



Baseline Measurement Report:

The
Principles
of Public
Administration

**BOSNIA and
HERZEGOVINA**

**April
2015**

Authorised for publication by Karen Hill, Head of the SIGMA Programme

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LIST OF ABBREVIATIONS AND ACRONYMS

| | |
|--------|---|
| ACA | Anti-Corruption Agency |
| AWP | Annual Work Programme |
| BAM | Bosnia and Herzegovina convertible mark |
| BD | Brčko District |
| BiH | Bosnia and Herzegovina |
| BM | Baseline Measurement |
| BMIS | Budget Management Information System |
| CAF | Common Assessment Framework |
| CHU | Central Harmonisation Unit |
| CoG | centre of government |
| CoM | Council of Ministers |
| CSA | Civil Service Agency |
| CSL | Civil Service Law |
| DEI | Directorate for European Integration |
| DEP | Directorate of Economic Planning |
| EBF | extra-budgetary fund |
| EC | European Commission |
| EI | European integration |
| EIPA | European Institute of Public Administration |
| ESA | European System of National and Regional Accounts |
| EU | European Union |
| FBiH | Federation of Bosnia and Herzegovina |
| FMC | financial management and control |
| GDP | gross domestic product |
| GFFBP | Global Framework on Fiscal Balance and Policies |
| GFS | Government Finance Statistics |
| HJPC | High Judicial and Prosecutorial Council |
| HR | human resources |
| HRM | human resource management |
| HRMIS | Human Resource Management Information System |
| IA | internal audit |
| IDDEEA | Agency for Identification Documents, Registers and Data Exchange of Bosnia and Herzegovina |
| IFAC | International Federation of Accountants |

Bosnia and Herzegovina
List of Abbreviations and Acronyms

| | |
|---------|--|
| IFC | International Finance Corporation |
| INTOSAI | International Organization of Supreme Audit Institutions |
| IPA | Instrument for Pre-accession Assistance |
| ISCRA | Investment Climate Regulatory Advisory Project |
| ISO | International Organization for Standardization |
| ISSAI | International Standards for Supreme Audit Institutions |
| IT | information technology |
| ITA | Indirect Taxation Authority |
| LA | Law on Administration |
| LGAP | Law on General Administrative Procedure |
| LMOAB | Law on Ministries and Other Administrative Bodies |
| LO | Legislative Office |
| MFTER | Ministry of Foreign Trade and Economic Relations |
| MoF | Ministry of Finance |
| MoFT | Ministry of Finance and Treasury |
| MoJ | Ministry of Justice |
| MoU | Memorandum of Understanding |
| MTBF | medium-term budgetary framework |
| NERP | National Economic Reform Programme |
| NGO | non-governmental organisation |
| OECD | Organisation for Economic Co-operation and Development |
| OGP | Open Government Partnership |
| PAR | public administration reform |
| PARCO | Public Administration Reform Coordinator's Office |
| PFM | public financial management |
| PIFIC | Public Internal Financial Control |
| PPA | Public Procurement Agency |
| PPL | Public Procurement Law |
| PPP | public-private partnership(s) |
| PRB | Procurement Review Body |
| RAP1 | Revised Action Plan 1 |
| RIA | Regulatory Impact Assessment |
| RoP | Government Rules of Procedure |
| RS | Republika Srpska |
| SAA | Stabilisation and Association Agreement |
| SAI | Supreme Audit Institution |
| SAI BiH | Office for Auditing of the Financial Operations of the Institutions of |

Bosnia and Herzegovina
List of Abbreviations and Acronyms

| | |
|-----|-------------------------|
| | Bosnia and Herzegovina |
| SG | Secretariat-General |
| TSA | treasury single account |
| UN | United Nations |
| VAT | value added tax |

OVERVIEW

The European Commission (EC) has strengthened its focus on public administration reform (PAR) in the “Enlargement Strategy and Main Challenges 2014-2015” by outlining six key issues of reform. Based on the Enlargement Strategy, the Principles of Public Administration were developed by SIGMA in co-operation with the EC¹. The Principles cover six areas: strategic framework for public administration reform, policy development and co-ordination, public service and human resource development, accountability, service delivery and public financial management (including public procurement); they define what good governance entails in practice and outline the main requirements to be followed by countries during the European Union (EU) integration process. The Principles also feature a monitoring framework enabling regular analysis of the progress made in applying the Principles and setting country benchmarks.

This Country Report for Bosnia and Herzegovina (BiH) sets the baseline values for the indicators included in the monitoring framework and provides analysis on where BiH stands against the Principles. It covers the period from January 2014 to April 2015, which is shortened to April 2014 to April 2015 in areas where a SIGMA assessment was conducted in 2014. The analytical report is complemented by the Methodological Annex, which defines the indicators included in the monitoring framework.

General state of play in Bosnia and Herzegovina

Following adoption of a political and economic reform plan by the Parliamentary Assembly on 23 February 2015, the Council of the European Union (Council), in its meeting of 21 April 2015, adopted a decision concluding the Stabilisation and Association Agreement (SAA) with BiH. It is expected that the SAA will enter into force on 1 June 2015. This decision marks an important step forward after several years of stalemate, as BiH signed the SAA in 2008 and ratified it in 2010.

The political and economic reform plan includes commitments for reforms needed to establish institutional functionality and efficiency at all levels of authority in BiH, which will enable the country to prepare for future EU membership. Its implementation is crucial for BiH to provide positive stimulus in many areas, including PAR, to continue reform efforts needed for EU integration of the country.

The PAR area has been one of the examples in which the country has managed to overcome its complex decision making process influenced by the Constitutional set-up. However, the strategic and operational frameworks for PAR expired at the end of 2014 and new ones need to be prepared and adopted by the Council of Ministers of BiH, the Governments of the Federation of BiH, the Republika Srpska and the Brčko District.

Almost all areas of the public administration require complex solutions because of the Constitutional set-up, and this complexity in turn impacts on the current state of play as legislative and institutional solutions vary considerably across the different levels of administration. This does not allow for uniform progress to be achieved across the whole country. Fragmentation and a lack of uniform and co-ordinated solutions has a direct impact on the level of services offered to citizens of BiH in different parts of the country and on the establishment of a professional and legally predictable public service based on merit. It also influences the overall efficiency of the public administration. The public finance management area still faces challenges as the budgets continue to be adopted later than envisaged by the laws, the debt burden continues to rise and some important elements of the financial management and control framework are still not in place in BiH.

Therefore, agreement on a joint reform agenda and implementation of the objectives of the new PAR strategic framework will be crucial for improving the effectiveness and efficiency of the public

¹ See the *The Principles of Public Administration* and relevant background information on the SIGMA website: <http://www.sigmaweb.org/publications/principles-public-administration-november-2014.htm>.

Bosnia and Herzegovina Overview

administration, as is needed for the EU integration process, but also for improving the delivery of services to the citizens and businesses of BiH.

1

Strategic Framework of Public Administration Reform

STRATEGIC FRAMEWORK OF PUBLIC ADMINISTRATION REFORM

1. STATE OF PLAY AND MAIN DEVELOPMENTS: 2014-APRIL 2015

1.1. State of play

In the absence of countrywide central planning documents, several planning documents adopted by the Council of Ministers of Bosnia and Herzegovina (CoM of BiH), the Government of the Federation of Bosnia and Herzegovina (FBiH), the Government of the Republika Srpska (RS) and the Government of the Brčko District (BD) identify public administration reform (PAR) as a priority.

PAR is one of the few areas where a countrywide strategy has been approved and implemented by all levels of the Bosnia and Herzegovina (BiH) administration – the State level of BiH, the FBiH, the RS and the BD. However, the two PAR planning documents – the PAR Strategy² and the Revised Action Plan 1³ (RAP1) - expired at the end of 2014 and a new PAR strategic framework has not yet been prepared.

Financial costs were not assessed in regard to either the PAR Strategy or the RAP1⁴, making it impossible to discern the costs associated with its implementation. The financial sustainability of PAR depends on the functioning of the PAR Fund, which is primarily financed by international donor organisations.

One institution, the Public Administration Reform Coordinator's Office (PARCO) at the State level of BiH, is assigned to co-ordinate the PAR agenda together with PAR Co-ordinators at the Entity and the BD levels, and its staff regularly participates in capacity building activities. Well-defined PAR management and co-ordination structures at both the political and administrative level, designed for the PAR Strategy and the RAP1, continue to operate informally.

