remain uneven across different administrative levels, with the founding thresholds varying depending on the jurisdiction. Thus, a political organisation may be founded by at least 50 citizens in FBiH, at least 500 citizens in RS, and at least 300 in the Brčko District of BiH.⁴⁰⁵

Procedures for establishing a political party are simple – political organisations are established at founding assemblies. Within thirty days after its establishment, a political organisation has to apply for registration with the competent entity court and the registration process is completed in 15 days in both entities.⁴⁰⁶ There are no legislative restrictions in place with regard to party ideology or the establishment and functioning of political organisations except for the prohibition against hate speech and discrimination under the Election Law⁴⁰⁷, as well as the obligation to respect fundamental human rights and freedoms.

An environment conducive to the operations of political parties is guaranteed by regulations governing budgetary allocations for the operation of political parties and party caucuses in parliaments at different administrative levels⁴⁰⁸. While in FBiH there is still no law regulating budgetary allocations for political parties, the funding for operation of political parties comes from municipal, cantonal and entity budgets.

Also, recent amendments to the Law on Party Financing of BiH⁴⁰⁹ have vastly raised the ceiling on contributions by individuals, legal entities and party members to KM 10,000 annually for individuals, KM 50,000 for legal entities and KM 15,000 for members. Increased ceiling on contributions and guaranteed budgetary allocations provide more than a favourable environment for political parties to access financial resources for their operation.

When it comes to equality between political parties, while on the one hand the Law states that “officials at all administrative levels who participate in the elections as candidates must not enjoy a privileged position with respect to other participants in the electoral process”⁴¹⁰, the relevant legislation, on the other hand, does not contain any provisions on abuse of power for personal promotion or the promotion of the party, which does happen in practice.

However, the laws themselves put parties in an unequal position in terms of the number of founders required for a party to be established in the entities and Brčko District. On the other hand, the right to direct budget funding is reserved only for the political parties, independent candidates, lists and coalitions that are represented in parliaments at different administrative levels, meaning that parties with more parliamentary seats receive more by way of budget allocations.⁴¹¹

RESOURCES (PRACTICE)

To what extent do the financial resources available to political parties allow for effective political competition?

SCORE 50

According to the data reported by parties in their financial reports, budget allocations account for about 80% of political parties' revenues.⁴¹² According to CEC BiH data, in 2014 a total of KM 17.852.327,66 (circa 10.500.000 USD) was paid to political parties from budgets of various administrative levels, excluding allocations for the operation of party caucuses in the entity, cantonal and municipal assemblies/parliaments⁴¹³. According to a survey conducted by TI BiH by sending queries to municipalities, governments and parliaments at all administrative levels, a total of about KM 24 million (circa 14.120.000 USD) was planned for 2014, including the funding of party caucuses.⁴¹⁴

In practice, however, the transfer of these budget funds is sometimes delayed for several months. Also, it is common for smaller municipalities not to plan these funds in their budgets at all due to budget constraints, which places smaller and opposition parties at some disadvantage as they claim that they have no access to other major sources of financing.⁴¹⁵ Furthermore, there are discrepancies between the funds that are planned for political party financing from budgets at various administrative levels and the amounts that are eventually paid, as evidenced by the increasingly frequent practice of transferring considerably smaller amounts than those originally planned in municipal budgets.⁴¹⁶ Thus, as an illustration, in 2013 the municipality of Gacko transferred only 8.82% and the municipality of Milići as little as 5.80% of the funds planned for that year.⁴¹⁷

Although, according to opposition parties, there is no

noticeable discrimination with regard to the disbursement of funds in favour of either the ruling parties or the opposition parties, the parties in power reap considerable benefits in terms of making free use of the existing infrastructure and resources in governmental authorities and other public institutions and public enterprises. There is also an increasingly common practice in election years for the ruling parties to use the positions they hold in institutions and public enterprises in order to promote the party or indirectly finance election campaigns with funds of the institutions and enterprises⁴¹⁸. Furthermore, according to representatives of political parties, the ruling parties that have been in power for years also have easier access to private sources of financing because they are in a better position to motivate donors to finance them by making not only monetary contributions, but also contributions in kind.⁴¹⁹

INDEPENDENCE (LAW)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?

SCORE 75

The legislative framework and institutions in BiH still provide very good protection to political parties, even in relation to the public interest, as was also found by the 2013 NIS Study. The parties cease operation by the decision of the bodies defined in their statutes, if their membership falls below the statutory minimum, and if they do not perform the activities defined under their statutes for a period longer than provided by law. A party may be banned only if it threatens the principles of democratic governance and the rights and freedoms guaranteed by the Constitution of BiH.⁴²⁰

In the implementation of the laws within its remit, the

CEC BiH can undertake investigations or take appropriate measures, on its own initiative or based on a complaint received. The CEC BiH has the right to seek access to the premises of political parties in order to audit their financial reports, or, if it concludes that a more detailed financial review is warranted. If a political party denies access to its premises, it shall be deemed that it failed to submit the financial report and shall be banned from participating in the upcoming elections.⁴²¹

In the event that there is a reasonable suspicion that the individuals who are members of political parties have committed a criminal offence, law enforcement authorities have the right to undertake necessary investigations. However, even in such cases there are no discriminatory provisions against political parties.

INDEPENDENCE (PRACTICE)

To what extent are political parties free from unwarranted external interference in their activities in practice?

SCORE 50

In BiH there have been no reported cases of any political party being banned, or of any such attempts being made by domestic institutions.

However, discrimination on political grounds is still present. Political parties and their representatives often engage in public verbal confrontations and the spreading of ethnic and religious intolerance. Furthermore, political discrimination is also present among the parties belonging to the same ethnic group, primarily with regard to appointments and employment in the public sector. Inter-party conflicts, particularly at the municipal level, often escalate into physical altercations and blockade of institutions.⁴²²

Inter-party intolerance also affects cooperation between institutions at different administrative levels. For example, if a party holding power at one administrative level belongs to one ethnic group, and a party holding power at another administrative level belongs to another ethnic group, cooperation between the institutions and government representatives at these two administrative levels is hampered.⁴²³ There are frequent accusations coming from the municipal level, especially in RS, to the effect that municipal budgets suffer due to discrimination on a political basis, and that the RS Government undermines the municipalities where local government is run by SDS, i.e. the party that is in opposition at the entity level.⁴²⁴ It is also important to note that because of inter-party conflicts occurring during most of the previous mandate of the FBiH Government (2010–2014), work of the Government was hampered by frequent blockages, which has severely affected the efficiency of governance and decision-making in this entity.⁴²⁵

The CEC BiH, which is responsible for overseeing the activities of political parties, uses its power to deny the right of nomination to parties or candidates in the upcoming elections for failure to submit financial reports only after all other legal means have been exhausted. In 2014 the CEC BiH barred 12 political parties from running for the upcoming elections for refusal to grant access to the premises of the party and failure to submit financial reports sanction⁴²⁶, which is an increase from 2013, when only three such sanctions were imposed.⁴²⁷

Although the High Representative of the international community in BiH exercised the so-called Bonn powers to sanction a large number of public officials in the past (in one case even freezing the bank account of the Serbian Democratic Party), these powers have not been used in the recent period and there have been no cases of blocking the work of parties or dismissals of public officials.

TRANSPARENCY (LAW)

To what extent are there regulations in place that require parties to make their financial information publicly available?

SCORE 50

Neither the freedom of information laws nor the Law on Party Financing make it compulsory for parties to disclose their financial reports.

Although political parties are required by law to keep books and submit annual, pre-election and post-election financial reports to the CEC BiH, these reports are not available in their entirety. Specifically, the CEC BiH is required to publish aggregated annual and electoral financial reports of parties but it does not publish complete reports with all the relevant information.

The very legislative framework limits the transparency of parties and the availability of data on their financing by providing for financial report forms which, for example, under the cost of advertising include only aggregate information on the costs of printing posters, putting up posters, organising election rallies, etc. rather than showing individual expenditures, as well as by failing to provide for the obligation to publish timely and comprehensive information.

However, some progress has been made in this regard since the release of the 2013 NIS Study, most notably in that the CEC BiH has amended the rules and forms for submission of annual, pre-election and post-election financial reports. The amended rules now allow the CEC BiH to publish parts of the reports relating to individual sources of revenues, i.e. the identity of the individuals and legal entities that make contributions to parties.⁴²⁸ However, data on individual expenditures of parties are still not available. These data are especially important

in the case of post-election financial reports because they allow the public an insight into how election campaigns are financed. Additionally, the unavailability of data on parties' expenditures implies that the public does not have an insight into how parties spend funds that are awarded to them on an annual basis from budgets.

The CEC BiH also publishes reports on the audit of political parties, but these reports, too, are very limited in terms of timeliness and quality of information.

TRANSPARENCY (PRACTICE)

To what extent do political parties make their financial information publicly available?

SCORE 25

Since the legislative framework does not require them to do so, political parties invest very little or no effort at all to make their financial reports available to the public. As has been mentioned earlier, the CEC BiH only publishes excerpts from the financial reports of parties, and no complete data are available, especially those relating to parties' expenditures.

In its reports, the CEC BiH publishes detailed information on budget allocations for parties. However, except for the level of BiH, these reports do not include data on allocations for party caucuses at the entity, cantonal and municipal levels, and do not provide a complete overview of allocations for parties – especially given that parties do not submit reports on expenditures for the caucuses, and can use the funds for parties' needs. Thus, for example, the CEC BiH data for 2014 show that the planned funds from the budgets at all administrative levels totalled KM 18.674.869,81⁴²⁹, while a TI BiH's survey into planned funds for 2014 came up with a total of approximately KM 24 million⁴³⁰. This amount is about

KM 5 million higher compared to CEC data precisely because TI BiH data for 2014 capture all forms of budget allocations for parties.

ACCOUNTABILITY (LAW)

To what extent are there provisions governing financial oversight of political parties?

SCORE 25

The legislative framework governing the financing of political parties still contains substantial deficiencies that hamper effective compliance monitoring and law enforcement. These deficiencies were pointed out by the Council of Europe's Group of States against Corruption (GRECO) in its Third Round Evaluation Report on BiH, reiterating that the country has made no progress in the last three years in addressing the following problems:

- Patchy and inconsistent legislative framework on party financing;
- The law does not encourage political parties to use a single bank account for all ingoing and outgoing transfers, allowing them to use of several bank accounts, which results in the use of cash and hinders financial control;
- Lack of transparency of the accounts and activities of the entities that are related, directly or indirectly, to political parties – or otherwise under their control;
- Inadequate resources of the Audit Department of CEC BiH, which supervises the financial reports of political parties, and inadequate mechanisms for ensuring the independence of this body;
- Lack of supervision over parties' expenditures;
- Sanctions are disproportionately low compared to the violations committed;
- The law does not make a clear distinction between expenditures that are considered campaign expenses

and regular operating costs of political parties during campaigns, which prevents independent verification of campaign spending.⁴³¹

As identified in the previous NIS Study, the existing regulations do not separate party functions from professional functions in public enterprises and institutions, and there are no restrictions for public officials to use their position to promote their political party or themselves as candidates, which puts managers of institutions in a privileged position, particularly in the pre-election period. Also, the CEC BiH is not competent to conduct detailed control of how resources are spent, so political parties are left to spend taxpayers' money arbitrarily and however they see fit.⁴³²

Oversight of party financing is still not timely – it is only in the course of regular audits that irregularities are detected. Also, deadlines for publication of audit reports are inadequate. As a result, audit reports are released as late as a year and a half after the election, which is too late for them to have any impact on the election results. And even when violations are found and sanctions imposed, these sanctions are too low to deter political parties from violating the law – ranging from KM 500 to KM 5,000, or up to three times the amount of received contributions if the party exceeded contribution limits or accepted illicit contributions. Under the Election Law, exceeding the expenditure ceilings applicable during election campaigns carries a fine of up to KM 10,000.

ACCOUNTABILITY (PRACTICE)

To what extent is there effective financial oversight of political parties in practice?

SCORE 25

Given the strict legislative provisions prohibiting candidacy in the next election for parties that fail to deliver

their financial reports to the CEC BiH, parties generally comply with this obligation – in 2013 financial reports were submitted by 94 parties.

However, the reliability and credibility of these reports remains questionable, given the aforementioned deficiencies in the legislative framework preventing fully effective financial oversight of political parties. At the same time, year after year CEC BiH continues to detect in its audit reports numerous deficiencies in parties' financial reporting.

According to the report on the implementation of laws falling under the responsibility of CEC BiH, violations of the Law on Party Financing and the Election Law include the following:

- Generating revenues from property not owned by the parties;
- The absence of invoices for purchased goods and services;
- Accepting contributions in excess of the statutory limit;
- Failure to report contributions by individuals and legal entities;
- Failure to submit the financial report within the time limit and in the form prescribed by the relevant law;
- Refusal by the party to grant the Audit Department access to its premises for the purpose of conducting an audit;
- Violation of limits on campaign spending set under the Election Law of BiH.⁴³³

In addition to the above violations, prior to the last amendments to the Law on Party Financing in 2012 that allowed parties to make free use of municipal facilities, the audit reports had for years indicated that a lot of parties used municipal facilities free of charge, in contravention of the Law, thus effectively receiving illicit contributions. TI BiH conducted a study on a sample of

seven political parties and found out that between 2009 and 2012 parties caused losses to municipal budgets across the country to the tune of at least KM 1.1 million (circa 650.000 USD), where this amount is calculated based on the minimum rates for the lease of municipal premises. Had they leased their premises at market rates, municipalities could have generated a total income of up to KM 5,000,000 (circa 2.940.000 USD).⁴³⁴

In 2014, CEC BiH imposed 27 sanctions to political parties for violations of the Law on Political Party Financing, and 2 sanctions for violations of Election Law. The sanctions range from KM 1.000 (circa 590 USD) to KM 13.000 (circa 7.650 USD).⁴³⁵ The amounts of fines are disproportionately low compared to the identified infringements and the gain that parties could obtain through breaking the law.

INTEGRITY MECHANISMS (LAW)

To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?

SCORE 75

Regulations on internal organisation of political parties have remained unchanged since the 2013 NIS Study. The internal organisation, membership, party bodies and the manner of their appointment, as well as many other issues, are regulated by statutes as the highest legal acts of political parties.⁴³⁶ Statutes are largely based on democratic principles and members have the right to elect and be elected to party bodies.

Party leaders are to be elected democratically, i.e. by vote from among several candidates, at party congresses, councils, assemblies, etc. As a rule, candi-

dates for president and vice-presidents of parties are to be nominated by the general committees, as the highest decision-making bodies of parties between two congresses (councils, assemblies).

Selection procedures for other party or non-party functions are often defined in other internal rules, in addition to the statute. The level of democracy in these regulations vary somewhat, in terms of how much discretionary power is left to the party leader(ship) to propose or directly appoint party members to certain functions.

INTEGRITY MECHANISMS (PRACTICE)

To what extent is there effective internal democratic governance of political parties in practice?

SCORE 0

Despite party statutes that prescribe the procedures aimed at ensuring internal democratic governance, in practice there is a noticeable lack of internal democracy and decision-making by the membership of the parties. As a rule, most of the decisions relating to party activities, programme directions and matters of personnel policy are resolved and made by party leaders, possibly in consultation only with the topmost party leadership, while party bodies in the end only serve to verify leadership's decisions.

This personification of political parties is best illustrated by the fact that in some political parties, such as Alliance of Independent Social-Democrats – Milorad Dodik (SNSD), Democratic Front - Željko Komšić, or Alliance for Better Future – Fahrudin Radončić (SBB), the name of their leader is an integral part of the party's name.

The lack of effective internal democratic governance of political parties is further confirmed by the fact that all the major parties in BiH have been headed by the same leaders since their inception and there have been almost no initiatives for any change in their leadership.⁴³⁷ In 2015, most of the major political parties in BiH had their party elections and these elections were the most representative indicator of the lack of internal party democracy. The examples of elections in three big political parties – SNSD, SBB and Croatian Democratic Community (HDZ) – that were held in the short period of time in 2015, showed that the existing presidents ran unopposed and were therefore automatically re-elected.⁴³⁸ In other cases, the existing presidents were re-elected, while their opponents did not win enough votes to even endanger the support that the existing party leaders have within their party.

On the other hand, members who are dissatisfied with the party leadership and its decisions tend to leave the party because they are unable to influence decision making.⁴³⁹ The recent developments in Social-democratic party of BiH (SDP BiH,) which has for years been the most glaring example of the autocratic party rule exacted by its President Zlatko Lagumdžija, show that changes in party structures and their topmost leadership are initiated only after a massive electoral failure.⁴⁴⁰

Furthermore, in practice, any integrity mechanisms proscribed by the legislation or statutes are outweighed by the fact that political parties are perceived as the main generators of corruption, and some of the examples are given below:

- What remains one of the biggest problems attracting the attention of the public and the media, especially amidst the growing unemployment in the country, is public sector recruitments and appointments along party lines, which are considered one of the main

causes of corruption in BiH and an obstacle to its effective sanctioning.⁴⁴¹ A study conducted by the Centre for Civic Initiatives reveals that in BiH there are in excess of 25,000 positions in the public sector or public administration that are considered partisan or electoral spoils, i.e. positions to which individuals are employed directly or indirectly along party lines.⁴⁴²

- Some party officials are under investigation and were arrested for serious corruption-related offences. For example, in September 2014, the leadership of the People's Party Work for Betterment was arrested for tax and customs evasion, establishing and closing down fictitious companies and acquiring property benefits causing losses to the budget of BiH.⁴⁴³ In December 2014, the SDP official Hamdija Lipovača was arrested on suspicion of abuse of office.⁴⁴⁴

- After the 2014 general election, the media aired an audio recording in which RS Prime Minister and SNSD official Željka Cvijanović talked about SNSD “buying” the political support of two MPs to form parliamentary majority in the National Assembly of RS. Although the RS Ministry of the Interior issued a statement claiming that the disputed recording was a forgery, the inaugural session of the National Assembly of RS showed that precisely two MPs changed party colours, practically proving the authenticity of the recording. Despite this affair, indicating political corruption of the highest order, Željka Cvijanović was named prime minister designate by the ruling coalition, which shows that the suspicion of being involved in corruption is not a bar to being appointed to the most senior positions of authority.

INTEREST AGGREGATION & REPRESENTATION (PRACTICE)

To what extent do political parties aggregate and represent relevant social interests in the political sphere?

SCORE 0

With the exception of youth forums and women forums, which are provided for in the statutes of most major political parties, the majority of parties in BiH do not have institutionalised cooperation with specific social groups. Establishment of cooperation and party leaders' meetings with, for example, trade unions, associations of pensioners or shareholders, youth associations, etc., usually take place before election and during the formation of the government, when it is in the interest of parties, with a view to gathering support and votes.⁴⁴⁵

Instead of representing the interests of citizens and specific social groups, political parties in BiH act as interest groups representing solely the interests of their narrow leadership. In practice there are often conflicting interests within the parties themselves, mainly concerning the distribution of functions or profits generated by public enterprises and institutions.⁴⁴⁶ The most recent Bosnia and Herzegovina Progress Report, published by the European Union in 2014, points out that “political patronage networks are widespread and influence all levels of government”.⁴⁴⁷

Also, political parties in the country are organised in such a way that they represent the interests of only one ethnic group and this is how they are perceived and valued among voters. Furthermore, some parties even profess to be the only legitimate representatives of their ethnic groups.⁴⁴⁸

Cooperation between political parties and civil society has not yet been institutionalised and takes place mainly between individual party representatives and CSOs. Instead of institutional cooperation, there is still the frequent practice of party representatives and parties themselves attacking organisations and the media that criticise the authorities or parties. The most illustrative example of this practice is the book *Demolition of the Republika Srpska*, published as part of a wider edition on the official website of SNSD, the ruling party in RS. Among other things, this book features a list of CSOs, media outlets and individuals accused of “inciting riots and undermining the constitutional order”.⁴⁴⁹

ANTI-CORRUPTION COMMITMENT (PRACTICE)

To what extent do political parties give due attention to public accountability and the fight against corruption?

SCORE 0

Although the fight against corruption has of late become a recurring theme of political rhetoric and an indispensable part of pre-election promises, it is only lip-service, while political parties remain essentially the main generators of corruption in BiH. This is evidenced by the attitudes of citizens. A 2014 survey into citizens’ perceptions of public administration has identified political parties as a segment of the society in which corruption is by far the most widespread.⁴⁵⁰

The examples of parties supporting, causing or excusing corruption are numerous and they annul any declarative pre-election party promises of anti-corruption programs. The examples of corruption (given under “Integrity” section) caused by or committed by political parties are countless, while the decisions made by the

management of political parties even grant amnesty for corruption. On the other hand, as it can be seen from the analyses of other NIS pillars, political parties and their leaders have for years been obstructing anti-corruption reforms on all levels in order to maintain control over all segments of the system, and thus also their main source of income and power. For this reason, it can be said that the anti-corruption initiatives are only declarative or even non-existent.

RECOMMENDATIONS

Most of the recommendations from the 2013 NIS study have not yet been implemented and remain relevant today, as listed below with certain adjustments:

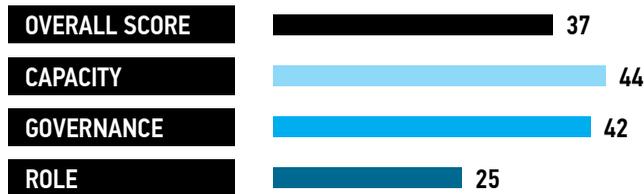
- In order to ensure equal criteria for the establishment and operation of political parties and consistent behaviour of parties and candidates across the country, it is necessary to adopt uniform regulations on political parties at all administrative levels in BiH.
- Political parties should enhance their internal democracy, by improving their statutes and internal structures and introducing opportunities for all members to vote for the party leadership and participate in the making of important party decisions;
- The Law on Political Party Financing should introduce an obligation for political parties to use single bank accounts for all their financial transactions. The expenditures of political parties related to their regular operations and those related to election campaigns should be precisely defined and separated by law. The Law should also introduce the audit of parties’ expenditures (not only revenues) and define the categories of expenses that cannot be covered from public subsidies, in order to ensure their effective control. Additionally, the prescribed formats of financial reports of political parties should be made more detailed to include information on all individual expenses, and the obligation to publish the complete financial statements should be introduced;

- In addition to introducing heavier monetary penalties, it is necessary to expand the range of sanctions that the CEC BiH can impose on political parties and candidates (e.g. denial of budget funding to parties that repeatedly violate the rules);
- The legislative framework governing the conduct of political actors during election campaigns should be amended such to make a distinction between the performance of public office and the performance of party functions and to impose restrictions on the use of public office for the purpose of pre-election promotion of candidates and parties.