1.2. Main developments

The CoM of BiH adopted the RAP1 Annual Progress Report 2013⁵, RAP1 Biannual Progress Report January-June 2014⁶, Annual Report of PARCO Work in 2013⁷ and Biannual and Annual Reports of PARCO Work⁸.

Both houses of the Parliamentary Assembly of BiH adopted a joint statement⁹ on reform commitments in the EU accession process, including in the field of PAR.

² BiH PAR Strategy, CoM of BiH, Government of RS, Government of FBiH, 2006.

³ RAP1, CoM of BiH, Government of the RS, Government of the FBiH, and Government of BD, 2011.

⁴ RAP1, CoM of BiH, Government of the RS, Government of the FBiH, and Government of BD, 2011.

⁵ Annual Progress Report. Monitoring of implementation of the RAP1 of the PAR Strategy 2013, CoM of BiH, September 2014.

⁶ Biannual Progress Report. Monitoring of implementation of the RAP1 of the PAR, CoM of BiH, January 2014.

⁷ Annual Report on the Works of the PAR Coordinator's Office, January-December 2013, adopted by CoM of BiH, May 2014.

⁸ Biannual Report on Works of the PAR Coordinator's Office, January-June 2014, adopted by CoM of BiH, October 2014 and Annual Report on Works of the PAR Coordinator's Office, January-December 2014 adopted by CoM of BiH, February 2015.

⁹ *Joint statement on reform commitment in the EU accession process*, House of Representatives and House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, Official Gazette No. 16 of 23 February 2015.

2. ANALYSIS

The analysis covers the five Principles of the strategic framework of PAR area, grouped under two key requirements¹⁰. For each key requirement, baseline values are provided for the indicators of the monitoring framework of the Principles. The Principles cover an analysis of the Government's central planning, as well as specific PAR planning document(s), including their links to Government financial planning documents. The Principles also examine the set-up and functioning of the PAR management and co-ordination mechanisms at both the political and administrative levels.

2.1. Key requirement: The leadership of public administration reform is established and the strategic framework provides the basis for implementing prioritised and sequenced reform activities aligned with the Government's financial circumstances.

Baseline values

The PAR leadership and strategic framework is examined through eight indicators that describe the country's general approach towards defining reform objectives and actions, comprehensiveness of the scope of public administration reform, links to financial planning and the implementation rate. The PAR reporting and monitoring system is also assessed. Two of the eight indicators are qualitative, while the rest are quantitative based on an analysis of data and documents that the responsible institutions of the country provided.

In BiH, the strategic framework for PAR has expired¹¹, and a new framework has not yet been established. Nevertheless, the monitoring and reporting structure established under the PAR Strategy continues to operate, and the RAP1 objectives and actions are being implemented until the new strategic framework is approved. The implementation of the reform objectives and actions is financed primarily through the PAR Fund; however, the planning documents have not been costed or resourced, and financial planning documents do not provide clear information on financing the PAR agenda.

| | Principle no. | Indicator | Baseline year | Baseline value |
|--------------|---------------|---|---------------|-----------------------------|
| Qualitative | 1 | Extent to which the scope of PAR central planning document(s) is complete. | 2014 | 0 |
| | 2 | Extent to which a comprehensive PAR reporting and monitoring system is in place. | 2014 | 3 |
| Quantitative | 1 | Ratio of central planning documents featuring PAR objectives and priorities uniformly and coherently. | 2014 | Not available ¹² |
| | 1 | Share of public administration development | 2014 | 61% ¹³ |

¹⁰ SIGMA (2014), *The Principles of Public Administration*, OECD Publishing, Paris, pp. 9-17.

¹¹ BiH PAR Strategy, CoM of BiH, Government of RS, Government of FBiH, Government of BD, 2006, p. 8, foresees that the third stage of the reform process will finish by the end of 2014.

¹² In BiH there are no countrywide central planning documents. The priorities for PAR are identified in the PAR document itself. The medium-term planning documents at the State level, the two entities and the BD level either feature PAR as a priority or refer to some PAR-related objectives.

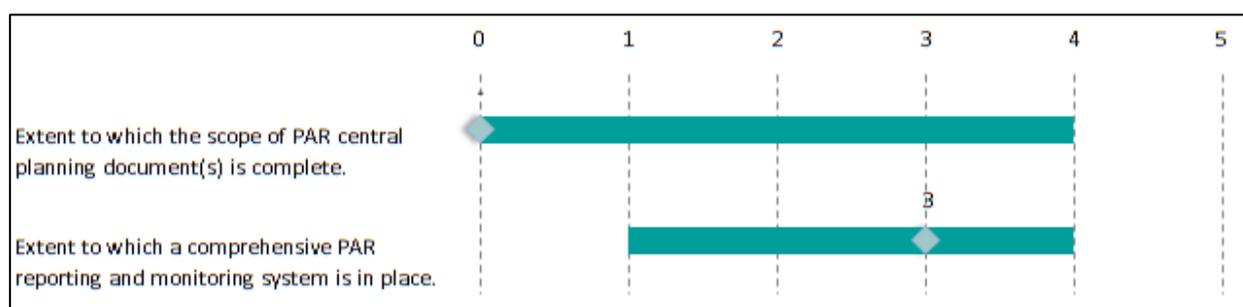
¹³ The percentage was calculated isolating those RAP1 activities that are of administrative or process nature. Examples of administrative or process nature activities are the following: regularly maintaining and updating electronic databases of laws and by-laws; better co-operating on and exchanging of data between different levels of government; affirming implementation of the code of ethics/conduct in practice; hiring and training of staff; and developing a new organisational structure.

Bosnia and Herzegovina
Strategic Framework of Public Administration Reform

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|--|---|--|------|-----------------------------|
| | | activities and reforms from all activities in PAR planning document(s). | | |
| | 2 | Annual implementation backlog ¹⁴ of public administration development activities and reforms. | 2014 | 7% ¹⁵ |
| | 2 | Percentage of fulfilled PAR objectives. | 2014 | Not available ¹⁶ |
| | 3 | Share of resourced and costed PAR measures. | 2014 | 0% |
| | 3 | Ratio between planned PAR Instrument for Pre-accession Assistance (IPA) funding in the IPA sectoral programme and the national planning documents. | 2014 | 0% |

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 1. Country baseline value in comparison with the regional range



¹⁴ The indicator looks at the implementation rate of public administration development activities and reforms within the particular year.

¹⁵ The indicator is calculated on the basis of the Annual Progress Report 2014 prepared by PARCO and submitted to the CoM of BiH in March 2015. There were 41 one-off activities foreseen for 2014; only 3 were fully implemented by all levels of administration. Only those activities that are implemented by *all levels* of administration are considered to be implemented - if the same activity is not implemented by at least one level of administration, it is considered to be unimplemented.

¹⁶ The PAR Strategy and RAP1 do not have performance targets aligned with the set policy objectives for PAR, therefore it is not possible to set a value for the percentage of fulfilled PAR objectives.

Analysis of Principles

Principle 1: The Government has developed and enacted an effective public administration reform agenda which addresses key challenges.

There are currently no countrywide central planning documents in BiH. They are being developed at the State level, the FBiH, the RS and the BD separately. The national development strategy¹⁷, which was supposed to declare development priorities for the country as a whole, has not been approved¹⁸.

PAR as a priority, or PAR-related objectives, features in the key planning documents setting out medium-term and annual priorities for the State level, the FBiH, RS and BD. For example, the Work Programme for 2014 of the CoM of BiH¹⁹ identifies PAR and public finance management as one of its work areas and foresees a regular flow of related information. The Work Programme of the Government of the FBiH for 2011-2014²⁰ identifies the need to complete PAR to enable the public administration in the FBiH to operate professionally, transparently and consistently with European standards. The Economic Policy for 2014 of the RS²¹ identifies a number of activities designed to reduce costs and establish an efficient and effective public administration. The Development Strategy of BD for 2008-2017²² also mentions the need to improve the public administration.

The PAR Strategy and RAP1, which expired in 2014, covered all PAR areas: the strategic framework, policy co-ordination, civil service, accountability, PFM and public services (through IT solutions). The RAP1 contained a high number of activities, yet only 61% are planned reforms and development activities while the rest are of a more process-oriented nature (linked to process or administrative actions in reaching the final result, as well as capacity building).

Although the PAR Strategy and its RAP1 expired in 2014, no new PAR planning document has yet been prepared. The first meeting on the future path of the PAR at the expert level was organised by the PARCO, with its counterparts from both Entities and the BD, on 18 February 2014. Already in the Annual Report for Implementation of the RAP1 for 2013²³, PARCO had suggested preparing a new set of reform measures up to 2020.

A document called "PAR: The Way Forward" was prepared in September 2014²⁴, which contains an assessment of the current PAR status and proposed next steps for the future of PAR policy. However, the PAR Co-ordinators did not reach agreement to put it forward for review by the CoM of BiH and the Governments of the Entities and the BD.

There have been no further concrete results in developing a new PAR strategic framework in BiH. Taking into account the above-mentioned factors, the indicator value for the extent to which the scope of PAR central planning document(s) is complete is set at 0.

PAR as a priority is expressed in different annual and/or medium-term planning documents approved by different decision-making bodies in BiH: the CoM of BiH, the Government of FBiH, the Government of the RS and the Government of the BD. The strategic PAR framework expired in 2014

¹⁷ The Development Strategy has been approved by the Government of FBiH only. Development Strategy, Government of the FBiH, 2010.

¹⁸ The Annual Work Programmes of the CoM of BiH for 2013 and for 2014 had foreseen a revision of the Development Strategy and Social Inclusion Strategy (Measure No. 147 in the Annual Work Plan 2013 and Measure No. 147 in the Annual Work Plan 2014).

¹⁹ The Work Programme of the CoM of BiH for 2014, the CoM of BiH.

²⁰ Work Programme of the FBiH 2011-2014, Government of FBiH, December 2011.

²¹ The Economic Policy for 2014, the National Assembly of RS, December 2013.

²² The Development Strategy of BD for 2008-2017, BD Assembly.

²³ Annual Progress Report for 2013. Monitoring of implementation of the RAP1 of the PAR Strategy, CoM of BiH, September 2014.

²⁴ Document "PAR: the Way Forward" was prepared with the support of the EU Technical Assistance project "Support to Co-ordination and Implementation of PAR in BiH".

and no new strategic framework has been established yet. The old co-ordination structure, which addressed the complexity of the decision-making structure in BiH, will continue to operate until the new strategic framework for PAR has been created.

Principle 2: Public administration reform is purposefully implemented; reform outcome targets are set and regularly monitored.

While the PAR Strategy identified the need for performance measurement and described the monitoring and evaluation system to be established by PARCO, neither the PAR Strategy nor Action Plan 1 (covering the first four years of implementation of the PAR Strategy) identified any concrete performance indicators or targets. There was a sophisticated monitoring system for Action Plan 1 that assessed the implementation of reform actions and determined their overall input into achievement of PAR objectives, but this ceased to exist after RAP1 was adopted in 2011 and covered the time period until the end of 2014.

RAP1 included indicators for each objective. The indicative analysis of these suggests that most indicators are aimed at the immediate results of the activities, focusing on processes and outputs rather than their longer-term impact. Moreover, the indicators are not used consistently in the progress reports, and no quantified information is provided. Therefore, the PAR reporting and monitoring system is evaluated at 3.

The PAR Strategy also described the intended monitoring and reporting system, whereby PARCO had to prepare quarterly output monitoring reports, as well as annual reports including data on both output and outcome monitoring. However, since 2010 PARCO has prepared biannual and annual reports based on the decision of the CoM of BiH taken in April 2010²⁵. The reports are publicly available on the PARCO website and are submitted to all decision-making bodies of the State, the two Entities and the BD²⁶.

A standard methodology²⁷ is applied to prepare biannual and annual reports, which allows the provision of aggregate and detailed information on the achievement of objectives and activities. Challenges and obstacles to progress are reported, and recommendations are provided based on the reporting information received from all levels of administration. The methodology produces information on performance by each level of administration against objectives²⁸. However, the methodology does not aggregate performance of all levels of administration against each and every objective²⁹. Analysing progress against each objective, but not against each level of administration, the annual implementation rate of activities in 2014 was 7%³⁰. The implementation rate of actions under all objectives since adoption of the RAP1, according to PARCO, is 61% as it is calculated by a different methodology. The indicator value for the percentage of fulfilled PAR objectives cannot be set as there are no clear performance targets attached to the set policy objectives.

The information used to compile the reports comes from several sources: progress reports provided by the State level, the FBiH, the RS and the BD institutions and PARCO itself. However, the reports do not provide information on the progress achieved in relation to identified performance indicators.

²⁵ Decision of the CoM No. 05-07-1-1279-24/10, 29 April 2010.

²⁶ PARCO website: www.parco.gov.ba.

²⁷ Annual Progress Report for 2014, Section 2, prepared by PARCO and submitted to the CoM of BiH in March 2015.

²⁸ First, the percentage of implemented objectives by each level of administration is calculated. Then the average is calculated by adding the percentages of all levels of administration and dividing by the total number of administrations.

²⁹ The implementation status of objectives is determined by analysing the performance of each level of administration in relation to objectives. Then an objective implementation percentage for each level of administration is calculated. This methodology provides information on how well each level is performing against objectives but it does not provide information on whether one and the same objective is implemented by all levels of administration.

³⁰ This number includes one-off activities relevant for 2014.

There is a separate PAR reporting and monitoring system that produces regular biannual and annual reports. However, the weakest part is the use of performance indicators. The indicators are mainly process- and output-level ones; thus, reporting is realised based on the achievement of activities and objectives, not actual impacts achieved. The reports are publicly available.

Principle 3: Financial sustainability of public administration reform is ensured.

The PAR Strategy and RAP1, do not provide information on the financial resources needed to implement the PAR agenda. In general, there is no practice of costing activities foreseen to implement the PAR agenda. The PAR Strategy describes the PAR Fund as a source of funding for PAR activities and projects but does not stipulate the total amount of funding needed from the EU or other donors³¹. In addition, there are no indications of the necessary funding to implement the reform actions set out in the RAP1. Therefore both indicator values for the ratio of costed actions and the ratio between planned PAR Instrument for Pre-accession Assistance (IPA) funding in the IPA sectoral programme and the national planning documents are set at 0% for 2014.

The PAR Fund³² is a joint financial initiative that includes funding from donors and contributions from the State level, the two Entities and the BD. PARCO supports the PAR Fund's operations, managed by the Joint Management Board. The PAR Fund regularly reports to the PAR Fund Joint Management Board on project implementation and ideas for new joint projects to be financed from the PAR Fund. PARCO budget is considered as BiH's contribution to PAR implementation. The validity of the PAR Fund is determined by a Memorandum of Understanding (MoU), and its I-V Annexes are signed between the donors and the Governments at all levels³³. Annexes I-IV expired at the end of 2014; therefore, the BiH Presidency approved Annex V to the MoU in March 2015 to extend the Fund's validity³⁴.

Since its inception in 2007 and until 31 December 2014 (the period covered by the Memorandum and the Annexes I-IV) the PAR Fund received almost BAM 26 million (about EUR 13.3 million) of which BAM 7.2 million (about EUR 3.7 million) was withdrawn to implement 13 projects until 31 December 2014³⁵. The relatively slow absorption rate of available funds is explained by a complex decision making process, including elaboration of all necessary documents, the need to gain support of the project proposal by all administrative levels and donors, and lengthy public procurement procedures.

The only information available on financing PAR-related activities concerns the contributions made by the State level, the two Entities and the BD to the PAR Fund. The financial planning documents of the State level, the two Entities and the BD do not provide information on the financial resources from the respective budgets that are allocated for implementation of mandated activities relating to PAR.

There is no practice of calculating the cost of the PAR agenda in BiH. Likewise, there is no information on medium-term IPA funding or on expenditure trends for PAR-related activities and projects. The only identifiable source of financial investments for implementation of the PAR agenda

³¹ PAR Coordinator's Office (2006), *"Public Administration Reform Strategy in BiH: Monitoring and Evaluation"*, (2006), PARCO, Sarajevo, p. 53.

³² Memorandum of Understanding (MoU) for Establishment of the PAR Fund between the United Kingdom Department for International Development, the Swedish International Development Co-operation Agency, the Ministry for Development and Co-operation of the Netherlands, the European Commission Delegation in BiH and the CoM of BiH, the Government of the FBiH, the Government of the RS, the Government of the BD and the MoF and Treasury of BiH, July 2007.