6.12. MEDIA

OVERALL PILLAR SCORE: 37/100

STATUS: WEAK



SUMMARY

Two years after the publishing of the 2013 NIS Study, the situation in the media remains largely unchanged. Despite a solid legislative framework, in reality the media continues to face a number of problems that affect its work. Pressures and threats against the media are widespread while there are a number of media that are controlled by the ruling structures. Hate speech, disregard of basic professional standards and ethnic polarisation of the media continue to be the dominant features of most media in the country.

STRUCTURE AND ORGANISATION

Legal provisions stipulate that there are three public broadcasters in Bosnia and Herzegovina – one at the state level (BHRT), and two at the entity levels (FTV and RTRS). Although the law provides for the establishment of the Corporation of the three public broadcasters, this has not happened to date despite many years of trying.

Besides public broadcasters, a total of 45 television and 144 radio stations operate in the country. Although a large number of television and radio stations are owned by lower administrative units – cantons, cities and municipalities, in recent years there has been a significant increase in the establishment and operation of private broadcasters. Recent years have also seen the opening the spin offs global media corporations for

regional regional south east market, such as Al Jazeera and N1 (CNN partner). Oversight of the broadcasters is performed by the Communications Regulatory Agency (CRA) of BiH.

In the country there are nine daily newspapers and BiH issues of foreign dailies (such as “Večernji list” [*Evening Gazette*] from Croatia), as well as five magazines. Regulation and supervision of the print media have been established by means of self regulation through the Press Council of BiH. The role of the Press Council of BiH largely boils down to making recommendations that do not have binding force.

Recent years have seen a significant increase in the number of online media in BiH. However, their work is still not properly regulated, which leaves room for numerous abuses

TABLE WITH SCORES

MEDIA

OVERALL PILLAR SCORE 2013: 37/100

OVERALL PILLAR SCORE 2015: 37/100

DIMENSION	INDICATOR	LAW 2013	LAW 2015	PRACTICE 2013	PRACTICE 2015
CAPACITY 2013 44/100 CAPACITY 2015 44/100	RESOURCES INDEPENDENCE	75 75	75 75	25 0	25 0
GOVERNANCE 2013 42/100 GOVERNANCE 2015 42/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY MECHANISMS	50 75 50	50 75 50	25 25 25	25 25 25
ROLE 2013 25/100 ROLE 2015 25/100	INVESTIGATE AND EXPOSE CASES OF CORRUPTION INFORM PUBLIC ON CORRUPTION AND ITS IMPACT INFORM PUBLIC ON GOVERNANCE ISSUES			25 25 25	25 25 25

RESOURCES (LAW)

To what extent does the legal framework provide an environment conducive to a diverse independent media?

SCORE 75

The existing legislative framework governing the existence and activities of independent media is a highly favourable one. Freedom of the media is guaranteed in the Constitution of BiH, European Convention for the Protection of Human Rights and Fundamental Freedoms (which is directly applicable in BiH), and Law on Communications.⁴⁵¹ Thanks to the involvement of the international community, which at times has gone as far as imposing legislation, BiH was the first of all former Yugoslav countries to adopt freedom of information laws, which were revolutionary in that they introduced the principle that all information held by public authorities is a public good and as such accessible to all citizens. Another very important step in the development of the media was the decriminalisation of slander. Regulation of electronic media across the country comes within the purview of the Communications Regulatory Agency (CRA), in accordance with the Law on Communications, while the regulation of the print media is based on the principle of self-regulation, through the work of the Press Council.

The efforts of the international community to create a public broadcasting system resulted in the adoption of the Law on the Public Broadcasting System of BiH in 2005⁴⁵² (Public Broadcasting System consists of four units: two entity-level broadcasters, one state-level broadcaster and the corporation as a public service umbrella), which, however, has not resulted in the establishment of a functional and independent public broadcasting system.⁴⁵³

RESOURCES (PRACTICE)

To what extent is there a diverse independent media providing a variety of perspectives?

SCORE 25

The media scene in BiH is generally characterised by diversity, but one which in no way reflects independence, objectivity, accuracy and quality of information. In BiH, there are 44 TV channels, 140 radio stations, four news agencies, nine privately owned daily newspapers, more than 100 periodical magazines and 80 online media. The public broadcasting system consists of three public radio and television broadcasters, which are financed from RTV tax and to a smaller degree from budget subsidies.⁴⁵⁴

The financing of public broadcasters is fraught with continuing problems, given the steady downward trend in the revenues from the RTV tax for public broadcasting services at the state and entity levels. In the first four quarter of 2014 alone there was a KM 1.6 million decline in the collection of the tax in comparison to the preceding year. The decline in revenues of public broadcasters is further evidenced by the fact that the Radio-Television of FBiH in 2012 earned KM 16,642,000 (roughly € 8,405,050.50) in revenue from the RTV tax, which was KM 950,000 (roughly € 479,798) less than in 2011.⁴⁵⁵ The debts of two public broadcasters – the Radio-Television of Bosnia and Herzegovina and the Radio-Television of the Federation of Bosnia and Herzegovina – arising from unpaid taxes, contributions and other obligations to the government – are in excess of KM 70 million.⁴⁵⁶

All other media are privately owned, with the exception of news agencies which are funded from the budget. Private media are largely financed from marketing revenues. The advertising market in the country has been

experiencing a continuing decline since 2009. The value of this market is about KM 50 million, which is almost 40% less than in 2009.⁴⁵⁷ One of the biggest advertisers is the government, i.e. institutions and enterprises under state control.

Journalists' salaries (600 KM or 300 Euros) remain on average 25% less than the average monthly salary in the country (843 KM or 415 Euros). Working conditions in some media outlets are very poor: there are no limits to working hours, while equipment is either inadequate or out-dated. There are 12 NGOs which deal with the media, and six journalist associations, but only a few are consistently and continuously active in the protection and promotion of journalism freedoms and their resources and influence are rather weak.⁴⁵⁸

Freedom House report concludes that the vast majority of the media are fighting for survival, and that there is no sign of improvements in this respect.⁴⁵⁹

INDEPENDENCE (LAW)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?

SCORE 75

The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms are directly applicable in BiH. The Law on Communications of BiH is founded on the principles of impartiality, fairness, non-discrimination, and separation of the broadcasters from political control and manipulation. The Law also provides for the independence of the CRA as the key authority for the regulation of electronic media. The Law clearly stipulates that state institutions must not interfere in the decision-making process of the Agency. Also, Article

40 stipulates that officials in legislative or executive functions at any level of government, or members of political party organs, or persons who have financial relationships with broadcasters, cannot serve as the Director-General or a member of the CRA Council.

The independence of public broadcasters is guaranteed by Article 4 of the Law on the Public Broadcasting System of BiH, which provides that the public service broadcasters have editorial independence and institutional autonomy. However, by subsequent amendments to the Law on PBS of FBiH, the Agency has been denied the competence to elect the members of the management board of this public broadcaster, and the competence was transferred to the Parliament of FBiH. In RS the Law allows for the process of electing members to the management board of the PBS RS to be repeated indefinitely, until a candidate receives the required political support in parliament, which forces the agency to propose a politically suitable candidate.

The legal framework in this area is therefore generally very good, with the examples of best European legal practices having been used in BiH with the help of the international community.

INDEPENDENCE (PRACTICE)

To what extent is the media free from unwarranted external interference in its work in practice?

SCORE 0

No progress in terms of strengthening the independence of the media has been achieved since the publication of the 2013 NIS Study. Relevant studies and media pundits conclude that the majority of media are remain entirely dependent on and controlled by the ruling structures, powerful oligarchies and power brokers.⁴⁶⁰ Government institutions remain the biggest

advertisers and so have at their disposal a very efficient mechanism for exerting influence on the media by financing those outlets whose policies promote the interests of the ruling structure. Thus, public service broadcasters are under the effective control of the political establishment, which is particularly evident in election campaigns when they openly put themselves at the service of ruling parties.

The political interference in the work of the independent regulator (CRA) has intensified through attempts to install a politically elected person as head of the Agency. The CRA director resigned in December 2014 after working in a caretaker mandate for more than seven years because the ruling political parties could not agree on who to appoint. This caused the CRA to completely lose credibility to effectively perform its job.⁴⁶¹

Public service broadcasters are under the effective control of the political establishment, which is particularly evident in election campaigns when they openly put themselves at service to ruling parties.⁴⁶²

At the same time, media outlets that are critical of the government very often face pressure and threats from politicians and/or criminal groups. In the first six months of its work, the Helpline for Journalists received 45 reports of direct pressure and threats against journalists. Attacks on journalists in Bosnia and Herzegovina in 2014 include the beating of Sinan Alić on January 25 near Tuzla, an attack on RTV Slon cameraman Branislav Pavičić by a law enforcement officer in Tuzla in February, the brutal assault on Slavo Kukić, a prominent writer and columnist in Mostar; and an assault on a television crew, including journalist Sanela Kajmović-Sojarić and camera operator Nihad Karić from Federation Television in Busovača, editor of the online portal Capital.ba, received death threats in Banja Luka. Particularly alarming are the frequent attacks

on journalists by government authorities. Because of this situation international institutions have frequently reacted condemning the practice.⁴⁶³

Also, judicial institutions are not entirely free of political influence and often show inadequate interest or even professionalism in the interpretation and enforcement of the legislative framework regulating the media landscape.

TRANSPARENCY (LAW)

To what extent are there provisions to ensure transparency in the activities of the media?

SCORE 50

The Law on the Public Broadcasting System of BiH⁴⁶⁴ regulates the relationship between the three public broadcasters in BiH (BHRT, RTRS and RTVFBiH), which were established by separate laws as public companies. Since they have the status of public companies, they are subject to the provisions of the relevant freedom of access to information laws. Private media ownership transparency is subject to the general provisions of Laws on companies.⁴⁶⁵

Rule 41/2009, issued by the CRA, on licenses for terrestrial broadcasting of radio and TV programmes applies to all broadcasters, except to the PSBs. When applying for licences for terrestrial broadcasting, all stations have to submit documents on media registration and ownership structure to the CRA. The Agency then performs technical, programmatic and financial evaluation of each application individually. The Agency does collect and publish lists of the broadcast companies, but without ownership structures of the companies.

The Law on Communications does not make it a requirement for broadcast companies to disclose their

ownership structure. The information on the ownership structure of each broadcast company is available to the public in the courts and relevant authorities.

Thus, while a number of provisions are in place, they do not regulate all aspects related to the transparency and ownership of the media. Citizens and the public may obtain information on the ownership structure of the media only in the institutions in which these media are legally registered, in accordance with a specific and complex procedure.

TRANSPARENCY (PRACTICE)

To what extent is there transparency in the media in practice?

SCORE 25

The business operations of the public broadcasters, which, being public companies, are subject to the relevant freedom of information laws, remain insufficiently transparent. The repeated attempts by TI BiH to obtain, under the freedom of information laws, information relating to their financial operations, particularly with regard to advertising during election campaigns, have remained fruitless.

There is a profound lack of transparency of media ownership, which, according to relevant studies and media experts, has an extremely negative impact on the functioning of the media.⁴⁶⁶

Furthermore, as media ownership structure is often intertwined with political interest groups, there is a strong clientelistic relationship between certain politicians, government structures and the owners of some media outlets. It is exactly because of this relationship that there is not sufficient transparency concerning relevant media activities or circulation/viewership.

One notable example from 2014 shows the complex connections between media, organised crime and advertisement companies. A group of a dozen directors of TV stations and advertisement companies were arrested under allegations of organised crime in connection with criminal offences of financial crime, corruption, money laundering, tax evasion, customs fraud, abuse of office, forging of official documents, giving and receiving gifts and other forms of benefits.⁴⁶⁷

ACCOUNTABILITY (LAW)

To what extent are there legal provisions to ensure that media outlets are answerable for their activities?

SCORE 75

In BiH there are defamation laws in place,⁴⁶⁸ under which defamation is completely decriminalised, so liability for defamation is established in a civil lawsuit. This has created conditions for strengthening the freedom of the media, especially because, under the Law, state institutions are barred from acting as plaintiffs in libel suits and any potential plaintiff is encouraged to first contact the media outlet that has broadcast the allegedly erroneous information and seek its correction, and only after that, if still dissatisfied, he or she may bring a lawsuit in court.

In addition to the defamation laws, the electronic media are subject to the CRA rules and codes. The print and Internet media, on the other hand, are subject to the Press and Online Media Code, whose implementation is ensured by the Press Council on the basis of the principle of self-regulation. Codes lay out principles and standards for professional and ethical journalism and in case of the CRA code, it sets basic principles of TV and Radio programme content.⁴⁶⁹

ACCOUNTABILITY (PRACTICE)

To what extent can media outlets be held accountable in practice?

SCORE 25

The accountability of media is far from satisfactory. Media reporting is highly ethnocentric and aimed at demonstrating loyalty to political patrons, which continues to pose a big obstacle to compliance with professional standards and principles of accountability.⁴⁷⁰

At the same time, weakened by political pressure and interference, the CRA fails to provide consistent and full application of the statutory standards, which leaves the media ample room for abuse.⁴⁷¹

Inconsistent implementation of the legal framework, rules and codes, has opened space for the media to become an instrument in the hands of the political elite and tycoons. One of the main mechanisms of preserving the accountability of the media, namely the institute of protection from defamation lawsuits, is largely non-functional in practice. The huge backlog of cases in the courts in BiH prevents access to justice within a reasonable period, while political pressure on the judiciary very often leads to courts decisions being made in the interests of holders of political or economic power and against journalists.

The process of self-regulation of the print media also entails a certain process of democratic growth and awareness-raising. The well-designed framework suffers from the consequences of political and cultural legacy, which excludes the accountability of the media. Effective accountability mechanisms are noticeable in the electronic media, in part because of the sanctions available to the regulator; however, the same is not true of the press.⁴⁷²

INTEGRITY MECHANISMS (LAW)

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

SCORE 50

In BiH there are sectoral codes of ethics. One applies to the broadcasting of radio and television programmes. It was established by the CRA, and, as such, is binding on all electronic media. Also, there is the Press Code that was agreed upon together with the Press Council by six journalists' associations in BiH. The print media are self-regulated, so, unlike the CRA, the Press Council is not a substitute for a judicial authority. The Press Council monitors and analyses possible violations of the Code, acting on individual complaints about a particular news item or press article. The most important provisions of the Code include prohibition of discrimination and insults and the question of accuracy and fair reporting. As regards privacy, journalists are allowed to intrude into an individual's private life if such intrusions are necessary for the public interest, but there are also provisions to prevent abuses.

There are no individual codes of ethics or ethics committees within individual media outlets. Ethics committees, which are called councils of honour, exist in journalists' associations, whereas no such committees exist within individual media outlets.⁴⁷³

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of media employees ensured in practice?

SCORE 25

In BiH there are six professional journalists' associations: Independent Union of Professional Journalists, Journalists' Association of RS, association "BiH Journalists", association "Apel", Union of Journalists of BiH, and Croatian Journalists' Association in BiH – which protect the interests of journalists and try to standardise media ethics. However, these associations follow the ethnic and entity division of the country. While problems faced by journalists in BiH are broadly similar, journalists mostly organise themselves along the ethnic lines. The exception to this is the association "BiH Journalists", which seeks to overcome this division in practice, especially in journalism. Almost all of these journalists' associations have their codes of ethics and councils of honour to prosecute violations of professional standards. In practice, however, these mechanisms are used very rarely.

For example, the media often violate the existing codes, publishing incomplete and one-sided information. A survey by the Sarajevo-based Media Plan Institute shows that 65% of the published journalistic content has only one source of information. According to the BiH Press Council, in 2014 the Council received 818 complaints, of which 250 were related to the editorial content and the rest were related to online comments on websites. The Council managed to resolve around 60% of the complaints using the self-regulation mechanism, i.e. through voluntary publication of a retraction by media outlets.

There are frequent complaints in the public against journalists and media outlets alleging that they blackmail individuals by seeking various services from them in order not to disclose compromising information about them.

Media outlets generally attach very limited importance to the education of journalists. Professional associations of journalists operate on a voluntary basis.

INVESTIGATE AND EXPOSE CASES OF CORRUPTION (PRACTICE)

To what extent is the media active and successful in investigating and exposing cases of corruption?

SCORE 25

The vast majority of the media very rarely engage in investigative journalism in a systematic and responsible manner. The reasons for this situation lie in insufficient funding as well as in the fact that most of the media depend on government institutions, either through direct control, or indirectly through advertising, as government institutions and state-owned companies continue to be the biggest advertisers.⁴⁷⁴

The few media outlets that do cultivate investigative journalism often come under pressure and are exposed to impromptu investigations, fiscal and tax controls, which hampers their work. Very often the media and journalists who dare to engage in investigative journalism become the targets of pressure and threats by individuals or groups on whose activities they reported.⁴⁷⁵ A striking example of such practices was when police raided one of the most popular Bosnian portals "Klix" because they had earlier published a recorded conversation between the Prime minister of Republika

Srpska Željka Cvijanović and unknown persons in which Cvijanović talked about buying electoral support in the Assembly of RS.⁴⁷⁶

Further discouragement for the media and journalists that are active in exposing high profile cases of corruption comes from the relevant judicial institutions which invariably fail to give their investigations an appropriate judicial epilogue. Corruption investigations in BiH are selective in nature, depending on the relationship between media outlets and political structures. Some of the high profile cases are exposed only after a person or a political party falls from power or becomes opposition.

Another factor contributing to such a state of affairs is the close relationship that the media have with their customers and advertisers, who are almost never the subject of major investigative reports. Journalists are therefore partially and selectively active in investigating corruption cases, and their work rarely results in charges and successful convictions.

The Centre for Investigative Reporting (CIN) deals exclusively with investigation of such cases and is the most well-known investigative journalism programme in the country. The CIN is entirely funded from foreign sources, which clearly confirms the inevitability of financial independence if the media are to engage in investigative journalism.

INFORM PUBLIC ON CORRUPTION AND ITS IMPACT (PRACTICE)

To what extent is the media active and successful in informing the public on corruption and its impact on the country?

SCORE 25

Programmes that are implemented with the goal of raising public awareness of corruption and how to curb it are usually initiated by non-governmental organisations. The media almost never perform this role, except when they cover anti-corruption awareness campaigns funded by NGOs and some international organisations. There are very few programmes run by the media to inform the public in an objective and unbiased way about corruption and its impact and consequences. Media outlets that are financed from projects of international donors tend to have a much more analytical approach to reporting on corruption, its causes and consequences. Recent years have seen a positive trend of emergence of regional media outlets such as Al Jazeera Balkans and N1, which are relatively financially independent of local power structures and are therefore fairly free to address these issues. Also, the growing number of Internet users in the country allows citizens to access a wide number of local and international sources of information.

INFORM PUBLIC ON GOVERNANCE ISSUES (PRACTICE)

To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?

SCORE 25

A number of media outlets in the country are not under the direct control of the ruling political structures, but the most powerful and richest outlets find their interest in representing and promoting the views of the government. Media pluralism in BiH has not resulted in the democratisation of society, or the media for that matter. The journalists and media outlets that criticise the current government (at any of the many levels of government in the country) are accused and exposed to attacks and pressure.

Critical and analytical assessment and evaluation of government's performance remains inadequate. Media outlets that are controlled by the government or depend heavily on government entities for advertising act largely as an official mouthpiece for the ruling parties rather than objectively report on the work of government. In parallel with that, there is pronounced tendency among the media to ignore the most pressing problems in society, in order to avoid reporting critically on the work of the government.⁴⁷⁷

Interconnections between the media and politics, i.e. governments in BiH, reflect in the following:

- journalists practicing self-censorship and siding with the ruling elite (partial independence);
- media knowingly neglecting important social topics and favouring politics instead;
- media's "watchdog" role being abolished, politics be-

ing reduced to the level of cheap popular entertainment, and media being politicised;

- political cronies being appointed to managerial positions in public broadcasters;
- impact through advertisers;
- dependence of journalists on their own knowledge (or lack thereof).⁴⁷⁸

In order to get a relatively unbiased account of government activities, one needs to consume several media simultaneously, to get information from different angles. The pro-government media paint a misleadingly rosy picture, in which everything the governments do is good and in the interest of citizens. This type of reporting is much more pronounced in the ethnically and politically monolithic RS than in FBiH, where power is shared among several political parties representing different ethnic constituencies.

RECOMMENDATIONS

The vast majority of recommendations from the 2013 NIS study have not been implemented. What is more, as has been mentioned earlier, strong negative trends have been observed in the quality of the legislative framework and its implementation. Given the lack of credible efforts to implement the recommendations and improve transparency, integrity and accountability, most of the recommendations given in the previous study are still relevant:

- In the framework of a market economy, it is necessary to ensure equal treatment of all media in the market by ensuring transparent and competitive procedures for allocation of state subsidies, or, alternatively, abolish the subsidies altogether;
- Establish transparent rules for advertising in the media in order to enhance media independence and competition, and compare the findings of audits of public companies with the financial performance of the

media, about which the CRA should conduct surveys and make recommendations for future advertising;

- It is necessary to improve the legal framework by ensuring independent election of members of the management boards in the public broadcasters, through public and competitive procedures;
- It is necessary to increase the availability of information relating to the ownership of media outlets, through strict regulation of the obligation for public disclosure of ownership structure;
- In the public broadcasters, it is necessary to strengthen the programming councils, whose members should be selected without external interference and be independent from the influence of management boards in these media houses.

6.13. CIVIL SOCIETY

OVERALL PILLAR SCORE: 40/100

STATUS: WEAK



SUMMARY

Civil society appears to have deteriorated further in recent years. Civil society in BiH is heterogeneous; it includes various forms of associations, ranging from informal communities and volunteers to religious and professional organisations. Equally heterogeneous is the manner in which they obtain funding for their work, ranging from organisations that are financed from different levels of government (associations of pensioners, war veterans and trade unions), on which the state has a more pronounced influence, to CSOs financed by foreign donors through democratisation programmes (EU, USAID and many other Western European countries). That said, intimidation and violence against activists and civil society organisations continues, mostly involving human rights advocates and activists investigating alleged corruption.

STRUCTURE AND ORGANISATION

Civil society in BiH is heterogeneous; it includes various forms of association, ranging from informal communities and volunteers to professional organisations. It covers different areas of society, from sports, arts and culture to political associations or unions of veterans/disabled persons. CSOs often form coalitions or networks that may be permanent or temporary and gathered around particular, specific activities and goals.

There is no single database upon which to know the exact number of civil society organisations (CSOs). The number of registered organisations, however, is estimated at around 12,000, the majority of which are associations with no or very few employees (up to five). Of that number of locally registered organisations in the entities, only 500 up to 1500 are active.⁴⁷⁹

A limited number of CSOs are financed from public funds (usually at the local level), while the majority rely on international donors, membership fees, self-financing, etc.⁴⁸⁰

TABLE WITH SCORES

CIVIL SOCIETY

OVERALL PILLAR SCORE 2013: 46/100

OVERALL PILLAR SCORE 2015: 40/100

DIMENSION	INDICATOR	LAW 2013	LAW 2015	PRACTICE 2013	PRACTICE 2015
CAPACITY 2013 44/100 CAPACITY 2015 44/100	RESOURCES INDEPENDENCE	75 50	75 50	25 25	25 25
GOVERNANCE 2013 31/100 GOVERNANCE 2015 25/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY MECHANISMS			25 25 25	25 25 25
ROLE 2013 63/100 ROLE 2015 50/100	HOLDING GOVERNMENT ACCOUNTABLE POLICY REFORMS			75 50	50 50

RESOURCES (LAW)

To what extent does the legal framework provide an environment conducive to civil society?

SCORE 75

In the legal system of BiH the right to freedom of peaceful assembly and association is regulated by constitutional and statutory provisions and regulations⁴⁸¹. Special laws apply to religious communities and trade union organisations – the laws on political organisations, the Law on Freedom of Religion and Legal Status of Churches and Religious Communities in BiH, and the labour laws.

Despite there being three separate laws regulating CSOs in BiH (at the state and entity levels), they are all generally similar and positive.

CSOs in BiH can and do undertake all activities that are in compliance with the law. This includes advocacy, watchdog activities and criticising the government.⁴⁸²

According to USAID's CSO Sustainability Index, on a scale of 1 to 7 (1 being the highest score, and 7 the lowest) Bosnia and Herzegovina received a score of 3.4 for the legal framework regulating the work of CSOs.⁴⁸³

Registering a CSO at all governmental levels still requires a significant amount of time usually between one and two months. Registration fees are 200 KM (\$140) in the Federation of BiH and at the national level, and 600 KM (\$415) in the Republic of Srpska, not including other fees for certifying, fees for lawyers and issuing documents required for registration.⁴⁸⁴

The tax treatment of CSOs varies between the two entities. In Republika Srpska, businesses can deduct up to 2 percent of their revenues for donations to CSOs, while

businesses in the Federation of BiH can only deduct 0.5 percent of revenues. CSOs must pay VAT on all donations, except for those funds coming from the EU Instrument for Pre-Accession Assistance (IPA) and foreign governments. CSOs are exempt from paying taxes on the income earned through the provision of services, up to 50,000 KM (about \$33,000).⁴⁸⁵

To summarise, the legal framework for the operation of CSOs is regulated to a certain extent but requires further improvement for it to be more conducive to CSOs.

RESOURCES (PRACTICE)

To what extent do CSOs have adequate financial and human resources to function and operate effectively?

SCORE 25

The precise number of CSOs in the country remains unknown because CSOs can be registered at different administrative levels. Their number is estimated at around 12,000. However, various studies indicate that there are between 500 and 1500 active CSOs.⁴⁸⁶

A CSO network study report, made by TACSO and CSPC, identified over 50 active CSO networks in BiH. These are mainly advocacy networks (47%), sectoral networks (41%) and networks of service providers (12%).⁴⁸⁷

In 2012, the governments at different administrative levels in BiH allocated a total of more than KM 100 million (roughly € 50 million) to CSOs.⁴⁸⁸ A significant source of funding for CSOs comes from international bilateral and multilateral donors. The total amount of funding provided by international donors is far smaller than the total sum of appropriations from domestic budgets and is at a level of about KM 20 million (roughly € 10 million).⁴⁸⁹

INDEPENDENCE (LAW)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?

SCORE 50

The right to freedom of association, which is guaranteed by the Constitution of BiH and Entity Constitutions, is enjoyed by individuals who join or establish associations, as well as associations themselves, without any restrictions with regard to the connection of these associations' goals with advocacy for good governance and anticorruption. The existing law on NGOs in BiH is very liberal, and *de facto* allows any three persons who do not violate the Constitution of BiH to found a CSO in any area. Regulations governing associations do not restrict the right of peaceful assembly, public protest and association of members of the armed forces, police and civil servants⁴⁹⁰.

The existing legal framework that defines civil society in BiH does not specifically provide for any mechanisms to protect the work of CSOs from external interference. However, the existing laws on CSOs in both BiH entities as well as the state law do not provide for any presence of a governmental representative either at the meetings or in the work of the Steering Committee or any similar managerial body of CSOs.

As far as mechanisms to control the work of CSOs are concerned, the laws only provide for occasional controls of whether CSOs regularly pay contributions and payroll taxes as well as taxes for various other payments to the staff of CSOs (per diems, bonuses, etc.). The same applies to the obligation to pay VAT for services and/or products delivered by CSOs if the value of revenues from these activities exceeds KM 50,000 per year.⁴⁹¹

In summary, the existing legislative framework governing the work of CSOs does not cover the issue of privacy of work of CSOs, leaving this area unregulated. Initially, this might be good for CSOs as it gives them freedom from government's control and unwarranted interference in matters of work and management of CSOs. At the same time, however, this legal gap does not *prevent* control of CSOs by the government, and the government can possibly take advantage of this gap following the legal principle that *everything which is not forbidden is allowed*.

However, it is necessary to mention the worrying attempts by the ruling coalition in RS to assert control over CSOs. One such example was their attempt in May 2015 to adopt in the National Assembly of RS a draft law on the transparency of non-profit organisations, which was basically aimed at labelling and discriminating against NGOs that are financed from foreign sources. The draft law aimed to introduce a ban on so-called political activities of CSOs, while leaving the definition of these activities notoriously vague thus giving the competent institutions dangerously broad discretion to arbitrarily ban specific organisations through loose and erroneous interpretation of the law. Fortunately, the draft law was not adopted by the parliamentary committees, as a result of, among other things, the concerted efforts of CSOs which argued powerfully that such a law would cause violations of fundamental human rights to freedom of association and assembly.⁴⁹²

INDEPENDENCE (PRACTICE)

To what extent can civil society exist and function without undue external interference?

SCORE 25

Given the heterogeneity of CSOs, it is difficult to give a general assessment of the degree of their indepen-

dence. However, it could be argued that the organisations that are financed from budgets at various levels of government (such as veterans' associations, trade unions, pensioners' associations) are more likely to come under governmental influence, and in the majority of cases could even be characterised as governmental non-governmental organisations (GONGOs). On the other hand, foreign-financed CSOs are typically found to be free from undue external interference to a significantly greater extent.⁴⁹³

Also, when it comes to undue external interference in the work of CSOs, one should bear in mind the continuing cases of intimidation and violence against activists and civil society organisations in BiH, mostly involving human rights advocates and activists investigating alleged corruption.⁴⁹⁴

Although the religious communities are supposed to be part of civil society in BiH, they have been repeatedly associated with the government⁴⁹⁵, especially in election periods, so the aforementioned cases can be viewed in that context. Also, there are reports of arrests of CSOs' activists⁴⁹⁶ because of their intent to publicly express and stand for their views during adoption of new policies.

In such a context, it may be argued that in BiH there are still cases of external interference in the operation of CSOs and/or pressure on them, such as media-led smear campaigns aimed at tarnishing the image and undermining the integrity of CSOs, arrests of activists, intimidation, etc. Authorities at all levels in BiH do almost nothing to protect civil society and trade union activists, human rights activists as well as nongovernmental organisations and their membership. What is sadly lacking is an appropriate response by the competent ministries, Ombudsman as well as courts and the police in sanctioning threats and attacks, as nothing is done to create an environment in which it

will be possible for citizens and their organisations to operate freely in the field of human rights. According to official information, none of the above cases has been prosecuted.

TRANSPARENCY (PRACTICE)

To what extent is there transparency in CSOs?

SCORE 25

The main medium used by CSOs to publish their reports is through their websites, although these do not draw considerable attention to the contents of these reports or work results in a given period.

Something similar is true of financial statements, though it should be noted that one form of annual financial statement is mandated by the state (balance sheet and income statement) and CSOs are required to produce it.

While they continue to strengthen their media visibility in connection with their projects and activities, CSOs still lag behind when it comes to transparency in their internal operations and the publishing of annual reports⁴⁹⁷. CSOs in BiH do not have a high degree of awareness of the need to strengthen transparency of their work, improve participation of key stakeholders in programming and broaden CSOs' membership and activist base.

Such a state of affairs stands in stark contrast to the demands of CSOs for greater transparency and responsiveness of the governments in BiH towards the public and civil society. Lack of consistency on the part of CSOs diminishes their integrity and damages their public image. The fact that citizens are not particularly vocal in their demands that CSOs should make information about their programmatic and financial activities

publicly available is not a reason for CSOs to use this as an argument to remain largely non-transparent in their work.

ACCOUNTABILITY (PRACTICE)

To what extent are CSOs answerable to their constituencies?

SCORE 25

CSOs have steering committees and there is a clear distinction of responsibilities between ordinary staff and committee members. However, a lot of CSOs suffer from a lack of transparency in the work of their steering committees⁴⁹⁸. It is common practice for members of governing bodies (steering committees and/or assemblies) to be only names in CSOs' registration documents, whereas in reality they do not meet on a regular basis or make strategic decisions⁴⁹⁹.

The role of steering committees in CSOs in BiH is a topic outside CSOs' interest. More specifically, most CSOs see the existence of governing bodies (steering committee, assembly, etc.) as an obligation to be fulfilled during registration and these bodies have a small or virtually no actual role in managing the organisation or maintaining the organisation's relationship with its constituency and/or founders.

INTEGRITY (PRACTICE)

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

SCORE 25

As has been mentioned earlier, due to the heterogeneity of civil society and the variety of CSOs operating in the

country, it is very difficult to give a general assessment of the degree of their integrity in practice.

However, it could be argued that the degree of integrity is, as a rule, far greater in those CSOs that are financed from international sources. This is so primarily because international donors have clear rules and procedures for obtaining and spending funds, and the oversight of these procedures is very rigorous in practice. Furthermore, international donors insist that the organisations they fund abide by their internal rules and procedures relating to integrity assurance.⁵⁰⁰ However, irregularities and violations of procedures were observed in such organisations as well.⁵⁰¹ The integrity of the CSOs funded from the budgets at different levels of government in BiH is much lower, and the allocation of public funds is often opaque and without clear criteria.⁵⁰²

CSOs fall behind when it comes to self-regulation⁵⁰³. A certain dynamic has been achieved through a series of consultations and seminars on the introduction of quality standards in the management of CSOs. This process involves about hundred CSOs that have expressed willingness to participate in this initiative. However, no tangible progress has been made beyond consultations and the process has failed to create a concrete step forward or come up with proposals on how to address the issue of self-regulation.

In addition, a draft Code of Conduct and an initiative for the adoption of a Code of Ethics has been drawn up by at least two CSO networks in BiH⁵⁰⁴ as a self-regulatory document for the members of these networks. This should contribute to increased openness and transparency of CSOs involved in these networks, and thus greater credibility of members and their networks.

In general, however, the issue of self-regulation remains outside the main focus of CSOs. Occasional initiatives to this end have, so far, not been sufficient

to create considerable momentum towards introducing the code as a form of self-regulation.

HOLDING GOVERNMENT ACCOUNTABLE

To what extent is civil society active and successful in holding government accountable for its actions?

SCORE 50

In BiH there is a large number of watchdog CSOs and networks. The media generally report on the findings and information published by CSOs. While CSOs prepare credible and substantiated reports analysing all walks of government life, these activities typically fail to produce the desired effect on governmental institutions in terms of encouraging them to call public officials to account for widespread violations of the law. Very often, CSOs find themselves targeted by the authorities due to their criticism of governmental institutions.⁵⁰⁵

However, watchdog activities implemented by CSOs are very important in terms of providing the public with objective indicators and raising public awareness. What is sadly lacking is an appropriate response by the competent institutions as well as courts and the police on findings provided by CSOs. Nothing is done to improve an environment in which it would be possible for citizens and their organisations to influence to greater extent government decision.

Undoubtedly, many CSOs' advocacy activities in BiH focus on government accountability, contribute to greater efficiency of government, and increase public pressure (indirectly through the media) on authorities to do a better job.

POLICY REFORM

To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?

SCORE 50

CSOs continuously offer situational analyses and findings of studies on corruption and other social problems, propose possible policy solutions and/or advocate the making of policies, and launch initiatives and campaigns to that end. However, generally speaking, CSOs are still largely excluded from the decision-making process and their participation in these processes remains the exception rather than the rule. This is best illustrated by the fact that, of the 63 laws adopted in the state parliament between 2011 and 2014, public debate allowing participation of interested CSOs in the process of preparing legislation was opened in only three cases. In very many cases, the laws are adopted in urgent procedure and away from the public eye, leaving minimum room for public participation.⁵⁰⁶

Nevertheless, there are some positive examples of involvement and participation of CSOs in decision-making processes. One such example was preparation of the national strategy to combat corruption 2015–2019, where CSOs were involved throughout the development of this document, in cooperation with the Agency for Prevention of Corruption and Coordination of the Fight against Corruption (APIK).

Generally, local governments and public institutions, such as schools and universities, are much more responsive and open to civil society. One positive example is the cooperation between TI BiH and six public universities in BiH in the development of university integrity plans, which were eventually adopted by the relevant bodies of the universities.⁵⁰⁷

RECOMMENDATIONS

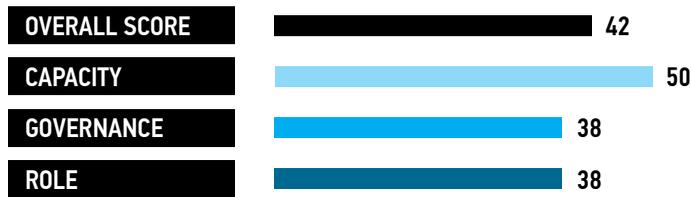
The vast majority of recommendations from the 2013 NIS study have remained unimplemented. What is more, as has been mentioned earlier, strong negative trends have been observed in the quality of the legislative framework and its implementation. Given the lack of credible efforts to implement the recommendations and improve transparency, integrity and accountability, most of the recommendations given in the previous study are still relevant:

- Further define the procedures for the registration of CSOs so as to prevent them from being subject to arbitrary interpretation by individuals in power and to eliminate the scope for manipulation;
- Promote local funding of CSOs and facilitate CSOs' access to funds collected under the Law on Games of Chance, as well as introduce and incorporate into the Law tax incentives modalities for CSOs;
- Increase the capacity of CSOs to strategically plan their fundraising activities, continue to strengthen volunteerism in BiH, and increase transparency in the allocation of local resources to CSOs;
- Support the development of specialised CSOs (or networks) to monitor, assess and report to the public on cases of pressure on CSOs as well as analyse and advocate for the right of CSOs to freedom of work;
- Encourage and support self-regulation of CSOs in BiH to enhance the overall functioning of CSOs, particularly with a view to increasing transparency as well as ensuring greater formal and informal coordination of CSOs' activities.

6.14. BUSINESS SECTOR

OVERALL PILLAR SCORE: 42/100

STATUS: MODERATE



SUMMARY

The economic situation in BiH has deteriorated in recent years, with no signs of any significant recovery in sight. The process of starting a business is still fraught with too much bureaucracy and red tape, while the process of liquidation or termination of a company is very cumbersome and can take as long as several years.

Despite solid legislation in individual areas, the business environment is characterised by weak rule of law, unreliable contract enforcement as well as corruption, which is particularly rife in public contracting. Politics

is too involved in the operations of companies, and the judiciary often comes under pressure. Through development banks, whose management is appointed by the executive authorities of the entities, the state spreads its influence to the private sector and enables the bolstering of the oligarchic structure.

Many facts relating to the operations of companies are unreasonably treated as trade secret and are difficult to access, even by their shareholders. Corporate governance is at a low level, as is corporate ethics, while anti-corruption initiatives of the business sector are in their infancy. Individuals or companies that disclose or report corruption are often exposed to different types of formal and informal pressures in practice.

STRUCTURE AND ORGANISATION

The percentage of state-owned capital in BiH is still high – The percentage of state-owned capital in BiH remains high – the state sector still accounts for about 40% of GDP⁵⁰⁸ and the government still holds considerable sway and influence over economic life in the country. There is still more than KM 10 billion of unprivatised capital in the hands of the Federation of BiH, distributed across almost 50 economic entities in various industries. Something similar is also true of RS, except with one difference in that RS completed the privatisation of Telekom Srpske several years ago. A significant state presence in the economy, coupled with considerable weaknesses in the business environment, continues to negatively affect private sector development.⁵⁰⁹ With the private sector's share in the creation of GDP standing at 60%, BiH ranks lowest in Southeast Europe, along with Serbia, in terms of the private sector's share of GDP.⁵¹⁰

TABLE WITH SCORES

BUSINESS SECTOR

OVERALL PILLAR SCORE 2013: 36/100

OVERALL PILLAR SCORE 2015: 42/100

DIMENSION	INDICATOR	LAW 2013	LAW 2015	PRACTICE 2013	PRACTICE 2015
CAPACITY 2013 44/100 CAPACITY 2015 50/100	RESOURCES INDEPENDENCE	50 50	50 50	25 50	50 50
GOVERNANCE 2013 38/100 GOVERNANCE 2015 38/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY	50 50 50	50 50 50	50 25 0	50 25 0
ROLE 2013 25/100 ROLE 2015 38/100	AC POLICY ENGAGEMENT SUPPORT FOR/ENGAGEMENT WITH CIVIL SOCIETY	25 25	50 25		

According to the Statistical Business Register, only 56.7% of enterprises were still active as at the end of July 2014. The majority (75.1%) are micro-enterprises with less than 10 employees operating mainly in retail and wholesale sectors. The economy continues to be dominated by the service sector, which in 2013 accounted for about 62% of gross value added (GVA), followed by industry (20%) and agriculture (8.1%). The informal sector fuelled by poor law enforcement and the inadequate fight against corruption represents a major obstacle for industry development and imposes significant risks and costs on the overall economy. Overall, there have been no major changes in the structure of the economy and the need to address the informal sector remains.⁵¹¹

The main forms of association of the business sector are chambers of commerce and employers' associations. The chamber system consists of the Foreign Chamber of Commerce at the state level and chambers of commerce at the entity level, and employers' associations follow the similar pattern of organisation. While some chambers of commerce are perceived as working in the interests of the authorities and business moguls associated with them, the main problem of the employers' associations is the fact that they do not efficiently represent the interests of their members in negotiations with government officials.⁵¹²

RESOURCES (LAW)

To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?

SCORE 50

The key legislation governing this area is adopted at the level of the entities and the Brčko District. The company laws govern the establishment, operation, management

and termination of business entities in the country. Specifically, the Company Law of FBiH⁵¹³ defines company as a legal entity that independently performs business activities with the aim of earning profit, and provides that a company may be established by domestic and foreign natural and legal persons. An identical formulation is contained in the Company Law of RS⁵¹⁴. Brčko District defines the business entity, in terms of the Framework Law on Registration of Business Entities in BiH⁵¹⁵ and the Law on Registration of Business Entities, as a legal person whose registration is mandatory under this Law.

According to Doing Business 2015, the number of procedures for starting business has decreased from 12 to 11 in the last three years. This improvement has come as a result of a reform that replaced the required utilisation permit with a simple notification of commencement of activities and streamlined the process for obtaining a tax identification number. It should be noted that there is still some variance between entities in terms of the procedures for starting business, but this is largely the result of differences in the administrative structure of the entities.⁵¹⁶

However, domestic legislation is not yet entirely aligned. In both entities the registration consists of 12 procedures, but the procedures differ between the entities.

Laws governing ownership and other property rights are within the competence of the Entities and the Brčko District. The Law on Property Rights of RS⁵¹⁷ governs the acquisition, use, management, protection and termination of ownership rights and other property rights. The law provides that any natural or legal person may have ownership rights and other property rights, and that it may have property (movables and immovables) in ownership, co-ownership or joint ownership, in accordance with the law. The Law on Property Relations

of FBiH⁵¹⁸ governs the identical matters as the Law on Property Rights of RS. The Law has established that “every natural and legal person is entitled to the peaceful enjoyment of their property, alone as well as in association with others”. The Law on Ownership and Other Property Rights of the Brčko District was adopted in 2001.⁵¹⁹

State-level laws and implementing regulations that govern patents, trademarks, industrial design, and copyright and related rights were adopted in 2010 and 2011. The implementation of this legislation is overseen by the Institute for Intellectual Property of BiH.⁵²⁰ However, there is still an obligation to ratify the International Convention for the Protection of New Varieties of Plants (UPOV Convention) and the European Patent Convention. The FBiH Administration for Inspection and the RS Inspectorate do not have jurisdiction over the laws governing the protection of intellectual property. In such cases market inspectorates in both entities proceed in the same way as in the process of tracking and seizing goods of suspicious origin and treat such goods as non-originating goods or as the provision of services without an operating license.

The High Judicial and Prosecutorial Council of BiH (HJPC) appointed senior staff and 32 judges in commercial courts in RS: in Banja Luka, Bijeljina, Doboj, Istočno Sarajevo and Trebinje, which began operation on 1 May 2010. The commercial courts are competent to resolve commercial disputes, bankruptcy, liquidation and business registration.

In FBiH, amendments to the Law on Courts provided for the formation of special commercial departments, one in each canton, operating within cantons’ municipal courts. This was aimed at achieving greater efficiency in the conduct of proceedings in this area, without the formation of specialised commercial courts.

FBiH and RS have almost identical laws on bankruptcy, the only difference being which courts are in charge of conducting bankruptcy proceedings: in the first instance – district commercial courts in RS and municipal courts in FBiH; in the second instance – the Higher Commercial Court in RS and cantonal courts in FBiH.

RESOURCES (PRACTICE)

To what extent are individual businesses able in practice to form and operate effectively?

SCORE 50

According to Doing Business 2015, it requires 11 procedures and takes an average of 37 days to start a business in BiH, making the country stand at 147 in the ranking of 189 economies on the ease of starting a business.⁵²¹ It is important to note that these indicators tend to vary from one administrative unit to another as business registration is subject to regulations at the local, cantonal and entity levels. The complexity of the administrative system is evidenced by the fact that in some administrative units a business entity may be registered in only a few days, while in others starting a business may take more than a few months.