³³ Ibid.

³⁴ Based on the results of the 115th session of the CoM of BiH, the PAR Coordinator's Office will provide the Annex V to the BiH Presidency, and the Chairman of the CoM of BiH is proposed as the signatory. The BiH Presidency, at its 5 meeting on 26 March 2015, approved the Annex V. <http://www.predsjednistvobih.ba/zaklj/sjed/default.aspx?id=65336&langTag=bs-BA>.

³⁵ *Annual Report on Work of the Public Administration Reform Coordinator's Office* for 2014, the CoM of BiH, February 2015. Examples of projects funded by the PAR Fund: Development of Performance Management System in the Structures of Civil Service in BiH; Improvement of Rules and Procedures for Legal, Other Regulations and General Documents Drafting in BiH; Budget Management Information System (BMIS).

in BiH is the PAR Fund, which consists mainly of financial resources that international donor organisations have pledged.

Key recommendations

Short-term (1-2 years)

- 1) In close co-operation with other PAR co-ordinators, PARCO should prepare a proposal focusing on the preparation process of the preparation of a new PAR strategic framework (i.e. new planning document(s) in the field of PAR), and initiate discussions at the political level. The CoM of BiH, the Governments of the FBiH, the RS and the BD should make decisions on the preparation process of a new PAR strategic framework.
- 2) PARCO should ensure that the new planning document(s) elaborated in the field of PAR is properly costed and that performance indicators and targets are defined to monitor PAR impacts.

Medium-term (3-5 years)

- 3) The Ministry of Finance (MoF) and Treasury of the CoM of BiH, the MoF of the FBiH, the MoF of the RS and the Finance Directorate of the BD should reconsider the approach towards their medium-term and annual financial planning documents in order to clearly identify appropriations devoted to implementing the PAR agenda, including clearly identifying international donor funding.

2.2. Key requirement: Public administration reform management enables guiding and steering reforms, determines the accountability for implementation and ensures the professional administration needed for reform implementation.

Baseline values

The functioning of the PAR management and co-ordination mechanism is examined through five indicators, one of which is qualitative. These indicators provide information on operations of the mechanism and examine the capacity of the leading PAR unit to support the functioning of PAR and its co-ordination mechanism.

In BiH, there is a formally approved PAR management and steering mechanism that is very much in line with the country's complex decision making structure. The status of the lead institution indicates some weaknesses in relation to its temporal nature, which influences its ability to fully exercise its co-ordination role vis-à-vis other State level institutions and co-operation with the PAR Co-ordinators of the Entities and the BD³⁶.

³⁶ CoM of BiH Decision on the Establishment of the Co-ordinator for PAR, October 2004.

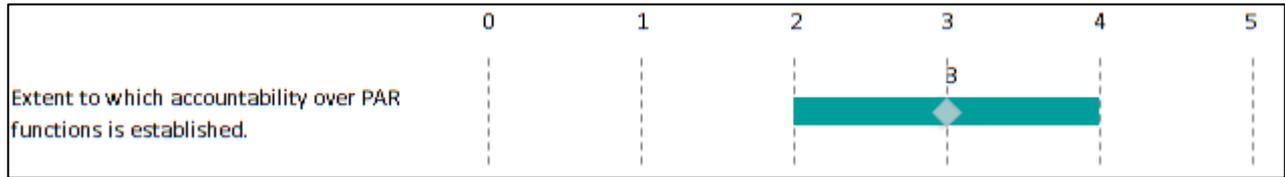
Bosnia and Herzegovina
Strategic Framework of Public Administration Reform

| | Principle no. | Indicator | Baseline year | Baseline value |
|---------------------|---------------|---|---------------|------------------|
| Qualitative | 5 | Extent to which accountability over PAR functions is established. | 2014 | 3 |
| Quantitative | 4 | Frequency of PAR-related political discussions. | 2014 | 10 ³⁷ |
| | 4 | Implementation rate of decisions made by political and administrative-level PAR co-ordination forums. | 2014 | 57.1% |
| | 5 | Annual staff turnover in leading PAR unit. | 2014 | 3% |
| | 5 | Proportion of leading PAR unit staff that has undertaken at least two PAR-related trainings during the last year. | 2014 | 43% |

³⁷ This value shows the total number of the PAR-related discussions held during 2014. It is a quantitative and not a qualitative indicator and therefore should not be regarded as an indicator for scale.

The value of the qualitative indicator of the country is displayed below in comparison with the range of values for the same indicator in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 2. Country baseline value in comparison with the regional range

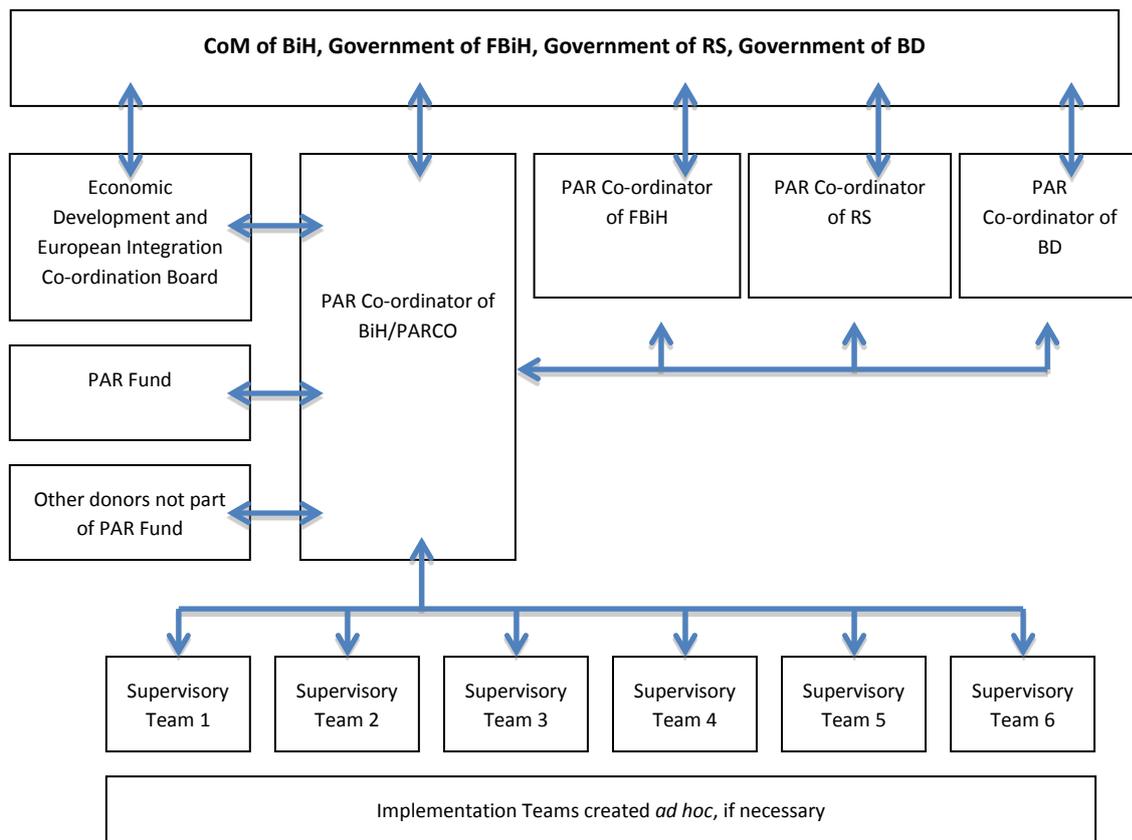


Analysis of Principles

Principle 4: Public administration reform has robust and functioning co-ordination structures at both the political and administrative level to steer and manage the reform design and implementation process.

There is a clear PAR management and co-ordination structure in BiH. It is well defined and described in the Common Platform³⁸ document adopted in 2007 by the CoM of BiH, the Government of FBiH, the Government of RS and the Government of BD.