According to the same report, the paid-in minimum capital is 14.6% of income per capita. The costs, excluding the paid-in minimum capital, include on average about KM 400 for a founding act and having it notarised by the public notary, about KM 550 for registration with the court and notification of the registration in the official gazette, an additional KM 50 on average for making a company stamp and obtaining an approval from local authorities, as well as the regulation on matters of organisation, salaries, etc., which entails further costs depending on whether the preparation of these documents is entrusted to a lawyer or an external expert. Notaries have a very prominent role: each

decision of the competent authority of a company must be notarised, which makes the whole process more time-consuming and more costly. While one part of the public thinks that the notaries help lift the burden from the courts, the Foreign Investors Council in BiH believes that the participation of notaries in processing decisions of business entities is unnecessary because it comes down to copying the decision of business entities.⁵²² Obtaining a construction permit requires 15 procedures and takes an average of 179 days, and the costs make up about 20% of the total value of investment in given building structure. The highest costs, on average, are associated with paying the land development and use fee (about KM 32,000), obtaining validation of the technical audit of the main project (about KM 28,000), and technical review of the building and obtaining an occupancy permit (about KM 7,800).

Registering property requires 7 procedures, takes on average 24 days and costs 5.2% of the property value. The highest costs are associated with notarisation of sale-purchase agreements (about KM 500 on average). The Property Register has been unreliable ever since the end of the war as it leaves scope for challenging a property transfer. Efforts have been made to update the laws on the cadastre of real property, repeal previous conflicting laws and create new entity-level registers.

The process of liquidating or winding up a business entity is more complicated than registering it and may take as long as several years. The request for initiation of liquidation proceedings, which is filed with the competent court, should be accompanied by the documentation on registration and any amendments thereto, as well as certificates proving that all tax and non-tax liabilities have been settled and the founder's decision on the dissolution of the company. According to data collected by Doing Business 2015, liquidation and reorganisation take longer than the optimum amount of time, the average recovery rate is 36%, and

the procedure takes an average of 3.3 years.

Although preparations in the area of copyright and neighbouring rights, and industrial property rights have advanced, further efforts are required, in particular to improve enforcement and coordination.⁵²³ A reliable system for collecting, analysing and exchanging data among the various institutions involved is still lacking. An enforcement strategy is still not in place and enforcement, as well as coordination among enforcement bodies at various levels, needs to be improved.

The 2015 Index of Economic Freedom ranks BiH 97th out of 178 countries, with an overall economic freedom score of 59, while of 43 countries in the Europe region, BiH is ranked 38th. The country's score has remained practically unchanged in recent years, so its economy remains in the "mostly unfree" category.⁵²⁴

INDEPENDENCE (LAW)

To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?

SCORE 50

The current constitutions and laws guarantee freedom of enterprise. The preamble of the Constitution of BiH emphasises the desire to promote "the general welfare and economic growth through the protection of private property and the promotion of a market economy". Article 4 of the Constitution provides that "There shall be freedom of movement throughout Bosnia and Herzegovina. Bosnia and Herzegovina and the Entities shall not impede full freedom of movement of persons, goods, services, and capital throughout Bosnia and Herzegovina. Neither Entity shall establish controls at the boundary between the Entities".

In general, entity legislation that governs the establishment and management of business entities, rights and obligations of the founders, linking and reorganisation (status changes and changes of the legal form of business entities), and liquidation of business entities clearly defines all essential aspects of an independent framework for the functioning of the business entity. However, the state and its authorities continue to play an influential role when it comes to registration of certain activities, giving business names to business entities, etc. According to current legal regulations, the activities which are stipulated by the law as those that may be performed only on the basis of the approval, permit or other document issued by the competent authority, may be performed after obtaining the said approval, permit or other document of the competent authority.

One of the important yet underutilised mechanisms to protect private companies from external interference in their work relates to the employers' associations formed at the state and entity levels and the level of the Brčko District of BiH. According to the statutes of these associations, their mandate is primarily related to representing the interests of their members in relations with trade unions and government representatives at all levels, including local authorities. Also, the associations were created with the aim of providing technical assistance and support to members in different areas and activities (taxes, legal issues, social policy) and representing their membership in collective bargaining and concluding collective agreements.

The Law on Prohibition of Discrimination⁵²⁵ establishes a framework for implementation of equal rights and opportunities for all persons in Bosnia and Herzegovina and defines a system of protection against discrimination. This law, which also applies to private companies, defines responsibilities and obligations of legislative, judicial and executive authorities in BiH as well as

legal persons and individuals with public authorities to ensure protection, promotion and creation of conditions for equal treatment.

The work of the private sector is subject to a set of standard policies and laws that govern the fields of customs duties and taxes, import and export, investment, state aid, public-private partnership, etc. The customs policy and indirect tax policy are regulated at the state level, while the responsibility for regulating direct taxes rests with the entities and the Brčko District. There are no restrictions on investments, except for the military and the media, where foreign control is limited to 49%. The right to transfer and repatriation of profit and remittances is guaranteed; however, there are a few restrictions on capital transactions and foreign currency accounts. The Law on State Aid was adopted in 2012, but the State Aid Council remains to become fully operational and its financing issue is yet to be resolved.⁵²⁶ The Law on Public-Private Partnership exists only in RS (adopted in June 2009). This Law regulates the scope, principles, manner and forms of public-private partnership, and requirements for the establishment of a public-private partnership as a form of cooperation between the public and the private sector, achieved by the pooling of resources, capital and expert knowledge, for the purpose of construction, rehabilitation, reconstruction and maintenance of infrastructure.⁵²⁷ Finally, there is also the Law on Competition⁵²⁸, which regulates the rules, measures and procedures for the protection of market competition. This Law applies to all legal and natural persons who are directly or indirectly engaged in the production, sale of goods and provision of services, involved in trade of goods and services and who, through their actions, can prevent, restrict or distort competition in the entire territory of Bosnia and Herzegovina or a significant part of the market, including bodies of state administration and local self-government.

INDEPENDENCE (PRACTICE)

To what extent is the business sector free from unwarranted external interference in its work in practice?

SCORE 50

The economic situation in BiH has worsened over the last few years, mainly due to the slow progress in the field of economic freedoms. Widespread corruption discourages entrepreneurial activity. Local courts are faced with a lack of funds for the prosecution of complex crimes. Huge and expensive administration and lengthy registration procedures are remnants of the former centralised planning. The process of starting a business and obtaining approval for the work is still hampered by administrative delays. Unregistered economy is still very high and accounts for about one third of the gross domestic product, half of which is informal economy.⁵²⁹

It can be said that unwarranted external interference in the work of the private sector is most evident in public contracting and public procurement. While the long-standing failure to adopt the Public Procurement Law of BiH was seen as a political tactic as every year more and more procedures were conducted in a non-transparent way, the new PPL BiH is the result of a direct compromise between two political parties (SDP and SNSD) aimed at retaining the existing influence on the outcomes of public procurement procedures. Generally, public contracting is heavily influenced by the managers of contracting authorities, who by definition are individuals appointed by political parties. For example, political influence often occurs in the selection of the type of procedure to be used and selection of bidders, as well as the subsequent addition of annexes to the original contract. According to data for 2013, the number of contracts concluded on the basis of direct agreement

was 66,887, which is 17 times more than the number of contracts concluded using the open procedure (3,882). At the same time, the number of contracts concluded on the basis of competitive request for quotations is more than 3.5 times greater than the number of contracts concluded using the open procedure, and is 14,213. For several years the non-governmental sector has been calling attention to the practice of avoiding open or restricted procedures by splitting the value of public procurement into a number of smaller contracts, as well as their award through a competitive request.⁵³⁰

The protracted economic crisis which has continued since 2007 has resulted in increased interference of the state, as well as politics, in the operations of business entities. Through development banks (IRB in RS and RB in FBiH), whose management is appointed by the executive authorities of the entities, the state has spread its influence to the private sector and, through non-transparent procedures (or complete absence thereof), imposed a clientelistic relationship on the economy and strengthened the oligarchic structures.

In RS for years there have been numerous examples of irregular allocations of proceeds of privatisation, which are held in escrow in a special account with the IRB. Instead of transparent procedures for lending to industry development projects, funds were granted on partisan, kinship and friendly grounds,⁵³¹ as well as for buying social peace through various social transfers. Similar is the case with the Development Bank of FBiH.

It can be said that the private sector is finding it difficult to stand up to the arbitrariness of public administration and civil servants. The reasons are many, ranging from the weak rule of law as manifested in inconsistent application of laws governing discrimination, public procurement, competition, etc. to inadequate functioning of the existing representative bodies (employers' associations or chambers of commerce).

The 2014 BiH Progress Report notes that no substantial improvements can be reported as regards the business legal system in Bosnia and Herzegovina, which remains complex and challenging. The implementation of laws remains poor due to weak institutional enforcement capacity. The judicial system still frequently does not function efficiently and in particular struggles to cope with commercial dispute settlements. A weak rule of law and unreliable contract enforcement procedures continue to hamper the business environment. Overall, lengthy contract enforcement procedures and weaknesses in the rule of law continue to be detrimental to the business environment.

The Report further notes that no major progress has been made in reducing the state's influence on the economy. In addition, hardly any measures to decrease para-fiscal charges have been implemented, thus putting an additional brake on private sector development. In 2013 direct budget subsidies to industry and agriculture were around 1% of GDP. Similarly to previous years, the Entity governments provided loan guarantees worth 6.3% of GDP to several companies in the infrastructure sectors.

TRANSPARENCY (LAW)

To what extent are there provisions to ensure transparency in the activities of the business sector?

SCORE 50

In recent years there have been no significant changes to the legislation related to the operations of business entities. It can be said that the legislative framework does not deviate significantly from the legislation of other European countries, even though it is a bit less specific. Each entity Company Law defines similar forms of legal entities for the corporate sector: partnerships, limited liability companies, and joint stock

companies, which can be open joint-stock companies or closed joint-stock companies. Open joint-stock companies must be registered on the stock exchange, but in recent years there has been a practice of re-registration and “closing down” of joint-stock companies and their withdrawal from the stock exchange. This certainly reduces transparency but also affects the rights of minority shareholders.

The Laws on Accounting and Auditing of RS and FBiH were adopted in April 2009 and December 2009, respectively, and have been in force since the beginning of 2010. They have further harmonised the accounting and auditing obligations of companies in both entities. They provide that all enterprises need to file their financial statements and, when applicable, the related audit report with the entity registry of financial statements. The entities' accounting and auditing laws list entities that are subject to an annual audit regardless of the size of their operations.

Both stock exchanges, the SASE and the BLSE, publish the financial statements of all listed entities in all segments of the market on their websites. The Ministries of Finance are responsible for supervising bookkeeping and accounting systems and ensuring that legal entities comply with the provisions of the entities' laws on accounting and auditing.

The 2010 World Bank Accounting and Auditing Report on the Observance of Standards and Codes (ROSC)⁵³² indicates that BiH has made some progress since the publication of the previous report in 2004, noting that it should quickly implement the International Financial Reporting Standards for Small and Medium-Sized Enterprises (IFRS for SMEs) to ensure full alignment with the EU *acquis communautaire*.

The entities' Banking Agencies require banks to prepare financial statements based on both IFRS and their

prudential regulations and then to have them audited. This double requirement has produced bank financial statements that are not in compliance with IFRS. The entities' Insurance Supervisory Agencies require monthly, quarterly and annual regulatory reporting in addition to the filing of financial statements.

TRANSPARENCY (PRACTICE)

To what extent is there transparency in the business sector in practice?

SCORE 50

Current monitoring and enforcement arrangements do not ensure that the quality of financial statements published by public-interest entities meets the IFRS standard. Financial sector regulatory agencies do not monitor compliance with accounting requirements by regulated entities (e.g. banks, listed companies and insurance companies) systematically. The Securities Commissions perform *ad hoc* reviews in case of capital increase or reduction but do not review the annual financial statements of listed companies. Financial sector regulatory agencies tend to rely exclusively on statutory audits to evaluate the quality of financial statements of regulated entities.

Generally, there are no publicly available registers or data on registered companies (details of management structure, contact data, reports, etc.). Very few companies prepare an annual report that is made available to the general public.

The banking sector is the main source of information on possible money laundering, as other relevant institutions are not yet fully functional, but the number of reports on transactions above the threshold has decreased in recent years.⁵³³

The Insurance Agency of BiH was established in

2006 and does not yet have structured processes for reviewing financial statements prepared by insurance companies.

The overall lack of compliance with IFRS of the reviewed financial statements casts a shadow on the ability of the audit profession, including audit firms that are members of international networks, to enforce compliance of the use of IFRS for the preparation of financial statements as required by the Framework Law and the entities' accounting and auditing laws. Legislation on corporate accounting and auditing is broadly aligned with the *acquis* (but not yet fully in line with latest EU legislative developments) and almost fully harmonised between the entities. In November 2013, the FBiH Chamber of Auditors was established as a professional organisation of audit firms and licensed auditors. The Committee for Public Control, supervising the Chamber of Auditors, was also set up.

In addition, many facts relating to the operation of companies are unreasonably treated as trade secret and are difficult to access, even by their shareholders. There are also chronic problems of lack of internal audit or lack of its independence, as well as lack of internal rules on external auditor rotation.⁵³⁴

ACCOUNTABILITY (LAW)

To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?

SCORE 50

The system of corporate governance in companies in BiH is a two-tier one, with the classic division of the governance bodies into those that perform oversight and those that perform daily management of the company.

Looking at the structure and competences of companies' bodies, one can say that the key role in ensuring effective corporate governance and successful operation of a company is played by the company's supervisory board. Thus, for example, the Assembly is responsible for strategic decision-making; however, its decisions are typically based on the proposals of the Supervisory Board. The company's management is focused on the organisation of labour and day-to-day management and operation of the company, and is also responsible for ensuring the company's compliance with applicable legal regulations. The Supervisory Board is hierarchically ranked between the Assembly and the Management Board and is responsible for ensuring the optimal relationship between the owners and operative society. The Supervisory Board thus represents a transmission mechanism whereby the shareholders' will is translated into the day-to-day operation of the company. The role and functions of the supervisory board include not only supervision of the company's operations, but also often participation in making operational decisions, which, by nature, are part of the basic powers of the company's management. Accordingly, the Supervisory Board's powers and responsibilities are broader than those of the Assembly and the Management Board. As concerns its relation to the Assembly, the Supervisory Board has an obligation to act in the best interests of shareholders, prepare draft decisions of the Assembly and ensure implementation of the Assembly's decisions. Based on the decisions of the Assembly, the Supervisory Board formulates the company's policy, appoints and dismisses members of the Management Board and oversees the work of the Management Board, participating more frequently in decision making.

A series of amendments to the Company Law in FBiH,⁵³⁵ Law on Enterprises of RS, and its subsequent abolition and the adoption of the new Company Law in RS in late 2008,⁵³⁶ have led in part to a change in the legal status

of governance bodies. The Company Law of RS provides for the existence of the management board. In closed joint-stock companies this role can be performed by the director and the executive board. The Law also provides for greater control over the work of the members of the supervisory board, i.e. non-executive directors, for the benefit of the shareholders.

The development of a corporate governance code for joint-stock companies was entrusted to the Securities Commission of FBiH and the Securities Commission of RS. Based on the entities' company laws, the Commissions issued the Joint-stock Company Governance Regulations in FBiH⁵³⁷ and the Standards of Corporate Governance for Joint-stock Companies in RS.⁵³⁸ Despite having been adopted by the Commissions operating within state authorities, the principles of corporate governance do not have a fully binding character (they were not passed by the legislature, or in the legislative procedure) but, rather, an implementing character in the sense that they elaborate the existing legal provisions and make suggestions and recommendations on how to improve operations of companies.

ACCOUNTABILITY (PRACTICE)

To what extent is there effective corporate governance in companies in practice?

SCORE 25

According to the 2011 survey into the state of corporate governance carried out by IFC and Sarajevo-based SEE Business Solutions Ltd., conducted on a sample of 76 joint-stock companies in BiH, businesses generally adhere to the legal obligations only formally, while good corporate governance practices remain marginal.⁵³⁹ Thus, the meetings of supervisory/management boards are generally held four times a year, in compliance with the legal obligation. There is still the practice of

paying fixed fees to members of the boards which do not depend on the results achieved. The membership of the management and supervisory boards is mostly made up of shareholders or persons related to them. While good corporate governance practices emphasise the importance of independent members in the board structure, there are only 11% of them in FBiH and 18% in RS.

One of the cornerstones of corporate governance is the professionalisation of the top management and linking award schemes for top managers to performance, development and growth. However, very few companies implement good corporate governance practices. This is mostly due to the fact that the private sector in BiH is largely comprised of family enterprises in which the core management consists of the founder/owner and his/her family members, who usually pursue quite a conservative approach. Furthermore, numerous open-type joint-stock companies have transformed into closed-type joint-stock companies, introducing governance principles based on the family company model. In practice, this means that there are no regular annual reports and that the operation of these businesses entities remains largely obscure. According to the latest available data on the state of corporate governance (2012 survey by IFC and SEE Business Solutions d.o.o.), the number of independent members in supervisory boards has dropped from 28% in 2008 to a mere 9% in 2012.

Although the supervisory/management boards' commissions are considered a key tool for better organisation of the system for oversight and implementation of the boards' decisions, they are rarely formed in joint-stock companies in BiH. The environment in which domestic companies operate is characterised by numerous risks. Often companies are not aware of these risks and do not pay enough attention to the issues of risk management and internal control of opera-

tions. According to the 2012 survey, internal auditors or internal audit departments exist in 50% of surveyed companies.

According to a 2010 survey on the current state of corporate governance in RS⁵⁴⁰, most companies do not have a Code of Corporate Governance. This finding is further confirmed by the annual surveys conducted by IFC and SEE Business Solutions d.o.o.

INTEGRITY MECHANISMS (LAW)

To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

SCORE 50

Some associations (trade unions, employers' associations, branch associations) have established their own codes of ethics and courts of honour, but the public is not informed about their work or possible effects of their work. The contents of these codes are quite uneven. Some codes contain detailed provisions on the prohibition of bribery, prevention and treatment in cases of conflict of interest, some have even incorporated the principles of the United Nations Global Compact,⁵⁴¹ while a number of codes mainly deal with the issues of relationships with customers, business partners and competitors.

Courts of honour of the entity and cantonal chambers of commerce⁵⁴² are responsible for the development and protection of fair business practices to be followed by chamber members, as well as for conducting proceedings and imposing sanctions for breach of commercial practices, contracts, trade rules, business usages and other applicable regulations in the domestic market. In

particular, the courts are in charge of looking into and sanctioning the stifling of competition in the market through monopolistic activity, unfair competition, speculation and restriction of the market, as well as the harming of the reputation of the Chamber's members and other companies in the performance of their operations in.

Another very important issue in terms of the fight against corruption in the business sector is the protection of whistleblowers; however, that issue has been ignored for years, even though there is an international obligation for the adoption of these regulations (stemming from the ratification of the UNCAC and other international legal instruments).

The area of public procurement is perceived as one of the largest generators of corruption. The new Public Procurement Law contains few anti-corruption provisions. One of the few examples is Article 52, which stipulates that the contacting authorities are under obligation to disqualify bidders in cases of bribery and conflict of interest.⁵⁴³ Although this provision is almost identical to the one in the old law (Article 27), what represents an innovation is the obligation imposed on each candidate/bidder to submit attached to the bid a separate written statement saying that it did not offer bribe or participate in any action that had corruption as its objective in the course of the public procurement procedure concerned.

According to the 2013-2014 Global Competitiveness Report, BiH fares by far the worst in such areas as ethical behaviour of firms (ranked 135th) and protection of minority shareholders' interests (ranked 130th).⁵⁴⁴

INTEGRITY MECHANISMS (PRACTICE)

To what extent is the integrity of those working in the business sector ensured in practice?

SCORE 0

Although there are occasional improvements in the legal regulations, integrity mechanisms are generally underdeveloped. Also, it is evident that there are major problems and delays in the implementation and use of existing mechanisms. The level of disclosure is low, with the exception of basic financial statements. Audit reports of companies are not easily accessible.

That the court of honour is not given serious attention and that it is approached merely formally is evidenced by the fact that the Rules of the Court of Honour of the Chamber of Commerce of the Republic of Srpska are borrowed verbatim from the Chamber of Commerce of Serbia, even using the *ekavian* dialect, which is not in official use in the Republic of Srpska. A similar situation is found in FBiH, where the entity and cantonal chambers use the same template when establishing their own courts of honour. What remains an issue of particular concern is the complete absence of publicly available information about the operation of courts of honour in said chambers of commerce. In the last seven years there have been no reports of a single session of the courts of honour in professional associations.

Corporate governance is weak, even in financial institutions, because regulatory requirements are low and licensing is implemented superficially. The case of a member of the supervisory board in a bank, who was selected and licensed while under criminal proceedings for a financial criminal offence (tax evasion) before the Court of BiH, is not an isolated practice.⁵⁴⁵

The disclosure of information on conflict of interest for board members often does not happen on an up-to-date basis, and boards do not have a sufficient number of truly independent and competent members. Open competitions for the selection of company members are virtually non-existent, and those few that do exist are only conducted to meet the formal requirement.⁵⁴⁶

In the last seven years there have been no reports of a single session of the courts of honour in professional associations.

In practice, rather than being offered protection and encouragement, individuals and businesses that report corruption are exposed to different types of formal and informal pressures. This is mostly evidenced by the information of the citizens' association *Tender*, whose complaints and appeals concerning the implementation of public procurement procedures by irresponsible and corrupt representatives of the contracting authorities have turned into a priority list of companies to be visited by control institutions with the aim of deterring private companies from participating in the complaints/appeals.

AC POLICY ENGAGEMENT (LAW AND PRACTICE)

To what extent is the business sector active in engaging the domestic government on anti-corruption?

SCORE 50

The relationship between the business sector and corruption is the best illustration of the "state capture" phenomenon, which has been a characteristic feature of BiH for years. The problem of corruption is often complained about by the part of the business sector not working hand in glove with the government. However,

they rarely engage in open confrontation, avoiding to notify competent judicial authorities for fear of retribution⁵⁴⁷ (in the form of frequent inspections, tax control, inability to participate in tenders, inability to obtain funds, etc.). All this results in a clientelistic relationship, and the discord within the business community only goes to provide fertile ground for this state of affairs.