Figure 3. Management and co-ordination structure of the Common Platform



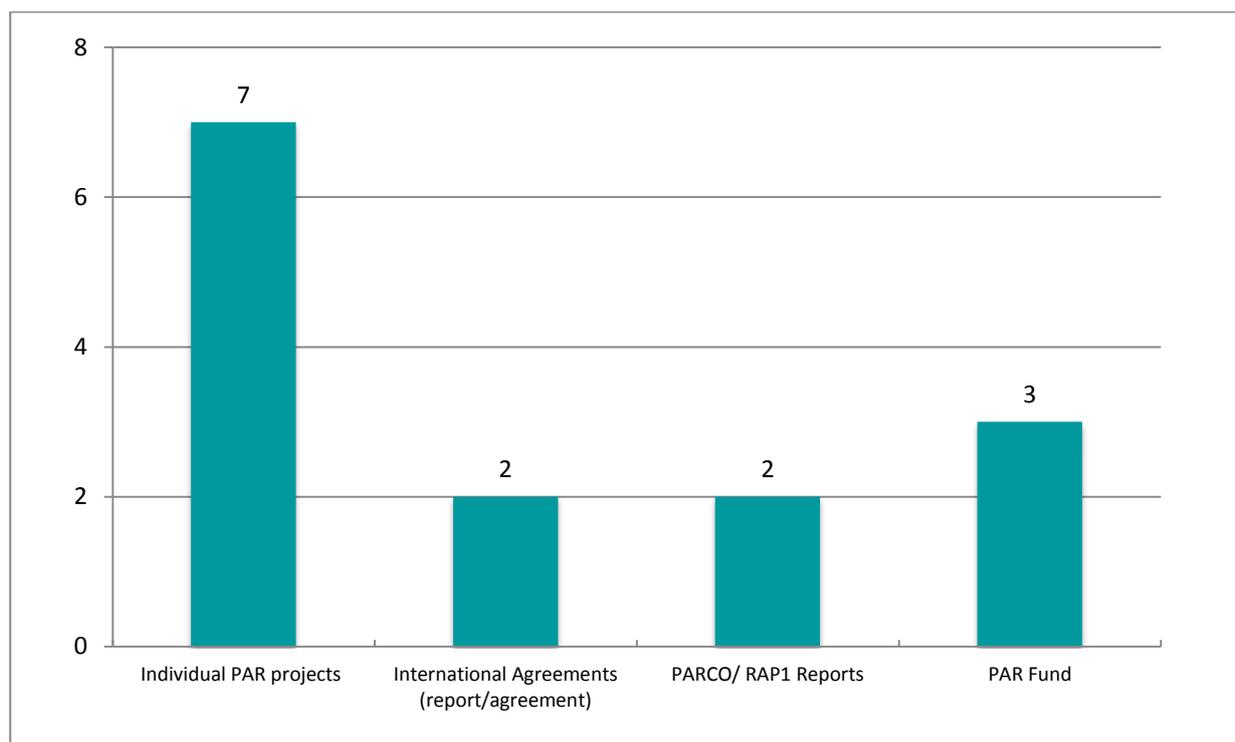
Source: Management and co-ordination structure developed by SIGMA, based on the Common Platform on the Principles and Implementation of the Strategy on Public Administration Reform in Bosnia and Herzegovina Action Plan 1.

³⁸ Common Platform on The Principles and Implementation of the Strategy on PAR in BiH Action Plan 1, CoM of BiH, Government of FBiH, Government of RS, Government of BD, April 2007.

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The CoM of BiH and the Governments of FBiH, RS and BD monitor PAR implementation by reviewing biannual and annual progress reports and other documents submitted to them regarding different PAR-related issues. In 2014, PAR matters (in total 14 various issues) were discussed in 10 meetings of the CoM of BiH. Even though the frequency of political-level PAR discussions was high, the meetings were mainly backward rather than forward-looking, as they discussed issues of an informative or reporting nature³⁹. They did not discuss the future of PAR in BiH or the preparation of a new PAR planning document(s), even though the two main planning documents were to expire in 2014 and the Annual Report on Implementation of the RAP1 for 2013⁴⁰ had suggested preparing a new set of PAR measures for the period up to 2020.

Figure 4. Number of Issues discussed by the CoM of BiH in 2014



Source: PAR Coordinator's Office information on the meetings of the Council of Ministers BiH.

The Economic Development and European Integration Co-ordination Board was envisaged⁴¹ as a political-level co-ordination and supervisory body for the PAR process in BiH, consisting of heads of the CoM of BiH, the Governments of the two Entities and the BD, and other major stakeholders. However, it did not meet in 2014 to discuss any PAR-related issues.

At the administrative level, PAR Co-ordinators have been appointed in the State, the two Entities and the BD⁴². They are responsible for co-ordinating reform efforts within and among specific administrative levels. According to the PAR Strategy, the PAR Co-ordinators should hold regular meetings (preferably monthly) during which they are to discuss matters relevant to facilitating the co-

³⁹ Based on the information provided by the PARCO, the meetings of the CoM of BiH discussed reports of PARCO, implementation of individual projects, or implementation of agreements. Only three issues were related to planning of future activities: conclusion of the agreement with the Deutsche Gesellschaft für Internationale Zusammenarbeit, extension of the PAR Fund by approving the Annex V to the MoU and allocation of PAR Fund co-financing for 2015-2017.

⁴⁰ Annual Progress Report for 2013. Monitoring of implementation of the RAP1 of the PAR Strategy, CoM of BiH, September 2014.

⁴¹ Common Platform on The Principles and Implementation of the Strategy on PAR in BiH Action Plan 1, CoM of BiH, Government of FBiH, Government of RS, Government of BD, April 2007, Sarajevo.

⁴² CoM of BiH Decision on the Establishment of the Co-ordinator for PAR, October 2004, Sarajevo.

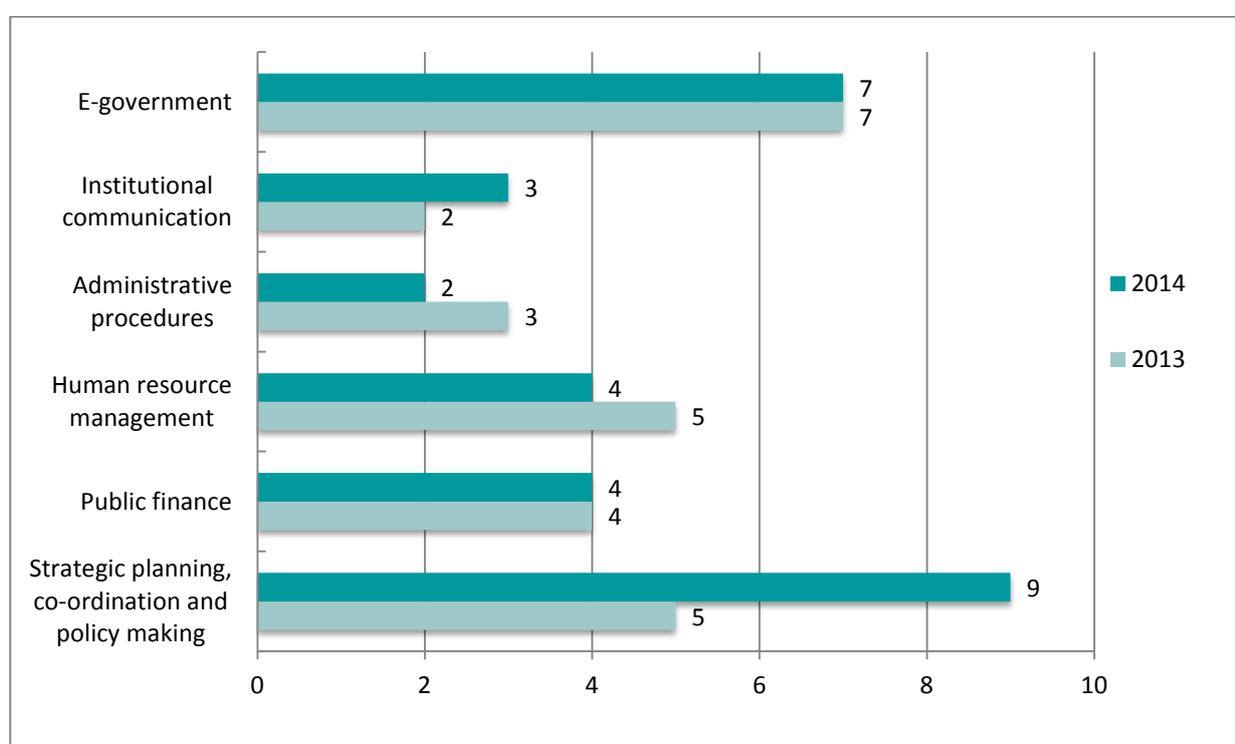
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ordination of administrative reform across BiH⁴³. According to PARCO, only two such meetings took place in 2014. However, the PAR Co-ordinators also met during three 2014 Technical Assistance Project Steering Committee meetings, which were devoted to elaborating proposals for the future of PAR policy in BiH.