However, in the last two years there have been several cases in which private companies reported incidences of extortion by public officials. Thus, an inspector for control of major taxpayers in the Tax Administration of RS, Željko Orej, was arrested for bribery on 30 May 2014 following a tip-off by Mirko Vojinović, President of the Management Board of the company Topdom BiH, from whom Orej had repeatedly demanded KM 20,000 for the concealment of tax liabilities. There was also another arrest of an inspector of the Tax Administration of RS in charge of forced collection in the Regional Centre Istočno Sarajevo, whom a number of companies reported for extortion. Also, there have been several prison sentences imposed, which will certainly provide a spur for further anticorruption efforts.

Also, it is certainly important to note that the corruption problems faced by the business sector are not adequately treated by the Agency for Prevention of Corruption and Coordination of the Fight against Corruption of BiH. The strategic approach to combating corruption, which is embodied in the Anticorruption Strategy 2009-2014, has left the problems of the business sector largely out of focus, with the only relevant measure being the organisation of a series of seminars and workshops with business entities aimed at identifying and eliminating areas and practices hampering efficient business operations in the market. However, not even this measure has been implemented as envisaged.

While the chambers in FBiH are based on the principle of voluntary membership, membership in the Foreign

Trade Chamber of BiH and the Chamber of Commerce of RS is a legal requirement, and thus their funding is guaranteed regardless of the quality of services they provide. In the opinion of independent economists, this is the main reason why the two chambers are an extended arm of the government, rather than the economy.⁵⁴⁸

The citizens' association Tender believes that the chambers are a part of the corruption chain in public procurement. Specifically, the two aforementioned chambers are responsible for issuing certificates to businesses proving the local origin of goods, services and works, on the basis of which they could get preferential treatment in public procurement procedures. In practice, however, this leads to abuse, i.e. the issuance of certificates for procurement items that do not have the local origin.⁵⁴⁹

In the last two years the Association of Employers of BiH has started to play a more active role in the fight against corruption. During the passage of the new Public Procurement Law, the Association was in a group of CSOs from Bosnia and Herzegovina that sent a joint open letter calling on the delegates of the House of Peoples of the Parliamentary Assembly of BiH to refrain from adopting the new Law. The initiative was a partial success as the delegates of the Parliamentary Assembly of BiH adopted nearly half of the 18 proposed amendments to the Law. It is important to note that the process of improving the public procurement system was also supported by the Association of Employers of FBiH. The employers' associations (the main ones being: Employers' Association of FBiH, Union of Employers' Associations of RS, and Employers' Association of BiH with members from both entities) pay lip service to the fight against corruption, without undertaking any concrete initiative on their own. According to the EC, the main problem of these associations is the fact that they do not efficiently represent the interests of their

members in negotiations with government officials.⁵⁵⁰

The UN Global Compact (UN GC), which promotes corporate social responsibility, was introduced in BiH in 2005. However, only three BiH companies have joined this global network to date.⁵⁵¹

SUPPORT FOR/ENGAGEMENT WITH CIVIL SOCIETY (LAW AND PRACTICE)

To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?

SCORE 25

Joint initiatives of the business sector and non-governmental organisations are a recent phenomenon in the country. However, the cooperation between the business sector and NGOs is still far from desirable. The reasons for this are varied, but the one seen as the most important is the government's view of civil society as an enemy rather than a corrective element of the society. By the same token, business entities that support or collaborate with civil society are seen as "enemies".

Via its hotline for reporting corruption, TI BiH has in recent years received serious complaints by the business sector concerning irregularities in privatisation and public procurement. Particularly striking were the cases of privatisation of the RS Oil Industry, company "Aluminijum" from Mostar, and others.⁵⁵² The documentation collected by TI BiH on these cases has led to investigations against top officials in both entities. However, the importance of these cases was downplayed by the national judicial authorities and they have never seen an epilogue in court.

In response to corruption in public procurement, in 2009 the managers and owners of private companies that participate as bidders in public procurement formed the citizens' association *Tender*. The association is committed to promoting cooperation with all legal entities in the public and private sectors, notably NGOs, in strengthening the role and capacity of civil society in the fight against corrupt malpractices in public procurement. *Tender* contributed substantially to CSOs' initiatives during the passage of the new Public Procurement Law. What remains a concern, however, is the association's financial dependence on projects that are funded entirely by international donors.

The issue of possible financial support from the business sector to civil society, which is a common practice in the majority of economies with developed democracy, has not yet been brought into spotlight, in part because of the deep economic crisis, and in part due to the lack of integrity on the part of the business sector.

RECOMMENDATIONS

- Provide one-stop-shop registration of business entities throughout Bosnia and Herzegovina;
- Specify the procedures for establishing public-private partnerships and concessions law, improve the legislation and monitoring of public procurement procedures and improve legislation
- Improve legislation which will introduce the principles of corporate governance in place of the existing guidance and recommendations;
- Improve the transparency and accountability of the national investment and development banks with consistent application of the principles of corporate governance;
- Improve work of the state and entity chambers of commerce and employers' representative bodies.

6.15. STATE-OWNED ENTERPRISES

OVERALL PILLAR SCORE: 33/100

STATUS: WEAK



SAŽETAK

Although it has been almost 25 years since the establishment of a new socio-political system and introduction of a market economy, when it comes to ownership of capital there are still deficiencies in the relationship of the state towards economic entities. State-owned enterprises (SOEs) are largely a legacy of the previous era in which all businesses were owned by the state. These are the business entities that have either not been privatised or have not been the subject of privatisation at all in recent years. The Federation of BiH, without cantons, is still the major shareholder in almost all 50 state-owned companies which employ tens of thousands of employees. A similar situation exists in the Republic of Srpska, with the difference that in RS, the telecommunications sector has been privatised.

The quality of the legislative framework governing the independence, transparency and accountability of the public sector is relatively good. In practice, however, there are numerous failures in the application of existing legislative provisions. Particularly problematic is the monitoring of the implementation of specific legislative provisions given the lack of accountability of state structures. It can be argued that SOEs are in a privileged position in relation to private companies, *inter alia*, because they are headed by individuals from the political parties that have received a mandate and, by extension, the power to appoint managers and manage state property and state-owned enterprises.

Public enterprises in Bosnia and Herzegovina are inefficient due to the great influence of politics and the state on their work. The most oft-repeated argument in favour of state ownership is the one of the depressed market, i.e. the disruption of the assumption of perfect competition in the sectors in which there is a decline in average costs, which leads to monopolies. And since in private ownership monopoly is a bad thing, it is better for a company to be owned by the state because the state is, presumably, beneficent. However, this argument is fallacious in the case of Bosnia and Herzegovina because of the questionable benevolence of the government(s), i.e. commitment of politicians to the common good.

STRUCTURE AND ORGANISATION

State-owned enterprises (SOEs) are those in which the state has significant control, through holding a full (100%), majority (over 50%) or significant minority (less than 50%) ownership stake. It is evident that the most important state-owned enterprises in BiH are in the energy, telecommunications, transport and utilities sectors, as well as military industry. There is no specific register containing data on the number of such enterprises, but it is estimated that there are a few hundred of them, which continue to make up a significant share of the country's GDP.⁵⁵³

There is still over KM 10 billion worth of unprivatised capital in the hands of FBiH, distributed across nearly 50 economic entities in different industries. According to the European Commission report⁵⁵⁴, the initial stock of state-owned capital for privatisation has remained unchanged at some two-thirds and is still in the hands of FBiH, while in RS about two thirds of the enterprises intended for privatisation have been sold. In Brčko

TABLE WITH SCORES

STATE-OWNED ENTERPRISES

OVERALL PILLAR SCORE 2013: /

OVERALL PILLAR SCORE 2015: 33/100

DIMENSION	INDICATOR	LAW 2013	LAW 2015	PRACTICE 2013	PRACTICE 2015
CAPACITY 2013 / CAPACITY 2015 37/100	INDEPENDENCE		50		25
GOVERNANCE 2013 / GOVERNANCE 2015 29/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY MECHANISMS		50 50 25		25 25 0

District BiH privatisation has completed with the sale of all 27 companies intended for privatisation. It is estimated that 60% of small enterprises and 30% of large enterprises are now owned privately or are in the process of being sold.

INDEPENDENCE (LAW)

SCORE 50

The legislative framework governing the establishment, operation, management and termination of companies is generally the same for both privately-owned and state-owned businesses. The Law on Companies of FBiH⁵⁵⁵ provides that the company is a legal entity that independently performs business activities with the aim of earning profit, and that it can be established by domestic and foreign individuals and legal entities. An identical provision is contained in the Law on Companies of RS⁵⁵⁶. At the same time, the Law on Public Enterprises in FBiH⁵⁵⁷ and the Law on Public Enterprises in RS⁵⁵⁸ provide that public enterprises may be organised in the form of a joint stock company or a limited liability company and may be founded by the institutions responsible for public interest activities (in the fields of energy, communications, utilities, management of public resources and other public interest activities), i.e. municipalities, cities, cantons or entities.

The regulatory framework for such industrial sectors as telecommunications and/or energy aims to promote free market and competition among all operators; however, there are still significant barriers preventing private providers of these services from entering the market. These barriers primarily consist in numerous permits and licenses issued by government ministries and their agencies.

That the authorities give 'preferential' treatment to state-owned enterprises is evident from the fact that FBiH

in 2013 adopted amendments to the Law on Penalty Interest Rate on Public Revenues⁵⁵⁹ writing off the debts arising from penalty interests on outstanding liabilities accumulated by big debtors, mainly state-owned enterprises. Tax debtors such as "Railways of FBiH", "Kreka" Mines, "Hidrogradnja", "Breza" Mines, "Agrokomerc" and others were thus forgiven about EUR 14,5 million worth of debt arising from penalty interests.

That the state does not have the intention of creating professional and independent governance structures in state-owned enterprises is evidenced by the placing of a ceiling on the pay of executives in state-owned enterprises, as opposed to employees in other sectors. The proposed Draft Law on Salaries in Public Enterprises in FBiH⁵⁶⁰ imposes a ceiling on the salaries of top managers (administration) and remunerations of members of supervisory boards, stipulating that the highest salary in a public enterprise cannot exceed four average monthly net salaries in FBiH in the previous three months, or five salaries for top-managers of economic giants employing more than 1,000 workers and having an annual income in excess of EUR ca 128 million. Maximum bonus for good economic performance is 30 percent of their basic salary. At the same time, remuneration for members of supervisory boards may not exceed the average monthly net salary in FBiH. In its conclusion dated March 2014 the Government of RS stipulated that the pay of a director and executive director of a public enterprise in RS, including all emoluments, may not exceed EUR ca.1530 and EUR ca. 1280 respectively.

INDEPENDENCE (PRACTICE)

SCORE 25

Although the governance of state-owned enterprises is nominally the responsibility of the appointed managerial and supervisory structures, the ruling

political parties continue to interfere strongly in their daily operations. According to many commentators, the key problem faced by public enterprises is the great influence of politics on their daily as well as strategic decisions⁵⁶¹.

The ruling structures have an enormous influence on appointments to the management boards and supervisory boards of SOEs. State-owned enterprises are generally treated as “spoils” that are divided between coalition partners after every election. Thus, after the 2010 general election in FBiH and formation of the new Government of FBiH, more than 200 people were summarily dismissed from their managerial positions in public institutions and enterprises.⁵⁶² A similar practice was observed following the 2012 local election and 2014 general election and the subsequent formation of new governments.

The process of appointments to managerial positions in public and state-owned enterprises is highly politicised. Nominally, members of supervisory boards and directors of such enterprises are appointed by the competent local, cantonal or entity assemblies, but in practice this largely depends on mutual agreements between political parties. Politicisation is associated with the decision-making process in which political objectives take priority (e.g. maximising the number of employees, ensuring a relatively high level of wages and maintaining low tariffs as a ‘social’ category). Such decision-making practices in public enterprises always end up pushing these enterprises into big problems in the long run. For example, according to available information⁵⁶³, only a handful of utility companies have good economic and financial indicators and are not faced with excess workforce⁵⁶⁴.

With the exception of electricity and telecommunications sectors and military industry, most state-owned enterprises perform very poorly in terms of business

results, are not motivated enough to increase efficiency and are faced with pressures to keep the prices of their goods/services at a socially acceptable level; as a result, the level of investment is low and threatens the long-term viability of some of these enterprises. This is exactly one of the effects of imposing a ceiling on wages in state-owned enterprises – on the one hand, capable managers avoid getting employed as top managers in such enterprises, and, on the other, incumbent top-managers are not motivated to improve operations and performance of their enterprises. There is also a routine practice of state-owned and public enterprises being run by individuals from relevant line ministries, depending on the sector over which the ministry is in charge. Thus, for example, the ministry of transport operates railways, airports and companies in charge of road infrastructure, and the ministry of energy runs companies in the energy sector. This leads to the interweaving of relationships concerning the management of state-owned enterprises with policy-making in given sectors.

TRANSPARENCY (LAW)

SCORE 50

When it comes to the work of state-owned enterprises, the laws require certain levels of accountability to be demonstrated by the enterprise’s assembly, supervisory board, management and executives.

Generally, the entity laws on accounting⁵⁶⁵ apply to all companies, regardless of the type of ownership. Among other things, these laws impose such obligations as setting up the bookkeeping and accounting systems, preparation and presentation of financial statements, and compulsory audit of the financial statements. All legal entities, including state-owned enterprises, are required by law to keep appropriate business records, to prepare and present their financial statements, and

to audit the financial statements in accordance with the relevant laws and implementing regulations.

Internal audit legislation imposes an obligation on the public sector, including public enterprises and organisations in which the state is the majority owner, to establish an effective internal audit system (i.e. hire an internal auditor if it is a smaller enterprise or set up an internal audit department if it is an enterprise with over 100 employees) as well as the obligations relating to a systematic review and assessment of risk management, internal controls and organisation's management, which includes policies, procedures and activities of state-owned enterprises. It also imposes the obligation to audit the adequacy and effectiveness of the financial management and control systems in enterprises. Central Harmonisation Units operating under the ministries of finance at the state and entity levels are responsible for monitoring the implementation of internal audit regulations, coordinating the work of internal audit units in organisations and enterprises, and reporting on internal audit activities.

State-owned enterprises are not required by law to prepare anti-corruption programmes or to report on their implementation if they already exist. The Strategy for Combating Corruption (2009–2014) does not explicitly address the issues of the fight against corruption in state-owned enterprises.

TRANSPARENCY (PRACTICE)

SCORE 25

Transparency in the publication of business results is limited, especially when it comes to business indicators, plans and results. Business results are usually reviewed at the meetings of the assemblies and supervisory boards, with only limited participation of the public and citizens. Reporting on performance indica-

tors is almost entirely limited to annual business plans and annual reports, which are not readily available to the public. Although business plans contain a vast amount of detailed information, it is primarily related to short-term financial plans (i.e. plans for next year), while very little attention is paid to the evaluation of achieved results. There is a conspicuous lack of a focused and coherent framework for the evaluation of results which could be actively used by owners for monitoring business operations of enterprises. Some state-owned enterprises are listed on the stock exchanges in Sarajevo and Banja Luka and are thus obliged to publish in these places required financial statements and relevant business decisions and plans.

Generally, there is no register of state-owned enterprises and therefore no data on their management and ownership structures. These data are not published in accordance with the principle of proactive transparency and can usually only be obtained using a request for information provided for under the Law on Freedom of Access to Information. For some companies, especially those that are listed on the stock exchanges, it is possible to obtain online information about their management and ownership structure.⁵⁶⁶

Internal auditing is a relative novelty in the public sector in Bosnia and Herzegovina, and therefore in state-owned enterprises. Although each enterprise in which the state is the majority owner is required by law to establish an internal audit system, a large number of enterprises have not yet done so.⁵⁶⁷ Another problem is the work of the audit committee, i.e. body that is responsible for external and internal audits and reporting to the management on accounting, reports and financial operations. Specifically, appointments to the audit committee are generally made along political lines, or include people who already perform certain managerial duties in other government organisations and enterprises, and who can hardly find time to actively participate

in these committees due to their regular work. For example, one of the executive directors in the state-owned enterprise “Pošte Republike Srpske” [*The RS Postal Service*] was found to have been member of the audit committees in seven state-owned enterprises.⁵⁶⁸ In April 2014 the RS Government adopted a decision restricting the number of possible memberships in management, supervisory and audit committees/boards in public enterprises, institutions and organisations.⁵⁶⁹

Although the law imposes an obligation on the audit committee to submit a report at each annual meeting, these reports are generally superficial and do not provide a thorough review of risks along with an in-depth analysis of risk areas or analysis of agreements concluded between state-owned companies and connected entities.⁵⁷⁰ What remains an even bigger problem, however, is the fact that the poorly functioning internal audit function also affects external audit because internal audit findings should be used as a basis for regular audits conducted by the supreme office institutions.

ACCOUNTABILITY (LAW)

SCORE 50

The laws regulating the operations of public enterprises and the laws governing companies impose precise obligations on the ownership and management structures in state-owned enterprises.⁵⁷¹ The bodies of state-owned enterprises are: the Assembly, the Supervisory Board and the Management. The Assembly is the highest body of the enterprise responsible for enacting all important documents and verifying business reports. It appoints and dismisses members of the supervisory board and audit committee, and decides on all important matters pursuant to the law and the Statute of the enterprise. The Supervisory Board is primarily responsible for supervising the work of the management and preparing proposals of all important internal documents

and decisions for the Assembly. The Management of the company is comprised of a Managing Director and Executive Directors and their most important task is drafting and supervising the implementation of the business plans. The Management is required to report to the Supervisory Board, and to prepare proposals that these Boards verify.

State-owned capital in enterprises is generally managed by entity and cantonal governments, or city/municipal mayors. There is an obligation of regular, at least yearly, reporting on business results to the legislature of the entities, cantons and/or cities/municipalities, but this obligation applies only to enterprises that are of strategic interest.⁵⁷² The legislature reviews and approves plans and activity reports, and issues conclusions with specific recommendations.

Internal documents and regulations of state-owned enterprises transpose the principles contained in the state and entity laws on administration, i.e. the principles of legality, transparency, openness, accountability, professionalism and impartiality. The Law on Civil Service in the RS Administration⁵⁷³ regulates who performs the Civil Service activities, organisation and positions in the Civil Service bodies, appointment and employment of civil servants, length of service and work conditions in the Civil Service, rights and duties of civil servants, financing of the work of the Civil Service bodies and relations of the Civil Service bodies to other government bodies. Similar is true of FBiH, where the employment in civil service is regulated by the Law on Civil Service in FBiH⁵⁷⁴, while in Brčko District, this area is regulated by the Law on Civil Service in Administrative Bodies of Brčko District⁵⁷⁵. It is important to note that with the internal documents and regulations stipulate that the recruitment procedures are conducted on the basis of open competition and professional merit, while providing for exceptions for specific categories.

ACCOUNTABILITY (PRACTICE)

SCORE 25

Current practice indicates that the members of supervisory boards are rather uninterested in work results, and are mostly people who are appointed with a view to obtaining remuneration for participation in committees, and not with the aim of improving the management and operations of state-owned enterprises. As discussed under independence (practice), their selection is a matter of agreement between the parties in power, with very little accountability for business results of the given enterprises. One could count on the fingers of one hand people who were called to account for poor business results, and the public generally has no information about the results of their work.

The process of electing members to management and supervisory boards in state-owned enterprises has been known for years and consists in the fact that the first thing the winning parties do after local elections is “divide the spoils”, and then install their party cronies in management and supervisory boards, regardless of how familiar they are with the issues and activities of the enterprises they are being appointed to. The fact remains that the basic criterion for appointment to supervisory boards of public enterprises is party affiliation or kinship or friendship. This has become so common that political parties talk about it overtly and even have their own personnel committees for the selection of the most loyal members to these positions.⁵⁷⁶ This of course means that such enterprises do not work in the public interest but solely in the interest of those in power, as evidenced by the poor business results of public enterprises.

With regard to supervisory boards in state-owned and public enterprises in BiH, a clear distinction needs to be made between two things – the required procedure

for selection of candidates, on the one hand, and the actual selection of candidates, on the other, where the procedure itself is well designed for selection of quality staff, but the final selection of candidates can be questionable. This is primarily a reflection of the level of development of political culture, the motivation for being involved in politics and the attitudes of individuals and parties towards ‘public interest’. Politics, therefore, continues to strongly affect the selection of members of supervisory boards, because the links with politics are unbreakable and because important enterprises and financial interests are at stake.

The management of public enterprises is generally inefficient and politicised with incompetent management boards and directors being appointed⁵⁷⁷. State-owned enterprises in the country are considerably less efficient than private corporations, with many continuing to operate at a huge loss. One of the key reasons for this is insufficient corporatisation of state-owned enterprises.

Corporate governance practices and the protection of minority shareholders’ rights before competent judicial authorities are unsatisfactory⁵⁷⁸. The relatively high degree of ownership fragmentation, caused by the massive voucher-based privatisation, even in small enterprises (in terms of equity size), imposes an obligation to ensure appropriate protection of the rights of minority shareholders. However, partially privatised state-owned enterprises do not attach any importance to this issue at all.

INTEGRITY MECHANISMS (LAW)

SCORE 25

The entity laws on public enterprises require state-owned enterprises to adopt codes of ethics. Specifically,

Article 19 of the Law on Public Enterprises of RS and Article 20 of the Law on Public Enterprises in FBiH stipulate that the Supervisory Board has the duty and responsibility to, in agreement with the Audit Committee, draft a Code of Ethics. The Code of Ethics must contain prohibitions regarding conflict of interest, prohibitions on disclosure of trade secrets, prohibitions regarding competition, prohibitions regarding credits, and the contents of the statement of duties of the members of the bodies and the employees. The laws also provide that the Management Board shall have the duty and responsibility to ensure the consistent implementation of the Code of Ethics as well as ensure that all responsible persons act in accordance with the Code of Ethics, and it shall do so by conducting disciplinary proceedings against persons that violate the Code. The laws on public enterprises also regulate conflict of interest situations, stipulating that the connected persons must avoid actual or apparent conflict of interest with a public enterprise in personal or professional relations⁵⁷⁹.

It is important to note that the current legislation does not regulate bribery and corruption and protection of whistleblowers in state-owned enterprises. Whistleblowers are still not legally defined at the entity and cantonal levels, except in cases where prosecutors grant immunity to 'penitent witnesses'. The Criminal Procedure Code provides that the 'associate witness' who has been granted immunity shall not be prosecuted except in case of false testimony. Corruption is a punishable offence for both the giver and the recipient of the bribe, which makes bribery difficult to detect.