None of the decisions that the CoM of BiH or meetings of the PAR Co-ordinators reached required any follow-up work; therefore, the value of the indicator looking at implementation of decisions made at the political and administrative levels was calculated based on decisions that the PAR Co-ordinator meetings reached having clear elements on which to follow-up. 57.14% of such decisions were implemented in total.

Supervisory Teams in the six policy areas defined in the PAR Strategy supervise the implementation of the activities foreseen by RAP1 and the objectives set out in the PAR Strategy. The Supervisory Teams consist of representatives of relevant public administration bodies from the State level, the two Entities and the BD. The teams were very active in 2014, holding 29 meetings⁴⁴.

Figure 5. The number of supervisory team meetings in 2013 and 2014



Source: Annual Report on the Work of PAR Coordinator's Office, January-December 2014, PAR Coordinator's Office 2015.

There are two important issues regarding the PAR co-ordination and management structures. The first relates to the effectiveness of the co-ordination mechanism. Despite frequent meetings within a formal co-ordination structure, implementation of the RAP1 experienced significant challenges in reaching the objectives and implementing activities within the set deadlines. The challenges may have been attributable also to the elections but, in general, the activeness of the co-ordination mechanism is not linked to the achieved progress. The second issue is that the Common Platform formally expired at the same time as the RAP1, although it has been informally agreed by the PAR Co-ordinators that it will continue to function until a new strategic framework for PAR is elaborated.

Formal PAR co-ordination structures at both the political and administrative levels to steer and manage the reform design and implementation had been set up under the complex decision making structure of the country and were regularly applied at the administrative level. However, the

⁴³ BiH PAR Strategy, CoM of BiH, Government of RS, Government of FBiH, Government of BD, 2006, p. 55.

⁴⁴ Annual Report on Work of the PAR Coordinator's Office January-December 2014 adopted by CoM BiH, February 2015.

Common Platform has formally expired, together with the RAP1, at the end of 2014. The co-ordination structures at the administrative level met actively in 2014 to discuss the implementation of the PAR agenda in BiH and continue to operate in 2015 in the absence of a new solution.

Principle 5: One leading institution has responsibility and capacity to manage the reform process; involved institutions have clear accountability and reform implementation capacity.

The PAR Coordinator's Office – established by a decision of the CoM of BiH on 28 October 2004, together with the PAR Co-ordinator position as its head – is defined as the key co-ordinator of the PAR process in BiH⁴⁵. The Common Platform provides a list of PARCO functions⁴⁶ and defines the roles of the supervisory and implementation teams involved in the BiH PAR process. In addition, decisions at the State, the two Entity and the BD levels on the appointments of PAR Co-ordinators, as well as members of the Supervisory Teams and Joint PAR Fund Management Board, also delineate key responsibilities assigned to these different positions.

This well-defined institutional and functional structure has, however, some built-in weaknesses that undermine its overall effectiveness and the authority of PARCO. While these issues were raised and discussed in detail in reviews in 2010⁴⁷, no changes to the legal framework have been made thus far.

The first weakness is that the initial decision on establishing PARCO provides that when the CoM of BiH concludes that the objectives and activities of the PAR Coordinator's Office are met, it will propose to abolish or transform the Office⁴⁸. Second, unlike other structures at the CoM of BiH, PARCO does not have a seat at the CoM meeting, as the Chairman of the CoM is supposed to represent PARCO in these meetings. Third, since it was established through a decision of the CoM of BiH, PARCO is not a statutory institution regulated by the Law on the CoM⁴⁹. This leaves PARCO without any real power to drive PAR at the political level nor any leverage vis-à-vis other institutions⁵⁰. The same observation applies to PAR Co-ordinators at the Entity and BD level.

All of the above-mentioned factors support the baseline value of 3 for the indicator of the extent to which accountability over PAR functions.

Despite having sufficient and skilled personnel (35 staff members with only a 3% annual turnover rate; 43% with at least two regular training courses), these observations indicate that the institution formally charged with co-ordinating the PAR process in BiH currently lacks the leverage to fulfil this function to the full extent. Moreover, with the expiry of the PAR Strategy and RAP1, it will be necessary to redefine PAR preparation and management structures.

The overall PAR management and co-ordination mechanism defines formal division of functions among different PAR structures, but its functioning is hindered by several shortcomings. The challenges are closely connected to the sustainability of PARCO and the current hierarchical status

⁴⁵ CoM of BiH Decision "On the Establishment of the Co-ordinator of PAR in the Office of the Chairman of the CoM", No. 302/04.

⁴⁶ The Common Platform stipulated the following responsibilities for PARCO: overall co-ordination of Action Plan 1 and RAP1 activities; operational co-operation with PAR Co-ordinators of both entities and BD; work organisation and co-ordination under six reform areas; co-operation with other bodies in BiH important to PAR implementation and co-operation in supporting the PAR Fund and other donors; preparation and organisation of the work of the PAR Fund Management Board; regular reports to all government levels about PAR implementation and providing operational/technical support for the work of the Economic Development and European Integration Co-ordination Board.

⁴⁷ For example, see Roll, H.-A. and G. Virant (2010), *"The Structures of the PAR in BiH with Special Regard to PAR Coordinator's Office"*, EUPAR, Sarajevo, or Puhalo, S. (2010), *"Analysis of Coordinating and Communication Capacities of the Public Administration Reform Implementation Structure"*, PARCO.

⁴⁸ CoM of BiH Decision No. 302/04 "On the Establishment of the Co-ordinator of PAR in the Office of the Chairman of the CoM".

⁴⁹ Law on the CoM of BiH, Official Gazette No. 30/03, 2002.

⁵⁰ Roll, H.-A. and G. Virant (2010), *"The Structures of the Public Administration Reform in BiH with Special Regard to Public Administration Reform Coordinator's Office"*, EUPAR (2010).

and authority of the PAR Co-ordinators and PARCO, impeding their ability to drive the PAR agenda forward and influence implementation of PAR Strategy objectives in general.

Key recommendations

Short-term (1-2 years)

- 1) The CoM of BiH, in consultation with the Governments of the FBiH, the RS and the BD, should consider redefining the status of PARCO to ensure its sustainability and that it has adequate authority to co-ordinate PAR reform in BiH, i.e. transform PARCO's status into a more permanent one.
- 2) The CoM of BiH, in consultation with the Governments of the FBiH, RS and BD, should redefine the PAR process steering and co-ordination structure to keep it consonant with decisions made on the elaboration of the new strategic framework.
- 3) At the political level, the work of the Economic Development and European Integration Co-ordination Board in regard to PAR policy should be re-started or a different, existing or new, structure should be tasked with taking responsibility, to ensure effective supervision of PAR implementation policy at the political level.
- 4) At the administrative level, the approach of the Supervisory Teams should be re-assessed to ensure that they can actually perform their functions and make an impact on the implementation of the PAR actions.

Medium-term (3-5 years)

- 5) PARCO should initiate measures in relation to the Governments of the FBiH, RS and BD to strengthen the capacity of PAR co-ordinators at the level of both Entities and the BD.

2

Policy Development and Co-ordination

POLICY DEVELOPMENT AND CO-ORDINATION

1. STATE OF PLAY AND MAIN DEVELOPMENTS: 2014-APRIL 2015

1.1. State of play

Due to the complex nature of decision making stipulated by the Constitution⁵¹ in Bosnia and Herzegovina (BiH), the policy development and co-ordination system is not established uniformly across the whole country. The analysis below, therefore, mainly focuses on the State level, where the legal framework for policy development and co-ordination is partially in place, including for European integration (EI). There are substantial challenges in the areas of co-ordination and scrutiny of policy content, unified co-ordination of EI matters, and thorough scrutiny of proposals from the perspective of affordability, as well as shortcomings with regard to harmonised medium-term planning and monitoring both for the whole of BiH and for the EI agenda.

While the transparency of the State level administration is commendable, with publicly available reports on planned sessions and the annual work of the Council of Ministers (CoM), public involvement in the policy decision making process through consultation on draft legislation does not fully adhere to the regulation. Tools for evidence-based policy making have been developed, but are used sporadically. Easy access to legislation through a comprehensive, electronic registry is not fully ensured, and consolidated texts are not available.

1.2. Main developments

In July 2014, the Council of Ministers of Bosnia and Herzegovina (CoM of BiH) adopted the Decision on Mid-Term Planning, Monitoring and Reporting Procedure in the Institutions of BiH⁵², prepared by the Directorate of Economic Planning. Based on the Decision, a draft methodology has been prepared, and training on the issues it covers has been provided to more than 100 people from 42 institutions, with the main focus on the linkages between planning and budgeting.

Following the 2014 requirements of the European Commission (EC), the relevant institutions in BiH have prepared the 2015 National Economic Reform Programme (NERP), which was adopted by the CoM in February 2015⁵³.

⁵¹ Annex 4, General Framework Agreement for Peace in Bosnia and Herzegovina (also known as the Dayton Agreement), 14 December 1995.

⁵² Official Gazette No. 62 of 11 August 2008.

⁵³ Press Release of the CoM of BiH:
http://www.vijeceministara.gov.ba/saopstenja/sjednice/saopstenja_sa_sjednica/default.aspx?id=18668&langTag=en-US.

2. ANALYSIS

The analysis covers the 12 Principles of the policy development and co-ordination area, grouped under four key requirements⁵⁴. For each key requirement, baseline values are provided for the indicators of the monitoring framework of the Principles. The Principles cover a whole policy cycle and address the functioning of the centre of government (CoG); policy planning, co-ordination and monitoring; Government decision making; and development of policy and legislation. The Principles also cover the necessary arrangements for EI throughout the policy cycle.

Due to constitutional arrangements in BiH, responsibility in the area of policy development and co-ordination is decentralised and separate approaches towards it exist at the State level, and in the Entities and the Brčko District (BD). The SIGMA Baseline Measurement focuses on a whole-of-country approach and analyses functioning of the central administration. In BiH, policy development and co-ordination functions are allocated to the State level, the Entities and the BD, often without any co-ordination at the whole-of-country level. The assessment concentrates on the legal and institutional preconditions necessary for the a countrywide approach and where that does not apply, it analyses the framework and functioning of the State level and initiatives launched or co-ordinated by the State level. It does not analyse functioning of policy development and co-ordination systems for the Entities and the BD.

2.1. Key requirement: Centre of government institutions fulfil all functions critical to a well-organised, consistent and competent policy making system.

Baseline values

The functioning of the CoG is examined through two qualitative indicators. One indicator covers all nine critical functions defined in the Principles of Public Administration, while the other is a specific indicator to analyse how the key EI functions are implemented by the administration. These qualitative indicators analyse establishment of the functions and how they are implemented.

The Dayton Peace Agreement and the present Constitution of BiH created a complex governance structure and, as core executive, the CoM of BiH and the Governments of the Federation of BiH (FBiH), Republika Srpska (RS) and the BD are established and functioning. Therefore, there is no single CoG⁵⁵ in BiH. At the State level of BiH, however, most of the nine key functions critical for the functioning of the CoG have been established, but the expected level of fulfilment has not been reached. The EI co-ordination system is partially established, with the expected level of fulfilment of EI functions by institutions ensured only to a limited extent.

| | Principle no. | Indicator | Baseline year | Baseline value |
|-------------|---------------|--|---------------|-----------------|
| Qualitative | 1 | Proportion of critical CoG functions that are fulfilled by the institutions. | 2014 | 2 ⁵⁶ |
| | 2 | EI functions are fulfilled by the institutions. | 2014 | 2 |

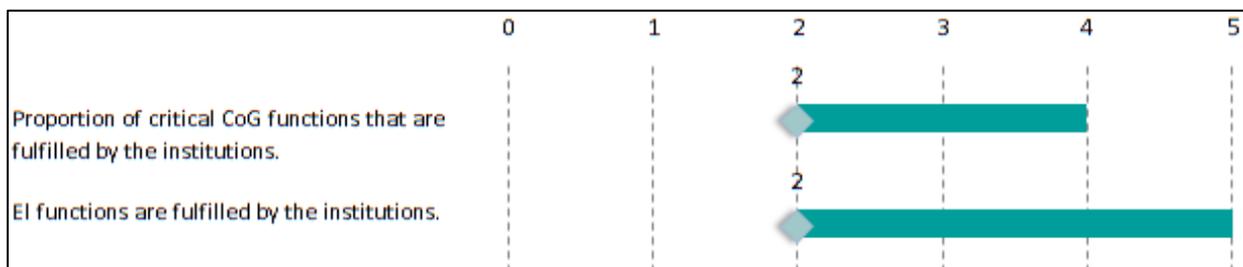
⁵⁴ SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, pp. 18-40.

⁵⁵ The Presidency, a collective body comprising three representatives of the constitutive people of BiH, is the highest Executive power. As a collective of Heads of State, the Presidency has roles with regard to foreign policy and defence and is the body that submits the budget proposal to the Parliamentary Assembly after the draft is developed by the CoM of BiH.

⁵⁶ Indicator value is set only for the State level.

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 1. Country baseline value in comparison with the regional range



Analysis of Principles

Principle 1: Centre of government institutions fulfil all functions critical to a well-organised, consistent and competent policy making system.

The institutions fulfilling the functions of the CoG at the State level of BiH are: 1) the Secretariat-General (SG) of the CoM, which is responsible for preparing sessions and meetings, developing the work plan of the CoM, monitoring implementation of CoM decisions, and communication activities; 2) the Legislative Office (LO), which is responsible for legal scrutiny, as well as ensuring the publication of decisions in the Official Gazettes of BiH, the two Entities and the BD; 3) the Directorate of Economic Planning (DEP), which is responsible for fiscal and economic medium-term planning and development planning, and checks proposals from this perspective; 4) the Ministry of Finance and Treasury (MoFT), which ensures fiscal scrutiny; and 5) the Directorate for European Integration (DEI), which is responsible for co-ordination of EI matters.

The documents comprising the legal framework for the functioning of the CoG at the State level of BiH are: the Constitution of BiH⁵⁷; the Law on CoM of BiH⁵⁸; the Law on Administration of BiH; the Law on Ministries and Other Bodies of Administration of BiH⁵⁹; the Law on Financing Institutions of BiH⁶⁰; the Rules of Procedures (RoP) of the CoM⁶¹; the Uniform Rules on Preparation of Legal Acts in the Institutions of BiH⁶²; the Regulations on Consultations in Legislative Drafting⁶³; and the Instruction on the Process of Preparation of the Work Programme of CoM of BiH⁶⁴.

With the exception of co-ordination and scrutiny of policy content from all aspects⁶⁵, the critical functions for the CoG defined by the Principle are established at the State level. Based on the materials (opinions, guidelines, reports) provided for this analysis and interviews with the administration, it is apparent that implementation challenges remain in co-ordinating the policy content of proposals for Government decisions, ensuring that policies are affordable and co-ordinating public sector resource

⁵⁷ Official Gazette No. 25/09.

⁵⁸ Official Gazette Nos. 30/03, 42/03, 81/06, 76/07, 81/07, 94/07 and 24/08.

⁵⁹ Official Gazette Nos. 5/03, 42/03, 26/04, 42/04, 45/06, 88/07, 35/09, 59/09 and 103/09.

⁶⁰ Official Gazette Nos. 61/04 and 49/09.

⁶¹ Official Gazette Nos. 35/03, 92/05 and 40/07.

⁶² Official Gazette Nos. 11/05, 58/14 and 60/14.

⁶³ Official Gazette No. 81/06.

⁶⁴ Official Gazette No. 21/07.

⁶⁵ The DEP is responsible for steering medium-term and strategic planning and scrutiny of proposals from the perspective of alignment with strategic priorities, but other aspects of co-ordination of policy content are not regulated.

planning. It is not possible to assess the practice of the CoG in terms of co-ordination of communication activities and handling relations with other state bodies because no information was provided on how these are carried out in practice. In light of these factors, the baseline value for the indicator assessing the proportion of critical CoG functions that are fulfilled by the institutions is 2.