The financing of political parties and election campaigns by state-owned enterprises is regulated by the Election Law of BiH⁵⁸⁰, implementing regulations issued by the Central Election Commission of BiH (rules, instructions, forms, etc.), the laws on political party financing (at the state⁵⁸¹, RS⁵⁸² and Brčko District levels), the laws on

prevention of conflict of interest (at the state, entity and Brčko District levels), laws relating to the registration of political parties, and laws relating to business operations of all legal entities, including political parties in BiH. Under the laws governing the financing of political parties, public enterprises and legal entities in which the state invested capital is at least 25% are prohibited from funding political parties.

INTEGRITY (PRACTICE)

SCORE 0

Codes of ethics in public and state-owned enterprises are internal regulations specifying the basic principles and rules that employees should adhere to in the performance of their daily duties. Interestingly, however, in most cases these codes fail to specify who is responsible for its implementation. Thus, codes of ethics in state-owned enterprises address issues such as conflict of interest, protection and proper use of property, corporate governance, encouraging the reporting of illegal or unethical behaviour, professionalism, prohibition of receiving gifts and impartiality only formally, while in practice opposite is happening in the absence of an authority to supervise the implementation of the Code.

No state-owned enterprise has so far adopted an integrity plan or anti-corruption strategy. At the same time, state-owned enterprises are perceived as a 'hotbed' of corruption, associated with shameless misappropriation of the state-owned capital and the state's passive, almost supportive attitude towards bad management and botched privatisation of state-owned enterprises. The findings of public sector audits show the real state of things in these enterprises (enterprises operating in the areas of forestry, postal service, electricity, railways, etc.)⁵⁸³.

State-owned enterprises generally lack mechanisms for the prevention of corruption and misuse of public funds. According to Global Integrity reports, the SAIs tend to be quite soft in their treatment of irregularities observed in the work of state-owned enterprises as the auditors do not want to arouse the anger of the political leadership. Also, it is noticeable that even sporadic media reports provide more information about irregularities than the SAIs ever found in their reports⁵⁸⁴.

Despite the fact that the legal provisions of the law on political party financing expressly prohibit the financing of political parties by state-owned enterprises, there are evident violations of these provisions in practice. For example, before the 2014 general election information appeared in the media that the entire Electric Utility Company of RS was mobilised to provide support to the Alliance of Independent Social Democrats (SNSD)⁵⁸⁵. However, the competent authorities failed to impose any sanctions for these activities.

Lastly, we will discuss the implementation of the legislation governing conflict of interest situations. According to reports of the Central Election Commission of BiH⁵⁸⁶, which was responsible for establishing the existence of conflict of interest situations in institutions at the state level as well as in FBiH and Brčko District, in 2013 there were 17 violations of the relevant provisions of the conflict of interest law. The most frequently violated provisions were those relating to public enterprises, with a total of 10 sanctions imposed. Also, 76% of the sanctions were imposed on the municipal level mainly for incompatibility between the function of a local councillor and employment in a state-owned or public enterprise. These data are confirmed by the decisions of the RS Commission on Preventing Conflicts of Interest, where the majority of identified conflict of interest situations relate to incompatibility between the function of a local councillor and employee in a public enterprise.⁵⁸⁷

RECOMMENDATIONS

- Finish the privatisation of state capital in state-owned enterprises for which domestic and foreign investors have shown an interest;
- Reduce political pressure on the leadership of state-owned enterprises through professionalisation of management structures and improve corporate governance in state enterprises, with an emphasis on transparency and accountability of management;
- Create public registers listing all state-owned enterprises, as well as the names of members of their management and supervisory bodies in both entities and Brčko District of BiH;
- Enhance the transparency of reporting and publication of annual reports on the work of state-owned enterprises;
- Initiate programmes for enactment of anticorruption strategies and/or integrity plans in the strategically important state-owned enterprises.

6.16. INTERNATIONAL INSTITUTIONS

OVERALL PILLAR SCORE: 70/100

STATUS: STRONG



SUMMARY

Since the release of the previous NIS Study in 2013, there have been no major changes in the role and involvement of the international community in the country. The 2013 NIS Study, on the other hand, found a significant change in the role of the international community over the previous five years, as reflected primarily in the international community's abandonment of the concept of direct governance of the country, giving priority to partnership with government institutions and using technical assistance (TA) projects as a key tool and the country's EU accession as a primary agenda. In formal terms the country remains a protectorate, formally governed by an *ad hoc* body personified

in the Office of the High Representative (OHR), under the supervision of the Peace Implementation Council (PIC) and under the general auspices of the United Nations and the Security Council. In parallel with the diminishment of the OHR's role, the involvement of the EU in the country has increased. The mandate of the EU Special Representative (EUSR) was separated from that of the High Representative (HR) in 2011, when the EUSR assumed duty in BiH, while the former "double-hatted" HR/EUSR retained only the position of the High Representative.

Decreased international presence is also evident in the decreasing amounts of funds available to international institutions in BiH. Some donor agencies have closed offices in BiH, or are about to do so. They intend to

continue their projects within the EU Instrument for Pre-Accession Assistance (IPA) and other multilateral funds, through the establishment of a donor coordination mechanism, in which coordination would be led by the EU Delegation in BiH.

STRUCTURE AND ORGANISATION

The structure of international organisations present in BiH has not changed significantly in recent years. Of the "Dayton organisations", namely organisations with a specific role under the Dayton Peace Agreement (DPA), those that are still present in the country include the Office of the High Representative (OHR), Organisation for

TABLE WITH SCORES

INTERNATIONAL INSTITUTIONS

OVERALL PILLAR SCORE 2013: 70/100

OVERALL PILLAR SCORE 2015: 70/100

DIMENSION	INDICATOR	LAW 2013	LAW 2015	PRACTICE 2013	PRACTICE 2015
CAPACITY 2013 88/100 CAPACITY 2015 88/100	RESOURCES INDEPENDENCE	100 100	100 100	75 75	75 75
GOVERNANCE 2013 60/100 GOVERNANCE 2015 60/100	TRANSPARENCY ACCOUNTABILITY INTEGRITY MECHANISMS	50 75 75	50 75 75	50 50 50	50 50 50
ROLE 2013 63/100 ROLE 2015 63/100	IMPLEMENTATION OF INTERNATIONAL LEGAL INSTRUMENTS COMMITMENT TO THE FIGHT AGAINST CORRUPTION REDUCE CORRUPTION RISKS BY SAFEGUARDING INTEGRITY IN INTERNATIONAL INSTITUTIONS RELATIONSHIP TO OTHER PILLARS	25 50 75 100	25 50 75 100		

Security and Cooperation in Europe (OSCE), International Monetary Fund (IMF), and Council of Europe (CoE). Apart from the OHR, at the moment of writing, these organisations are no longer involved in areas that are related to their role under the DPA. Besides them, some UN agencies (such as UNHCR, UNDP) continue their operation in BiH. Also, there is a downward trend in the number of development agencies present in BiH. Some of them closed their offices in BiH, while some of the projects that were run by these organisations continue under the IPA for BiH.

As far as the structure of international organisations is concerned, the OHR is managed by the PIC and it reports on the progress of BiH to the UN Security Council. After separation of the functions of the High Representative and EU Special Representative, EUSR function was fused with that of the Head of the EU Delegation to BiH in an attempt to consolidate EU presence in BiH.

RESOURCES (LAW)

To what extent does the mandate of international institutions allows their involvement in anticorruption and good governance activities?

SCORE 100

The unique constitutional set-up of BiH⁵⁸⁸, which implies an active and direct involvement of international organisations as well as limited state sovereignty, means that the involvement of international organisations is instrumental to overall political processes, including in the areas of anti-corruption combat and good governance.

Certainly, the most important international organisation in BiH is the Office of the High Representative, which was established by Annex 10 of the Framework Agreement for Peace in BiH (hereinafter: Dayton Agree-

ment).⁵⁸⁹ Initially conceived as an organisation that would oversee the civilian implementation of the Dayton Agreement, the OHR progressively expanded its scope of work as well as methodology. The responsibility for overseeing the OHR rests with the Peace Implementation Council (PIC)⁵⁹⁰, which, as of 2000, shifted from annual meetings of foreign ministers to meetings at the level of ambassadors and political directors. The said period was characterised by changes in the nature of international involvement in BiH, as reflected in the increasing involvement of the European Union (EU) and the diminishing role of non-European actors. In line with this shift was also the establishment of the function of EU Special Representative (EUSR), which was delegated to the High Representative immediately upon establishment.⁵⁹¹ The period of merging the two functions was completed on 31 August 2011, when the EUSR assumed duty in BiH, while the former “double-hatted” HR/EUSR retained only the position of the High Representative. The OHR formally retained broad executive powers,⁵⁹² although they have not been used in a long time due to the lack of agreement among key PIC member states.⁵⁹³

In addition to the OHR, the Dayton agreement assigned a significant role to the Organisation for Security and Cooperation in Europe (OSCE), whose mandate was also established by the Dayton agreement, and whose portfolio has also developed and expanded in the period of post-war democratic consolidation of BiH. In addition to the fact that OSCE documents are mentioned as reference points in the Dayton Agreement⁵⁹⁴, the OSCE was assigned a major role in the early electoral process in BiH⁵⁹⁵ as well as the important role of establishing the institutions of the Ombudsman for Human Rights and the Human Rights Chamber.⁵⁹⁶

The Council of Europe’s (CoE) work in BiH is based on Annex 6 (Agreement on Human Rights) of the Dayton Agreement. Early on, the CoE worked on the establish-

ment of the Commission on Human Rights, provided support to the institution of the Ombudsman for Human Rights, and appointed foreign judges in accordance with Annexes 4 and 7 of the Dayton Agreement. The CoE's initial task in BiH, in addition to assisting in the implementation of Annex 6 of the Dayton Agreement, is to prepare BiH for full membership in the CoE.

EU Special Representative (EUSR) is the key international institution in the country. Its mission is to partner with local authorities and contribute actively to the implementation of reforms necessary for the country's progress towards European integration.

RESOURCES (PRACTICE)

To what extent do international organisations have adequate financial and human resources to function and operate effectively?

SCORE 75

The shift in the international community's involvement in the country away from direct governance towards partnership with local authorities has significantly changed the mode of action of the international community in strengthening good governance, the rule of law and the fight against corruption. The role of the international community in the fight against corruption is mainly confined to the provision of funds to the government institutions of BiH for the implementation of technical assistance projects. In this regard, the most significant contribution has come from the United States Agency for International Development (USAID), European Union (EU), the Government of the Kingdom of Sweden and the Government of the Kingdom of Norway. During the five-year period 2007–2012, BiH received from EU € 21.5 million in IPA funds for 11 projects in the fields of judicial reform and anti-corruption.⁵⁹⁷ In 2014 USAID disbursements for democratisation, human

rights and governance projects totalled \$ 5.5 million.⁵⁹⁸

Recent years have seen a marked decrease in the budgets and number of staff in OHR and OSCE, given their diminished role and current mandate in the country. In 2012 the annual budget of the EUSR, i.e. EU Delegation in BiH, was significantly increased comparing to previous year. In 2012 budget was € 5.25 million, while in 2011 was 3,74 million. The EUSR in Bosnia is the EUSR with the highest budget among all 45 EUSRs appointed all over the world.⁵⁹⁹

INDEPENDENCE (LAW)

To what extent are international institutions able to act independently in the country?

SCORE 100

The operation of international organisations is defined in international agreements as well as mutual memorandums of understanding between BiH and individual organisations, guaranteeing them freedom from unwarranted external interference and numerous other privileges in accordance with international law standards.

A large number of international organisations in BiH still enjoy the status of partners and funders, which provides them with an additional guarantee of independence and freedom from unwarranted external interference.

Actual implementation, however, remains a problem.⁶⁰⁰ Difficulties encountered by international organisations in their work originate primarily from the sluggishness and lack of professionalism on the part of public administration, highly fragmented and inconsistent legislative frameworks in BiH, overlapping and/or vaguely defined competences, and complex governmental structure.

INDEPENDENCE (PRACTICE)

To what extent are international institutions able to act without undue external interference in their work in practice?

SCORE 75

In practice international organisations act in accordance with the agendas established by their management structures. The OHR, being the organisation with the broadest powers in BiH, formally operates on the basis of the guidelines laid down by the PIC. In the last decade or so, this organisation has remained operationally dormant and political parties, particularly those from RS, have taken the view that it should be closed and its mandate ended. EUSR, as an institution of the EU, acts on the basis of the proclaimed EU agenda. All political actors in the country claim to be committed to EU accession, and this organisation works in partnership with country's institutions towards that end. Other organisations present in the country such as the OSCE or bilateral diplomatic missions also operate within the framework of international agreements and agendas established by their management structures.

There are no data available about undue interference in the work and activities of international organisations in the country. However, as BiH is a unique country in that it is still formally a protectorate, the differences of opinion among key countries represented in the PIC continue to have an impact on the consistency of policies of individual organisations towards BiH.⁶⁰¹

TRANSPARENCY (LAW)

To what extent is there formal transparency in international institutions?

SCORE 50

International institutions in BiH are not subject to explicit disclosure rules nor are there mechanisms in place to ensure disclosure of information in their possession to the citizenry of the BiH. Since the majority of them have diplomatic status, access to the information regarding their work is limited accordingly.

Most international organisations maintain multilingual websites and publish reports that are available in local languages.

As far as transparency is concerned, the OHR should be regarded as a separate entity due to the nature of its involvement in BiH as well as the changing nature of relationships in and around BiH.

Annex 10 of the Dayton Agreement defines the High Representative as the final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement. To facilitate its work, at the conference in Bonn in 1997 the PIC granted the OHR the so-called Bonn powers, which are basically an executive mechanism. These powers range from the adoption of legislation in lieu of the legislative authorities in BiH to the removal from public office of officials who are deemed by the OHR to prevent the implementation of the Agreement. This unique mechanism was introduced gradually, reaching its peak in 2002, when it was used in 153 cases. Since 2002, the Bonn powers have been used to a progressively lesser extent, and in 2011 they were exercised only ten times, six of which to abrogate the previous decisions of the High Representative issued within the same mechanism. The

Bonn powers were described by the Venice Commission as “practice [that] does not correspond to democratic principles when exercised without due process and the possibility of judicial control”.⁶⁰² The crux of the problem lies in the attempt to simultaneously use the post-conflict management model, on the one hand, and the democratic election process, on the other.

TRANSPARENCY (PRACTICE)

To what extent do international actors publicly disseminate reports, budgets, project documents and/or official decisions in the local languages in practice?

SCORE 50

International institutions in BiH are mostly transparent in their presentation of expenditures for projects carried out in the country. Full transparency is reserved for donors and/or governments of countries from which these institutions originate or are financed. Most international organisations maintain multilingual websites and publish reports that are available in local languages.

As far as the OHR is concerned, the public are presented with rough details of the organisation’s funding organisation and the source of money, while the information on expenditure is not publicly available.

Most other international institutions operate in accordance with the laws of BiH as regards financial management, but the detailed information on expenditures and projects are generally not made public. Information is mainly available on websites including in the local languages.

Foreign NGOs are required to keep books and, in terms of labour issues, operate under the laws of BiH. They are also obliged to specify their field of action when registering with the relevant BiH institutions.

ACCOUNTABILITY (LAW/PRACTICE)

To what extent are international institutions accountable to their constituencies?

SCORE 75

International organisations regulate their relations with BiH in the Memorandums of Understanding. Those that have a role defined under the Dayton agreement, such as the OHR, OSCE and CoE, are practically and directly accountable to external stakeholders in terms of their performance, and there exists a certain level of mutual coordination among them. The coordination has functioned with varying success owing to the ambiguous hierarchical delineation among international organisations in BiH, as well as the need of certain organisations to expand their portfolio beyond what is defined in the Dayton Agreement. The most recent effort to better organise the international presence in BiH was the initiative to establish a Committee of Heads of Leading International Organisations with the participation of the OHR, EUFOR, NATO HQ Sarajevo, OSCE, UNHCR, EUPM, European Commission, World Bank, IMF and UNDP. The Committee was established in 2002 and although the last press releases was issued in 2004, the Committee continues to meet on a weekly basis to address mutual disagreements.

The OHR directly and practically reports on its work to the UN Security Council, the Council of Ministers of the EU – the Commission for the Western Balkans and the EU Political and Security Committee, and AFET of the European Parliament. As an organisation that was established by the peace agreement, when preparing reports, the OHR positions itself as an objective observer of the situation in BiH and does not consult or inform the governments in BiH about the contents

of these report. Bearing in mind the aforementioned change in the political dynamics and role of the OHR in BiH, since several years ago the RS authorities have been sending to the UN Secretary General their own reports, which represent their view of the situation in BiH and which, as a rule, are contrary to the reports of the High Representative. Help in giving importance to the RS reports in the UN Security Council is given by the Russian Federation.

Annex 10 of the Dayton Agreement defines the High Representative as the final authority regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement. To facilitate its work, at the conference in Bonn in 1997 the PIC granted the OHR the so-called Bonn powers, which are basically an executive mechanism. These powers range from the adoption of legislation in lieu of the legislative authorities in BiH to the removal from public office of officials who are deemed by the OHR to prevent the implementation of the Agreement. This unique mechanism was introduced gradually, reaching its peak in 2002, when it was used in 153 cases. Since 2002, the Bonn powers have been used to a progressively lesser extent, and in 2011 they were exercised only ten times, six of which to abrogate the previous decisions of the High Representative issued within the same mechanism. The Bonn powers were described by the Venice Commission as “practice [that] does not correspond to democratic principles when exercised without due process and the possibility of judicial control”.⁶⁰³ The crux of the problem lies in the attempt to simultaneously use the post-conflict management model, on the one hand, and the democratic election process, on the other.

Other Dayton organisations, namely the OSCE and the CoE, in practice report to their parent organisations based on their internal rules.

As far as donor and development organisations are

concerned, in accordance with the Paris Declaration, concrete steps have been made to ensure greater coordination, and national authorities are involved, at least nominally, in the planning and programming processes. In accordance with the conclusions of the Paris Declaration on Aid Effectiveness,⁶⁰⁴ which places a special emphasis on coordination between development agencies and harmonisation with the needs of the recipient countries, in 2005 seventeen development and donor agencies in BiH established the Donor Coordination Forum (DCF). In January 2009 the role of the secretariat for the DCF was taken on by the Ministry of Finance and Treasury of BiH/Sector for Coordination of International Economic Aid.

As far as foreign NGOs are concerned, they create programmes according to their own internal procedures and with varying levels of involvement of local actors.

INTEGRITY (LAW)

To what extent are there mechanisms in place to ensure the integrity of international institutions?

SCORE 75

All “Dayton” international organisations present in BiH have codes of conduct in place for their employees. The OSCE’s code of conduct, available on their website, requires, among other things, that OSCE officials, notwithstanding their diplomatic status, respect the laws and regulations of the host country, as well as its local customs and traditions.

The above code of conduct was defined solely by the organisation, and mostly includes clarifications as to conflict of interest, as well as rules on gifts and behaviour in the host country.

Most of the memorandums signed between the national

authorities and international organisations include a provision exempting international organisations staff, including local staff, from criminal liability in the performance of duties within the organisation's mission. Similar to OSCE's code of conduct, employees are expected to act in accordance with the laws of the host country. There are no known post-employment restrictions in international organisations. Also, it is understood that all the materials that are created in the course of employment belong to the organisation, not the individual or individuals who were involved in making them.

As regards the protection of whistleblowers, if there are regulations governing this matter, they come from the headquarters of international organisations, as BiH does not have its law on this issue.

INTEGRITY (PRACTICE)

To what extent is the integrity of international institutions ensured in practice?

SCORE 50

According to available information, there have been only sporadic instances of maladministration in the activities of international organisations, which the concerned organisations addressed in accordance with their own rules and procedures.

One such case, which was widely reported by the media, was the alleged involvement in corruption of the head of the International Criminal Investigative Training Assistance Program of the US Justice Department (ICITAP) in BiH in 2013. Shortly after media reports emerged regarding the alleged corruption, the ICITAP Director was dismissed, but details about the case were not made publicly available.⁶⁰⁵

As the focus and scope of international involvement in BiH has shifted over time away from humanitarian and on to developmental issues, cases of direct corruption, mainly related to procurement activities, have become a thing of the past.

IMPLEMENTATION OF INTERNATIONAL LEGAL INSTRUMENTS

To what extent are international legal instruments relevant for the country implemented and enforced?

SCORE 25

BiH is facing major problems in the implementation of international commitments, as defined in international legal documents it has ratified. Although the country ratified almost all important international legal instruments in such areas as the fight against corruption and organised crime, human rights and the rule of law, in practice their implementation remains fraught with innumerable difficulties.

This is best illustrated by the country's failure to meet the commitments arising from the Council of Europe conventions. Thus, the latest evaluation report of the Group of States against Corruption (GRECO), which concerns the country's compliance with this institution's recommendations as to the transparency of party funding, concludes that BiH has fulfilled only five of the twenty-two recommendations.⁶⁰⁶

That BiH is facing major problems in the implementation of international commitments is further evidenced by the judgement of the European Court of Human Rights in Strasbourg rendered in 2009. The judgement of the European Court of Human Rights in the case *Sejdić and Finci v. BiH* found that the provisions of the

Election Law regarding elections for the Presidency of BiH were in violation of Protocol XII of the European Convention on Human Rights. Since the Election Law of BiH is based on the provisions of the Constitution of BiH, which attributes the fundamental rights in the Dayton BiH to three constituent peoples, passive right to vote is reserved only for members of these three peoples: Bosniaks, Serbs and Croats. Dervo Sejdić and Jakob Finci, who are Roma and Jewish respectively, handed the case to the European Court of Human Rights in Strasbourg. After a three-year process the Court rendered a judgement in 2009 finding BiH guilty of violating the provisions of Protocol XII pertaining to the prohibition of discrimination. BiH thus became the first country in the history of the Court found in violation of the said Protocol. The judgement, however, has never been complied with.

Given the fact that the issue of compliance with the European Convention on Human Rights is explicitly mentioned in Title I, General Principles, Article 2 of the Stabilisation and Association Agreement (SAA), the European future of BiH will remain open to question until such time as the judgement is complied with, i.e. when the discriminatory provisions are removed from the Constitution and the Election Law of BiH. Given that the SAA with BiH was ratified by all EU countries, its entry into force is deliberately delayed because otherwise BiH would be in direct violation of the Agreement.

COMMITMENT TO THE FIGHT AGAINST CORRUPTION

To what extent are international actors committed to a long-term agenda (3-5) years to build transparency and good governance in the country?

SCORE 50

The shift in the overall role of the international community in BiH, away from the direct governance of the country to working in partnership with government institutions, has also led to a transformation of the role of the international community in enhancing transparency and good governance. In practice, this has resulted in a power vacuum as national institutions did not have adequate capacity to fully assume the new role and international organisations shifted their focus to providing support through technical assistance projects, primarily to judicial institutions and law enforcement agencies.

Given that the country is at least declaratively committed to joining the EU, the role of the EUSR and other EU institutions in this regard is somewhat more substantial because, in addition to technical assistance, it involves defining the agenda and conditions for BiH's accession. The EU is also acting as mediator in the negotiations on the implementation of reforms between numerous domestic institutions and leaders.

REDUCE CORRUPTION RISKS BY SAFEGUARDING INTEGRITY IN INTERNATIONAL INSTITUTIONS

To what extent is there an effective framework in place to safeguard integrity in international institutions, including meaningful sanctions for improper conduct by international institutions staff, and review and complaint mechanisms?

SCORE 75

In the last five years there have been no cases of international organisations staff being investigated or accused in cases relating to corruption. The same is not the case for the period between the end of the war

activities and establishment of full national and international infrastructure in the country. The public in BiH remains unaware of the outcomes of any investigative or court actions that may have been taken against the perpetrators of illegal and inhumane acts during that period, who are all protected by diplomatic immunity.

RELATIONSHIP TO OTHER PILLARS

To what extent are international institutions a key part of this country's NIS?

SCORE 100

Due to the country's unique constitutional set-up, international organisations constitute an integral part of the governance structure in the country and, by extension, of the integrity system. After a period of direct governance of the country in almost every pillar of the integrity system, international organisations are now trying to act as partners to domestic institutions.

Despite the obvious shift in the nature of the presence of international actors in BiH and the partial withdrawal of major donors, the role of international actors in the country remains substantial. With the increased role of national actors and the EU, whether through the presence of the EUSR or through IPA funds and Aid Coordination, BiH is trying to make a transition from a post-conflict country to one that moves forward on the path to EU membership.⁶⁰⁷

International organisations work closely with almost all pillars of NIS, although the emphasis remains on state pillars as part of the overall efforts to transfer responsibilities to national actors.

The basic mode of action of the international com-

munity is the provision of support to strengthening the capacity of BiH institutions through technical assistance projects. The role of the EU and EUSR in this regard is somewhat broader because, in addition to providing support through technical assistance projects, they act as mediators in the negotiations with BiH officials on the implementation of reforms.

RECOMMENDATIONS

No major changes have been observed in the role and presence of the International Community in the country since the release of the previous NIS study in 2013, so the recommendations remain as follows:

- It is necessary to exert institutional pressure on the authorities of BiH, which are now largely governing the country, and clearly link the further progress towards EU integration with measurable indicators of systemic fight against corruption.
- International actors in BiH should devote special attention to a strong and efficient operation of the judicial authorities in the country, namely the prosecutor's offices and courts, whose performance in the past was weak. Performance indicators should include successfully completed trials in cases of corruption and abuse of power by high-ranking individuals in the business and political milieu.
- Due to the decreasing international involvement in BiH, it would be necessary to harmonise activities of different international actors involved in anti-corruption projects in order to maximise the effects through the use of a methodology that is based on measurable performance indicators.

7. CONCLUSIONS AND RECOMMENDATIONS

Deeply entrenched weaknesses and problems observed in most of the pillars, which themselves rest on very fragile and shaky foundations, result in rampant corruption. The yawning gap between the normative and the actual, i.e. between statutory rules and what happens in practice, bears eloquent testimony to the absence of genuine political will to establish a functioning integrity system. A comparison with the previous NIS studies undertaken in 2004, 2007 and 2013 indicates a lack of any substantial progress in strengthening individual pillars and the system as a whole. Due to the country's unique constitutional setup and the need for state- and institution-building in the wake of the armed conflict, the international community long played the role of not only the initiator of reforms, but also their practical implementer. The reactions to these reforms by the country's political elite ranged from open opposition to feigned acceptance. The withdrawal of the international community from its mission of ensuring operational governance in the country was followed by such adverse trends as a decline in the quality of the legislative framework and deterioration of the overall functioning of institutions.

The country's proclaimed commitment to EU integration constitutes the general framework within which a number of reforms have been – and are still being – implemented as part of the Stabilisation and Association

process. However, the results of fifteen years of efforts towards EU integration remain very limited. The country has not yet met the requirements for filing its EU candidacy bid. Ethnic politics, behind which hide the interests of narrow ethno-political elites, have always taken precedence over the reform agenda aimed at EU accession. The reasons for the lack of progress in the implementation of reforms exist at several levels – political, structural and post-conflict. Firstly, the absence of political will for reform is an expression of the political elite's vested interest in maintaining the *status quo*. The experience of countries that have already joined the EU, such as Croatia or Romania, shows that the crackdown on political corruption, which in practice entails the investigation, prosecution and conviction of the most senior political office holders, is an inevitable part of the overall reform. The political elites in BiH are therefore aware that it is only by maintaining the status quo and exerting control over institutions that they can protect the acquired privileges and wealth and also protect themselves from prosecution. Secondly, the structural reasons for the lack of results in the implementation of reforms include the complex system of government and the absence of subordination and subsidiarity mechanisms, which in practice results in protracted processes of coordinating and articulating policies and their subsequent implementation. Thirdly, the post-conflict ambience with a still unfinished state-building process very often leads to situations in which the reforms that should be guided by the principle of functionality are actually negotiated and implemented at the level of ethnic politics and conflicting interests of different ethnic groups.

The key pillars of the state – the executive, the judiciary and the legislature – fail to ensure an effective system of checks and balances. There is considerable dominance by the executive branch, which derives its power from direct, symbiotic relationship with political parties and their top leaderships. It is the political parties

that are the crux of the problem because their role significantly deviates from that of political parties in developed democracies. Political parties are one of the few pillars that have undergone no reform whatsoever in the last twenty years of intensive state- and institution-building. The absence of internal democracy turns political parties into patrimonial networks whose sole aim is the struggle for control of state resources. All this ultimately results in a very strong state capture phenomenon.

The independence of institutions belonging to the so-called fourth branch of government, such as the CEC or the SAI, is under constant threat, and their role is often significantly downplayed. Therefore, the operating space for non-state actors such as the media and civil society is extremely narrow, and their role remains very limited, unless they pledge allegiance to the political elite. The continued strong presence of state capture means that the vast majority of the integrity pillars are captured by private interests of the political elite. The political elite derives its power from the absolute control over economic resources in the country and the close control of virtually all processes and institutions in the country, which is exerted through patrimonial, clientelistic networks.

If we analyse the situation in the pillars through the lens of dimensions measured by the NIS study, we will find a relatively satisfactory legislative framework and the existence of a solid capacity and resources in most of the pillars, but problems are chiefly rooted in how the pillars are managed and how they relate to each other. This is primarily evidenced by the very low scores for transparency, accountability and integrity in practice obtained by the vast majority of the state pillars. A further consequence of this is that the relations between the so-called “classical state pillars” (legislature, executive and judiciary) and the so-called “fourth branch of government” (CEC, SAI and others) are damaged to

such a degree to prevent the pillars from functioning at full capacity.

Progress in the implementation of reforms towards EU integration will require a stronger impetus. Such an impetus would have to come from the bottom, i.e. from the citizens themselves, through a process of democratisation of decision-making and overall functioning of the institutions. Non-state pillars such as civil society, the media and businesses should play an important role in this by making well-articulated demands for greater transparency and responsiveness of the public sector as a prerequisite for increased participation of citizens in decision-making and strengthening the accountability of the public sector. An equally powerful impetus is expected from the EU. EU support to the reform process cannot be confined to mere technical and financial support. Reforms as inherently political processes must of necessity be anchored in political will. In this context, stronger EU pressure for the creation of a political dynamics that would lead to genuine reform seems like an inevitable step on the long and arduous journey towards EU integration. This is particularly so because the international community effectively played the role of an internal political actor for a long time after the armed conflict.

Many essential reforms still lie ahead of BiH. Despite twenty years of effort at state- and institution-building, the country is, in many ways, still at the beginning. The strengthening, or, as many would call it, introduction of the rule of law and reform of the constitution, public administration and the judiciary are just some of the most important reforms that the country has to face.

As noted in the conclusions of the 2013 NIS study, the popular demand for reform and the basic national consensus over the course that the country should follow cannot be substituted by outside intervention.

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No. 73/08; Law on Conflict of Interest in Governmental Institutions of the Brčko District of BiH, *Official Gazette of the Brčko District of BiH*, Nos. 43/08 and 47/08

¹⁴⁴ Law Amending the Law on the Prevention of Conflict of Interest in Governmental Institutions of BiH, *Official Gazette of BiH*, No.87/13)

¹⁴⁵ https://www.parlament.ba/sadrzaj/ostali_akti/izvjestaji/default.aspx?id=35152&langTag=bs-BA&pril=b,

¹⁴⁶ European Commission 2013: 13

¹⁴⁷ <http://info.worldbank.org/governance/wgi/pdf/c24.pdf>

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¹⁷¹ "Tegetlija priznao da je ispijao kafe s Smiljanićem" [*Tegetlija Admits to Fraternising with Smiljanić*], *Nezavisne Novine Daily*, D. Sladojević, 27 September 2012 <http://www.nezavisne.com/novosti/hronika/Tegetlija-priznao-da-je-ispijao-kafe-sa-Smiljanicem-160345.html>

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¹⁸¹ Ruling of the District Court in Banja Luka, No. 11 0 U 00 26 45 10 U of 27 September 2010

¹⁸² However, the Ministry of Finance of RS informed the prosecutor and the District Court in Banja Luka that it would not comply with the binding court order, citing the following reasons: “If the court characterised the reminder as an appeal, then this notification is an act by which we have complied with the plaintiff’s request”. The lawsuit was filed on 2 October 2010, and a new lawsuit was filed by TI BiH on 27 October 2010. At the time of writing this report, the Banja Luka District Court has not yet issued a new ruling in the new lawsuit. So, the plaintiff was unable to access the requested information for almost two years, and even if the second lawsuit is ruled in his favour by issuing a binding order, he cannot be sure whether the defendant, Ministry of Finance of RS, would comply with it or not, and even if it does, the requested information will no longer be relevant to the purposes for which the plaintiff asked for it in its request for access to information of 13 November 2009.

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¹⁸⁵ *Official Gazette of RS*, no. 70/12

¹⁸⁶ *Official Gazette of FBiH*, no. 80/14

¹⁸⁷ *Official Gazette of RS*, no. 83/14

¹⁸⁸ Interview with Stevo Pucar, PhD, 28 November 2014

¹⁸⁹ *Ibid.*

¹⁹⁰ Annual reports on budget execution at state and entities levels

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¹⁹² <http://www.doingbusiness.org/data/exploreeconomies/bosnia-and-herzegovina> [accessed on 24 November 2014]

¹⁹³ Annual report on concluded public procurement contracts in 2013 Public Procurement Agency

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¹⁹⁵ *Official Gazette of FBiH*, nos. 29/03, 23/04, 39/04, 54/04, 67/05 and 08/06

¹⁹⁶ *Official Gazette of BDBiH*, nos. 28/06, 29/06 and 19/07

¹⁹⁷ *Official Gazette of BiH*, no. 87/13

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²⁰⁰ National Integrity System Assessment Bosnia and Herzegovina 2013

²⁰¹ 2012 Annual Audit Report with Findings and Recommendations,

²⁰² *Ibid.*

²⁰³ National Integrity System Assessment Bosnia and Herzegovina 2013

²⁰⁴ Proactive transparency in BiH: from cacophony to harmonisation, *Analitika*, April 2014

²⁰⁵ The initiative upholds the principle of openness in governments’ engagement with citizens to ensure progress, promote innovation and create safer communities, and embraces principles of transparency and open government with a view toward achieving greater prosperity, well-being, and human dignity.

²⁰⁶ *Official Gazette of BiH*, no. 100/13

²⁰⁷ ‘Proactive transparency’ is taken to mean the disclosure of information on the web pages of public organisations/institutions, proactive disclosure of materials related to the participation of the interested public in the normative activities as well as providing information to the public about the work of the organisation/institution.

²⁰⁸ *Official Gazette of BiH*, nos. 28/00, 45/06, 102/09,

62/11 and 100/13

²⁰⁹ *Official Gazette of FBiH*, 32/01 and 48/11

²¹⁰ *Official Gazette of RS*, no. 20/01

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²¹² Reports of the Public Procurement Review Body

²¹³ Interview with Prof. Zdravko Zlokapa, 27. November 2014

²¹⁴ Annual report on the work of the Public Procurement Review Body for 2013,

²¹⁵ *Official Gazette of BiH*, no. 39/14

²¹⁶ *Official Gazette of BiH*, no. 49/13

²¹⁷ *Official Gazette of BiH*, no. 100/13

²¹⁸ National Integrity System Assessment BiH 2013

²¹⁹ Reports of the NGO Tender (www.tender.ba)

²²⁰ National Integrity System Assessment BiH 2013

²²¹ Evaluation of the Strategy for Combating Corruption – final document, Transparency International BiH, May 2014

²²² www.account.ba

²²³ National Integrity System Assessment BiH 2013

²²⁴ *Official Gazette of BiH*, no. 39/14

²²⁵ More information on the official website of CA Tender, www.tender.ba

²²⁶ 2014 Bosnia and Herzegovina Progress Report, European Commission, Brussels, 8 October 2014, SWD (2014) 305 final

²²⁷ Denis Hadžović, Armin Kržalić, Alma Kovačević, “Pregled stanja u oblasti policije u BiH” [*Overview of the Situation in the Field of Policing in BiH*], Centar za sigurnosne studije, Sarajevo, 2013

²²⁸ European Commission, *Bosnia and Herzegovina 2014 Progress Report. Commission Staff Working Document* (Brussels: European Commission, 2014)

²²⁹ Law on Police Officials of BiH, *Official Gazette of BiH*, no. 27/04

²³⁰ <http://www.plata.ba/plata/obezbjedenje-i-zastita/inspektor-u-policiji>

²³¹ Estimate based on the number of members of law enforcement agencies in Denis Hadžović, Armin Kržalić, Alma Kovačević, “Pregled stanja u oblasti policije u BiH”

[*Overview of the Situation in the Field of Policing in BiH*], Centar za sigurnosne studije, Sarajevo, 2013

²³² In charge of detection and investigation of these criminal offences in SIPA is the Financial-Intelligence Department (FID), which is located in the SIPA headquarters. Regional offices also have their own anti-corruption teams. It is also the main law enforcement agency at the state level which is directly responsible for the fight against corruption. The Police Administration of FBiH has a Department for Combating Organised Crime operating within its Criminal Investigation Sector. The Department is composed of specialised investigators for financial investigations, corruption and money laundering. In the Police Administration of RS these tasks are performed by the specialised Unit for Combating Organised Crime and Corruption. In Brčko District, these matters are within the remit of the Department for Organised Crime which operates within the Criminal Investigation Unit of BD. Cantonal Mols in FBiH and PSCs in RS have criminal investigation units that can prosecute such cases if they discover them in the course of their work. In charge of the prosecution of these criminal offences in the Prosecutor’s Office of BiH is the Special Department II for Organised Crime, Economic Crime and Corruption (“Regulation on the Internal Organisation of the Prosecutor’s Office of BiH”, *Official Gazette of BiH*, no. 31/10).

²³³ Law on Independent and Supervisory Bodies of Police Structure of BiH, *Official Gazette of BiH*, no. 36/08

²³⁴ Members of the Independent Committee shall be selected from amongst the representatives of judicial institutions, retired police officials, retired and active civil servants and prominent experts from other areas of public life, field of law, criminology and police affairs. Law on Independent and Supervisory Bodies of Police Structure of BiH, *Official Gazette of BiH*, no. 36/08

²³⁵ Law on Police Officials of BiH, *Official Gazette of BiH*, nos. 27/04, 63/04, 5/06, 33/06, 58/06, 15/08, 63/08 and 35/09

²³⁶ Law on the State Investigation and Protection

Agency, *Official Gazette of BiH*, nos. 27/04, 63/04, 35/05 and 49/09

²³⁷ European Commission, Bosnia and Herzegovina 2014 Progress Report. Commission Staff Working Document (Brussels: European Commission, 2014)

²³⁸ Human Rights Report Bosnia and Herzegovina 2013, State Department

²³⁹ “Čampara puca na mjesto ministra MUP, Izetbegović će podržati Lukača za direktora FUP” [*Čampara Setting His Sights on Becoming Minister of Interior, Izetbegović to Support Lukač as Director of FBiH Police Administration*] *Moje vijesti*, 1 November 2014 <http://www.mojevijesti.ba/novost/202085/Campara-puca-na-mjesto-ministra-MUP-a-Izetbegovic-ce-podrzati-Lukac-za-direktora-FUP-a>

Interview with a SIPA employee, 10 November 2014

²⁴⁰ “Kriminalne skupine u sprezi sa političarima spremne su me i ubiti” [*Criminal Groups Linked to Politicians Ready to Go as far as Killing Me*], Interview with Dragan Lukač, Director of FBiH Police, *Slobodna Dalmacija Daily*, 5 February 2014

²⁴¹ “Dodik zloupotrebljavajući policiju i institucije sistema pravi haos u Skender Vakufu” [*Dodik Uses Police and Government Institutions to Wreak Havoc in Skender Vakuf*], *Vijesti*, 5 August 2014 <http://www.vijesti.ba/politicka-arena/231281-Dodik-zloupotrebaljavajuci-policiju-institucije-sistema-pravi-haos-Skender-Vakufu.html>

²⁴² Interview with a SIPA inspector, 10 November 2014

²⁴³ Annika S Hansen, *From Congo to Kosovo: Civilian Police in Peace Operations*, The International Institutes for Strategic Studies, 2013

²⁴⁴ Law on Police Officials of BiH, *Official Gazette of BiH*, no. 27/04

²⁴⁵ Law on Internal Affairs of FBiH, *Official Gazette of FBiH*, no. 49/05, and Law on Internal Affairs of RS, *Official Gazette of RS*, no. 4/12

²⁴⁶ Law on Freedom of Access to Information in BiH, *Official Gazette of BiH*, no. 57/00

²⁴⁷ TI BiH ALAC 2013 Annual Report

²⁴⁸ Law on the State Investigation and Protection Agency, *Official Gazette of BiH*, nos. 27/04, 63/04, 35/05 and 49/09; Law on the Border Police, *Official Gazette of BiH*, no. 50/04

²⁴⁹ According to Article 15 (1) of the Law on Independent and Supervisory Bodies of Police Structure of BiH, the Committee is competent for receiving, registering, assessing and forwarding complaints against conduct of police officials of BiH as well as referring the complaints to the competent police bodies, for continuous monitoring of status of the case, and for initiation of the relevant procedure against the complainant in case of false or tendentious complaint.

²⁵⁰ There is an internal prioritisation plan for resolving cases related to corruption offences which is followed by prosecutors. Generally, prosecutors tend to prioritise cases that were opened earlier and so-called detention cases, in which one or more persons are detained pending trial. In the implementation of the law, prosecutors act in accordance with the provisions of the CPC.

²⁵¹ The Law on Protection of Secret Data (*Official Gazette of BiH*, nos. 54/05 and 12/09) provides that persons holding office or working within the body, as well as persons applying to the position within the body that produces, manages or keeps secret data and/or works on intelligence or defence and security issues are subject to basic security checks in line with the procedure for the issuance of an authorisation to access secret data classified as *confidential*, and these checks are carried out by the Intelligence and Security Agency of BiH (OSA). Under the same law, exempt from this provision are police officials and civil servants and employees in the police and other security agencies in BiH, whose security checks are carried out by SIPA.

²⁵² Draft Report on the Parliamentary Oversight of the Security Sector in BiH 2013, Centre for security studies Sarajevo, http://www.css.ba/wpcontent/uploads/2011/06/images_docs2_nact%20izvjestaaja%20english.pdf

²⁵³ TI BiH ALAC 2013 Annual Report

²⁵⁴ Report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/inf (2013) 26

²⁵⁵ "Nezavisni odbor ponovo stao u zaštitu Gorana Zubca", [*Independent Committee Stands Behind Goran Zubac Again*], Moje vijesti, 24 November 2014 <http://www.mojevijesti.ba/novost/203979/Nezavisni-odbor-ponovo-stao-u-zastitu-Gorana-Zubca>

²⁵⁶ Law on Conflict of Interest in Governmental Institutions of BiH, *Official Gazette of BiH*, no. 16/02; Correction to the Translation of the Text of the Decision of the High Representative Enacting the Law on Conflict of Interest in Governmental Institutions of BiH, *Official Gazette of BiH*, no. 14/03; Law Amending the Law on Conflict of Interest in Governmental Institutions of BiH, *Official Gazette of BiH*, nos. 12/04 and 63/08

²⁵⁷ Interview with a SIPA inspector, 10 November 2014

²⁵⁸ "Prijavio sam inspektore a stavljeni smo u isti koš" [*Reported Inspectors and Now I'm Treated as if I'm One of Them*], Press RS, 19 April 2014 <http://pressrs.ba/sr/vesti/hronika/story/59388/Prijavio+sam+inspektore,+a+stavljeno+smo+u+isti+ko%C5%A1!.html>

²⁵⁹ "Inspektori demantuju, svjedoci dokumentovali policijsko zlostavljanje" [*Inspectors Issuing Denial, Witnesses Provide Documents Proving Police Abuse*], Slobodna Evropa, 14 October 2013 <http://www.slobodnaevropa.org/content/inspektori-demantuju-svjedoci-dokumentovali-policijsko-zlostavljanje-u-rs/25126967.html>

²⁶⁰ European Commission, *Bosnia and Herzegovina 2014 Progress Report. Commission Staff Working Document* (Brussels: European Commission, 2014)

²⁶¹ Interview with a SIPA inspector, 10 November 2014

²⁶² Perception of Public Administration in BiH 2014, TI BiH, Sarajevo <http://ti-bih.org/wp-content/uploads/2014/09/TI-BIH-Percepcija-Javne-Uprave-BiH-2014.pdf>

²⁶³ "Pobuna u 'specijali' MUP RS" [*Mutiny in MI RS Special Police*], BN TV, 14 November 2014 <http://www.rtvbn.com/323827/Pobuna-u-specijali-MUP-a-Srpske>

²⁶⁴ Interview with a SIPA inspector, 10 November 2014

²⁶⁵ Monitoring the Prosecution of Corruption 2013, TI BiH

²⁶⁶ Prosecutors are analysed separately from the judiciary, unlike in the NIS Study 2013. This is why this pillar is missing the comparative dimension with 2013.

²⁶⁷ In this NIS study public prosecutor is analysed separately from the judiciary, unlike the 2013 study.

²⁶⁸ Law on the Prosecutor's Office of BiH, *Official Gazette* no. 49/09

²⁶⁹ Law on Budget Execution and International Obligations of BiH for the Year 2014

²⁷⁰ Author's estimate based on publicly available information, showing the amount of funds available to the judiciary as a whole.

²⁷¹ Law on the Prosecutor's Office of BiH, *Official Gazette* no. 49/09

²⁷² Law on the High Judicial and Prosecutorial Council of BiH, *Official Gazette of BiH* no. 25/04; Law Amending the Law on the High Judicial and Prosecutorial Council of BiH, *Official Gazette of BiH* no. 93/05 and *Official Gazette of BiH* no. 15/08 – promulgated by the decision of the High Representative dated 15 June 2007 (*Official Gazette of BiH* no. 48/07), which entered into force on 3 July 2007.

²⁷³ European Commission, *2014 Bosnia and Herzegovina Progress Report. Commission Staff Working Document* (Brussels: European Commission, 2014), Human Rights Report Bosnia and Herzegovina 2013, State Department

²⁷⁴ Transformation Index BTI 2014: Bosnia and Herzegovina, Bertelsmann Stiftung

²⁷⁵ Blagovcanin, Divjak: How Bosnia's Political Economy Holds it Back and What to do About it, John Hopkins University, SAIS 2015

²⁷⁶ Law on Freedom of Access to Information in BiH, *Official Gazette of BiH* no. 57/00

²⁷⁷ ALAC 2013 Annual Report, Transparency International

²⁷⁸ Law on the Prosecutor's Office of BiH, *Official Gazette* no. 49/09

- ²⁷⁹ “Chief Prosecutor Warns Zubac”, Justice Report, 26 September 2013 <http://www.justice-report.com/en/articles/chief-prosecutor-warns-zubac>
- ²⁸⁰ Human Rights Report Bosnia and Herzegovina 2013, State Department
- ²⁸¹ Article 17 of the Law on HJPC BiH
- ²⁸² Article 81 of the Rules of Procedure of HJPC
- ²⁸³ HJPC’s 2013 Annual Report
- ²⁸⁴ Interview with Amila Mujčinović, attorney-at-law, January 2015
- ²⁸⁵ “Slučaj Budimir: Slijedi žalba na odluku Suda BiH” [*Budimir Case: Appeal to Court of BiH’s Ruling to En- sue*], 24 Sata Daily, 25 May 2013
- ²⁸⁶ HJPC’s 2013 Annual Report
- ²⁸⁷ Monitoring Corruption Prosecution 2012–2013, Transparency International BiH
- ²⁸⁸ European Commission, *2014 Bosnia and Herzegovina Progress Report. Commission Staff Working Document* (Brussels: European Commission, 2014), Human Rights Report Bosnia and Herzegovina 2013, State Department, Transparency International: Corruption Perception Index 2014
- ²⁸⁹ Decision on Admissibility and Merits AP 1885/13 on the appeal of Živko Budimir, 24 May 2013
- ²⁹⁰ Interview with Sanja Tošović, auditor of the Audit Department at CEC BiH, 1 August 2014
- ²⁹¹ Central Election Commission: The Report on Audit of 2012 Annual Financial Report and Preelection and Post-election Reports for Local Elections 2012, July 11 2014, Sarajevo. Available on: <http://izbori.ba/Documents/documents/revizija/2012/izvjestaji/090.pdf>
- ²⁹² Law on Civil Service in the Institutions of BiH, *Official Gazette of BiH*, nos. 19/02, 35/03 4/04, 17/04, 26/04, 37/04, 48/05, 02/06, 32/07 and 43/09
- ²⁹³ Biographies are available on: <http://www.izbori.ba/Default.aspx?CategoryID=42&Lang=3&Mod=4> [ac- cessed on 11 December 2014]
- ²⁹⁴ http://www.novosti.rs/vesti/naslovna/republika_srp- ska/aktuelno.655.html:515436-Sporo-brojanje-glaso- va-u-BiH-sumnjivo-svima [accessed on 7 December 2014]
- ²⁹⁵ <http://www.rtvbn.com/320815/Haos-u-ClK-u> [ac- cessed on 7 December 2014]
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⁴⁹⁶ <http://www.avaz.ba/clanak/169453/aida-sejdic-na-sudu-zbog-protesta-na-kojima-nije-ni-bila?url=clanak/169453/aida-sejdic-na-sudu-zbog-protesta-na-kojima-nije-ni-bila> [accessed on: 20 April 2015]

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⁵¹⁰ EBRD, Structural Change Indicators, <http://www.ebrd.com/what-we-do/economic-research-and-data/data/forecasts-macro-data-transition-indicators.html>

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⁵¹² European Commission, 2011

⁵¹³ *Official Gazette of FBiH*, nos. 23/99, 45/00, 2/02, 6/02, 29/03, 68/05, 91/07, 84/08, 88/08 and 7/09

⁵¹⁴ *Official Gazette of RS*, nos. 127/08 and 58/09

⁵¹⁵ Framework Law on Registration of Business Entities in BiH, *Official Gazette of BiH*, no. 42/04

⁵¹⁶ As concerns business environment, progress has been made in the reform of business registration. Having adopted a set of relevant laws, RS has been using the one-stop-shop system for company registration since December 2013. This system streamlines the procedure and allows a business to be registered within three days for the price of one convertible mark.

⁵¹⁷ *Official Gazette of RS*, nos.124/08 and 58/09

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⁵¹⁹ Law on Ownership and Other Property Rights, *Official Gazette of BDBiH* nos. 11/01, 8/03, 40/04 and 19/07

⁵²⁰ Law on the Establishment of the Institute for Intellectual Property of BiH, *Official Gazette of BiH*, no. 43/04

⁵²¹ <http://www.doingbusiness.org/data/exploreeconomies/bosnia-and-herzegovina>

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⁵²⁷ Law on Public- Private Partnership in RS, *Official Gazette of RS*, nos. 59/09 and 63/11

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⁵²⁹ Council of Ministers of BiH – Directorate for Economic Planning, Pregled socijalno-ekonomskih kretanja u BiH decembar/prosinac 2011: Mogućnosti zapošljavanja u BiH [*Review of Socio-Economic Trends in BiH December 2011: Employment Opportunities in BiH*], available on: http://www.dep.gov.ba/dep_publikacije/pregledsocioekonkretanja/?id=1460 [accessed on 14 April 2012].

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⁵³¹ <http://slobodanvaskovic.blogspot.com/2012/03/sumrak-saga-dodikovi-krokodili-zderu.html> [accessed on 18 May 2012]

⁵³² <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/BOSNIAHERZEXTN/0,,contentMDK:22949609~menuPK:362032~pagePK:2865066~piPK:2865079~theSitePK:362026,00.html> [accessed on 21 May 2012]

⁵³³ European Commission, 2011: 52.

⁵³⁴ International Finance Corporation and SEE Business Solutions, Corporate Governance in BiH, Sarajevo 2011

⁵³⁵ Company Law of FBiH, *Official Gazette of FBiH*, nos. 23/99, 45/00, 2/02, 6/02, 29/03, 68/05, 91/07, 88/08 and 63/10

⁵³⁶ Company Law of RS, *Official Gazette of RS*, nos. 127/08 and 58/09

⁵³⁷ Joint-stock Company Governance Regulations, *Official Gazette of FBiH*, no. 19/10

⁵³⁸ Standards of Corporate Governance for Joint-stock Companies, *Official Gazette of RS*, no. 117/11

⁵³⁹ International Finance Corporation and SEE Business Solutions, Corporate Governance in BiH, Sarajevo 2011

⁵⁴⁰ Todorović, Z. I. et al.: Corporate Governance in the Republic of Srpska: Current State, Fifth International Conference of the Banja Luka Stock Exchange, Banja Luka, 2010

⁵⁴¹ Employers' Association of BiH, *Code of Ethics for Employers*, available on: <http://www.apbih.ba/images/dokumenti/ETICKI%20KODEKS%20APBIH.pdf> [accessed on 26 May 2012].

⁵⁴² The country's system of commerce chambers consists of the state-level Foreign Trade Chamber and entity chambers. Besides the entity-level Chamber of Commerce of FBiH, with offices in Sarajevo and Mostar, in FBiH there are also 10 cantonal chambers. The chamber system in RS consists of the Chamber of Commerce of RS and five regional chambers (Banja Luka, Bijeljina, Doboj, Istočno Sarajevo and Trebinje).

⁵⁴³ Public Procurement Law of BiH, *Official Gazette of BiH*, no. 39/14

⁵⁴⁴ World Economic Forum, The Global Competitive-

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⁵⁴⁵ Interview with Slaviša Raković, former director of the International Operations Department in Nova banka, Banja Luka, 2011

⁵⁴⁶ Nebojša Vuković, Banja Luka Stock Exchange, Surveys into the Achieved Level of Corporate Governance in RS, 6 June 2012

⁵⁴⁷ <http://slobodanvaskovic.blogspot.com/2011/09/stankovic-protjerao-zorana-tadica-iz.html> [accessed on 26 May 2012]

⁵⁴⁸ Interview with Damir Miljević, business analyst, Banja Luka, 2012

⁵⁴⁹ According to a member of this association interviewed in August 2012, Tender even filed criminal charges against the executive director of the Chamber of Commerce of RS for issuing false certificates of origin. However, in this case, too, the judiciary failed to act in favour of independent businesspersons (Banja Luka, 2012).

⁵⁵⁰ European Commission, 2011

⁵⁵¹ https://www.unglobalcompact.org/participants/search?utf8=%E2%9C%93&commit=Search&keyword=&country%5B%5D=12&joined_after=&joined_before=&business_type=2§or_id=&listing_status_id=all&cop_status=all&organization_type_id=&commit=Search

⁵⁵² More examples and data can be found in TI BiH's publication Privatizacija državnog kapitala u BiH [*Privatisation of State-Owned Capital in BiH*], available on: http://ti-bih.org/wp-content/uploads/2011/03/PRIVATIZACIJA_DRZAVNOG_KAPITALA_U_BIH1.pdf [accessed on 11 July 2012]

⁵⁵³ The share of the state sector continues to account for about 40% of GDP while the government's influence over economic activity has remained significant as reflected in the share of GDP of public expenditures and the off-budget expenditures for state-owned firms.

⁵⁵⁴ 014 Bosnia and Herzegovina Progress Report,

European Commission, Brussels, 8 October 2014, SWD (2014) 305 final

⁵⁵⁵ *Official Gazette of FBiH*, nos. 23/99, 45/00, 2/02, 6/02, 29/03, 68/05, 91/07, 84/08, 88/08 and 7/09

⁵⁵⁶ *Official Gazette of RS*, nos. 127/08 and 58/09

⁵⁵⁷ *Official Gazette of FBiH*, nos. 08/05 and 81/08

⁵⁵⁸ *Official Gazette of RS*, no. 101/04

⁵⁵⁹ *Official Gazette of FBiH*, nos. 48/01, 52/01, 42/06 and 66/13

⁵⁶⁰ Law on Salaries and Other Remunerative Rights of the Managing Bodies and Other Bodies of the Institutions of the Federation of Bosnia and Herzegovina, Public Enterprises and Other Companies with Majority Ownership Stakes of the Federation of Bosnia And Herzegovina (Draft), Government of FBiH, March 2014 http://parlamentfbih.gov.ba/dom_naroda/bos/parlament/propisi/EL_materijali/Zakon%20o%20placama%20sa%20obr.pdf

⁵⁶¹ Conclusions of the round table “Why Are State-owned Enterprises Inefficient?”, 5 June 2014, Chamber of Commerce of FBiH, source: <http://www.drzava.ba/novosti/okrugli-sto-javna-preduzeca-u-bih-needifikas-na-zbog-uticaja-politike-u-njihov-rad/17>

⁵⁶² Dnevni Avaz Daily, 6 August 2011, article “Smjene upravnih i nadzornih odbora neustavne i nezakonite” [*Dismissals of Management and Supervisory Boards Unconstitutional and Unlawful*]

⁵⁶³ Statement given by Mićo Mičić, president of the Association of Cities and Municipalities of RS, March 2013, Edapedija

⁵⁶⁴ With regard to RS, it should be noted that the operationalisation of the Law on Establishment and Transfer of the Right to Assets Management to Local Governments (*Official Gazette of RS*, no. 70/06) lasted several years and that it was only in 2010 that the local governments acquired proprietary rights to public enterprises at the local level (Law on the Transfer to Local Governments of Proprietary Rights to the Capital in Utility Companies Owned by the Republic of Srpska, *Official Gazette of RS*, no. 50/19). Before that, these companies

had been managed from the entity level, which certainly bears some responsibility for the current situation in local utility companies. In FBiH the situation is further compounded by the unresolved relationship between cantons and local governments, and ‘individual responsibility’ continues to be difficult to determine for a given level of government.

⁵⁶⁵ Accounting and Auditing Law in FBiH (*Official Gazette of FBiH*, no. 83/09) and Accounting and Auditing Law of RS (*Official Gazette of RS*, nos. 36/09 and 52/11)

⁵⁶⁶ www.sase.ba and www.blberza.com

⁵⁶⁷ Reports of Supreme Audit Institutions

⁵⁶⁸ Report of the Taxation office of RS for the needs of RS Government, 2014

⁵⁶⁹ www.vladars.net

⁵⁷⁰ National Integrity System Assessment BiH 2013

⁵⁷¹ Law on Public Enterprises in FBiH (*Official Gazette of FBiH*, nos. 08/05 and 81/08); Law on Public Enterprises in RS (*Official Gazette of RS*, no. 101/04)

⁵⁷² Ibid.

⁵⁷³ *Official Gazette of RS*, nos. 62/02; 38/03; 42/04; 49/06

⁵⁷⁴ *Official Gazette of FBiH*, nos. 29/03; 23/04; 39/04; 54/04; 67/05; 08/06

⁵⁷⁵ *Official Gazette of Brčko District*, nos. 28/06; 29/06; 19/07

⁵⁷⁶ Srđan Blagovčanin, Transparency International BiH, 5 July 2012, article “Nestručan i neodgovoran Nadzorni odbor šteti i državnom preduzeću i partiji” [*Incompetent and Irresponsible Supervisory Boards Detrimental to both State-owned Enterprises and Political Parties*] <http://www.banjaluka.com/vijesti/kratke-vijesti/2012/07/05/nestrucan-i-neodgovoran-nadzorni-odbor-steti-i-drzavnom-preduzecu-i-partiji/>

⁵⁷⁷ Prof. dr. Manojlo Babić, round table “Why Are State-owned Enterprises Inefficient?”, 5 June 2014, Chamber of Commerce of FBiH, Sarajevo

⁵⁷⁸ Report on the State of the Securities Market in 2012, Securities Commission of RS, May 2013, Banja Luka

⁵⁷⁹ The following are considered connected persons:

- members of the close family of connected persons up to the third-degree blood relatives or relatives-in-law, or persons living in the same household as a connected person;
- legal entities that have the right of vote in a public enterprise;
- legal entities in which a public enterprise holds a share of at least 10% of the total vote;
- legal entities in which a public enterprise holds at least 10% of the shares with voting power; and
- legal entities in which connected persons or members of their close family are members of the Supervisory Board or the Management Board.

⁵⁸⁰ Election Law of BiH, *Official Gazette of BiH*, nos. 23/01, 7/02 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08 and 32/10

⁵⁸¹ Law on Political Party Financing, *Official Gazette of BiH*, no. 95/12

⁵⁸² Law on Party Financing from the Budgets of the Republic, Cities and Municipalities of RS, *Official Gazette of RS*, no. 65/08

⁵⁸³ Transparency International BiH, Comparative Analysis of the BiH Legislative Framework and the United Nations Convention against Corruption (UNCAC) <http://ti-bih.org/wp-content/uploads/2011/03/Uperedna-analiza-BiH-zakonskog-okvira-sa-UNCAC1.pdf>

⁵⁸⁴ 2011 Global Integrity Report, <https://www.globalintegrity.org/global/report-2011/bosnia-and-herzegovina/>

⁵⁸⁵ "Elektroprivreda Srpske finansira kampanju SNSD-a" [*RS Electric Utility Company Funding SNSD's Election Campaign*], story, Radio-Television BN, 25 September 2014, <http://www.rtvbn.com/318594/Elektroprivreda-Srpske-finansira-kampanju-SNSD-a>

⁵⁸⁶ 2013 Report on the Implementation of Laws Falling under the Responsibility of CEC BiH, CEC BiH, Sarajevo, March 2014, source: http://www.izbori.ba/Documents/CIK/God-Izvjestaji/2013/Izvjescje_za_2013_godinu_SIO_BiH-bos.pdf

⁵⁸⁷ Reports of the RS Commission for determining conflict of interest in the institutions of RS (www.sukobinteresa-rs.org)

⁵⁸⁸ BiH is organised as a semi-protectorate in which international institutions actively participate in the political life of the country. The level of their involvement has changed since 1995, depending on their assessment of the progress achieved.

⁵⁸⁹ Article II of Annex 10 of the Dayton Peace Agreement gives the High Representative the following roles: Monitoring the implementation of the peace settlement; Maintaining close contact with the Parties to promote their full compliance with all civilian aspects of the peace settlement; Coordinating the activities of the civilian organisations and agencies in BiH to ensure the efficient implementation of the civilian aspects of the peace settlement – the High Representative shall respect their autonomy within their spheres of operation while as necessary giving general guidance to them about the impact of their activities on the implementation of the peace settlement; Facilitating, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation; Participate in meetings of donor organisations; Reporting periodically to the United Nations, European Union, United States, Russian Federation, and other interested governments, parties, and organisations.

⁵⁹⁰ The PIC was established in 1995 at an implementation conference held in London and has since come together at the highest ministerial level another six times. The last PIC meeting was held in Brussels in 2007. The London Conference also established the PIC Steering Board, which meets once a week at the ambassadorial level, and once every three months at the level of political directors. The main purpose of the PIC is to provide the High Representative with clarifications as to the political direction of his actions.

⁵⁹¹ In February 2002, the European Union's General Affairs Council (GAC) appointed the High Representative as the EU Special Representative (EUSR) to BiH. The

new “double-hatted” HR/EUSR maintained supervision of all activities in the field of rule of law, including the EUPM, acting as an advisory body to the Secretary General/High Representative and the EU Commission.

⁵⁹² Bonn Powers were adopted by the PIC at its December 1997 meeting in Bonn. Expanding Annex 10 of the Dayton Agreement, the Council granted further powers to the HR, namely to remove from office public officials who violate legal commitments or act contrary to the Dayton Agreement, and to enforce such laws as it deems necessary if the legislative bodies in BiH are not in a position to do so.

⁵⁹³ Interview with Reuf Bajrović, president of the Emerging Democracy Institute, Washington DC, 13 January 2015

⁵⁹⁴ Article 1 and Annex 1B of the Dayton Agreement http://www.ohr.int/dpa/default.asp?content_id=369

⁵⁹⁵ Annex III of the Dayton Agreement http://www.ohr.int/dpa/default.asp?content_id=371

⁵⁹⁶ Annex VI of the Dayton Agreement http://www.ohr.int/dpa/default.asp?content_id=372

⁵⁹⁷ “Thematic Evaluation of Rule of Law, Judicial Reform and Fight against Corruption and Organised Crime in the Western Balkans” Imago Management and Government Solutions, February 2013 http://ec.europa.eu/enlargement/pdf/financial_assistance/phare/evaluation/2013_final_main_report_lot_3.pdf

⁵⁹⁸ US Foreign Assistance to Bosnia and Herzegovina 2014 http://www.foreignassistance.gov/web/OU.aspx?FromRGA=true&OUID=214&FY=2014&AgencyID=0&budTab=tab_Bud_Spent

⁵⁹⁹ Tolksdorf D, “The relations between the EU Special Representatives and the External Action Service” Paper prepared for presentation at the 8th Pan-European Conference on International Relations, 18 -22 September 2013, Warsaw; European scrutiny committee of the UK parliament, Annex: EUSR mandates 2012-2013: situation of budgets, 18 June 2012 (the Minister’s emphasis) “Summary

⁶⁰⁰ Global Integrity Index for BiH rated the legislative

framework in BiH with a score 90/100 and its actual implementation with 39/100, indicating the so-called implementation gap which is rated as huge by the Global Integrity Index. <http://report.globalintegrity.org/Bosnia%20and%20Herzegovina/2009> [accessed on: 2 June 2012]

⁶⁰¹ Interview with Reuf Bajrović, president of the Emerging Democracy Institute, Washington DC, 13 January 2015

⁶⁰² The original text reads as follows “this practice does not correspond to democratic principles when exercised without due process and the possibility of judicial control”. <http://www.coe.ba/pdf/CDL-AD2004004-bs.pdf> [accessed on: 2 June 2012]

⁶⁰³ Ibid.

⁶⁰⁴ <http://www.oecd.org/development/aideffectiveness/34428351.pdf> [accessed on: 2 July 2012].

⁶⁰⁵ “Bosanski Watergate: Propast najvažnijeg američkog igrača u BiH” [*Bosnian Watergate: Collapse of the US’s Most Important Player in BiH*], Slobodna Bosna Daily, 22 August 2013

⁶⁰⁶ Third Evaluation Round, Compliance Report on Bosnia and Herzegovina, Incriminations, Transparency of Party Funding, GRECO 2013 <http://www.msb.gov.ba/PDF/GRECO25122013.pdf>

⁶⁰⁷ Interview with Bodo Weber, Democratization Policy Council, 10 January 2015

CIP - Каталогизација у публикацији
Народна и универзитетска библиотека
Републике Српске, Бања Лука

343.352:061.2(497.6)

NATIONAL integrity system assessment : Bosna i Hercegovina 2015 /
[lead researcher Srđan Blagovčanin ; researchers Aleksandar Draganić
... [et al.] ; project manager and editor Lejla Ibranović ; translation into
English Vojislav Boljanić]. - Banja Luka : Transparency International,
2016 ([s.l. : s.n.]). - 282 str. : ilustr. ; 23 cm

Tekst štampan dvostubačno. - Bibliografija: str. 253-281.

ISBN 978-99955-755-5-7

COBISS.RS-ID 5908248

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