While there is no countrywide CoG, at the State level the basic legislative and institutional framework for a functioning CoG, including the EI process, is in place. However, co-ordination of policy content has been defined only partially, and implementation challenges have also been observed with regard to ensuring the affordability of proposals. Implementation of the co-ordination of communication functions and the handling of relations with other state bodies cannot be assessed due to the lack of evidence.

Principle 2: Clear horizontal procedures for governing national European integration process are established and enforced under the co-ordination of the responsible body.

As defined in the Law on CoM of BiH (Article 23), the Law on Ministries and other Administrative Authorities of BiH (Article 18), and the Decision of the CoM of BiH on the DEI (Article 3), the DEI has the mandate to co-ordinate and harmonise activities of authorities at all levels in BiH in the EI process, as well as for communication with the EC. However, the State level, the two Entities and the BD all have a share in deciding and implementing integration matters. The DEI is responsible for co-ordinating activities and supervising implementation of decisions; participating in the preparation of drafts, policy proposals, laws, other EI-related regulations and guidelines; and providing advice concerning issues of harmonisation of processes and activities of the authorities in BiH on implementation of obligations related to EI.

Due to the complexity of the political structure in the country and the stalemate in the accession process, the country as a whole has not been able to progress much⁶⁶, and competences regarding EI remain rather decentralised. In 2014, the country worked without a unified EU integration programme, as the 2013 programme had expired⁶⁷ and the new one had not been adopted by the CoM⁶⁸.

There are six key functions related to EI: 1) overall daily co-ordination of EI; 2) planning of EI, including costing of reforms; 3) monitoring the country's preparations for the EI process; 4) co-ordinating transposition of the *acquis*; 5) co-ordinating EU assistance; and 6) co-ordinating EI-related negotiations. All of these functions are established, with the exception of co-ordination of EI-related negotiations, since this is not required from the country at this stage of the integration process. However, the expected level of fulfilment has not been observed with regard to the planning of EI, and monitoring of the country's performance is only executed to a limited extent⁶⁹. Therefore, the baseline value for the indicator regarding the extent to which EI functions are fulfilled by the institutions is 2.

While the EI co-ordination structure is in place for the whole country and the DEI is positioned to fulfil all tasks applicable to BiH at the current stage of EI, the State level, the two Entities and the BD all have a share in deciding and implementing integration matters. Planning and regular monitoring of EI is not fully ensured for the whole country, and the integration process is seriously hampered by the lack of co-operation between the State level, the two Entities and the BD in EI matters, especially with regard to a unified approach to harmonisation with the *acquis*.

⁶⁶ As described in the [2014 Progress Report](#) of the European Commission, the political tensions within the CoM and the lack of any effective co-ordination mechanism continuously limit the interaction of the country with the EU.

⁶⁷ Programme for Measures for Implementation of the Interim Agreement/SAA (2013).

⁶⁸ The DEI developed the new programme along with the summary report on the previous one, but it has not yet been adopted by the CoM. Both the new programme and the previous one included activities for the State level, the two Entities and the BD.

⁶⁹ Monitoring is not systematic. The DEI provides regular information to the CoM about EI matters (for example in the form of an annual summary of the findings of the EC Progress Report), but monitoring is not aligned to activities as an overall EI plan has not been developed. The DEI also developed eight semi-annual reports on Implementation of the Interim Agreement that were adopted by the CoM.

Key recommendations

Short-term (1-2 years)

- 1) The CoM of BiH should establish the legal framework, and nominate and strengthen the capacity of the institution responsible for co-ordinating the policy content of proposals within the CoG, by establishing and defining clear roles and responsibilities. The institution responsible for policy co-ordination should serve as a quality controller and neutral assessor to ensure scrutiny of all policy proposals and take methodological responsibility for developing a comprehensive policy making system.
- 2) The CoM should strengthen the central role and capacity of the DEI to guide and co-ordinate the EI agenda and institutional set-up for the transposition of the EU *acquis*, including transparent monitoring of achievements at the State level.

Medium-term (3-5 years)

- 3) The CoM should ensure that sufficient assessment of the financial affordability of proposals is always carried out and takes into consideration all potential costs, not only for the current year's budget but from a medium-term perspective as well.

2.2. Key requirement: Policy planning is harmonised, aligned with the Government's financial circumstances and ensures the Government is able to achieve its objectives.

Baseline values

Six indicators are used to measure whether policy planning is harmonised. They cover the annual implementation backlog of planned commitments; the annual backlog in developing sector strategies; the link between funds estimated in sector strategies and those taken up in the medium-term budgetary framework (MTBF); the completeness of financial estimates; the annual backlog of EI-related commitments; and the extent to which achieved outcomes are reported.

Medium-term policy planning and monitoring, including EI, is not established at the country level. At the State level, the values of indicators illustrate many existing challenges, especially in relation to ensuring the affordability of plans and with regard to providing regular reports on work done and outcomes of the work to the public. The analysis is limited by the fact that sample strategies were not provided.

| | Principle no. | Indicator | Baseline year | Baseline value |
|---------------------|---------------|---|---------------|-------------------|
| Qualitative | 3 | Completeness of financial estimates in sector strategies ⁷⁰ . | 2014 | 0 |
| | 5 | Extent to which reporting provides information on the outcomes achieved. | 2014 | 1 ⁷¹ |
| Quantitative | 3 | Annual implementation backlog of planned commitments in the central planning document(s). | 2013 | 14% ⁷² |
| | 3 | Annual backlog in developing sector strategies | 2013 | 25% |

⁷⁰ A sample of five recently adopted sector strategies is used.

⁷¹ Indicator value is set only for the State level.

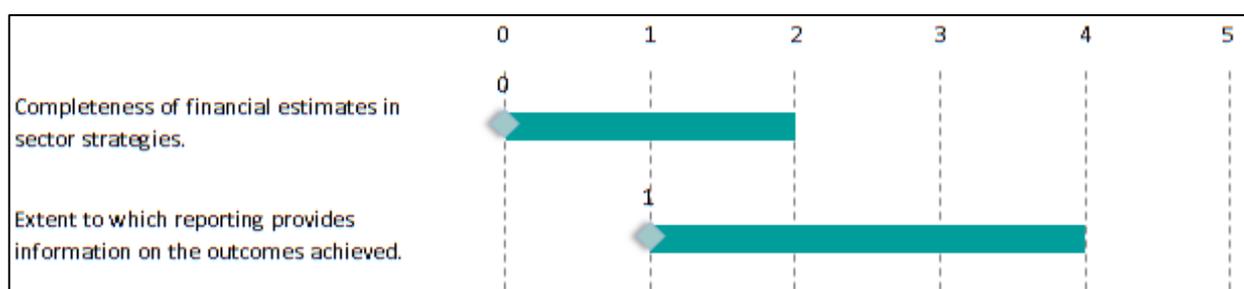
⁷² Ibid.

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| | | | | |
|--|---|---|------|-----|
| | 3 | Ratio between total funds estimated in the sectoral strategies and total funding identified for the corresponding sectors within the MTBF ⁷³ . | 2014 | 0% |
| | 4 | Annual implementation backlog of EI-related commitments. | 2013 | 11% |

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 2. Country baseline value in comparison with the regional range



Analysis of Principles

Principle 3: Harmonised medium-term policy planning, with clear whole-of-government objectives, exists and is aligned with the financial circumstances of the Government; sector policies meet the Government objectives and are consistent with the medium-term budgetary framework (MTBF).

Except for the Global Framework on Fiscal Balance and Policies⁷⁴, medium-term planning has not been established for the whole of the country, though sector strategies developed at State level are supposed to cover sectoral issues for the whole country from a medium-term perspective. Because of these factors the following analysis focuses only on the State level. However, it is worth noting that the CoM adopted the 2015 NERP at the beginning of 2015. The NERP includes analysis and projections of the macroeconomic framework for 2014-2017, and provides information on priorities and sectoral structural reforms for the State level, and also for the RS, the FBiH and the BD⁷⁵.

Medium-term planning at the State level is regulated by the RoP and the new Decision on Mid-Term Planning. In accordance with the RoP⁷⁶, the CoM shall adopt an annual work programme by the beginning of the calendar year, consisting of the most important tasks for the year⁷⁷. As the Decision

⁷³ The ratio is calculated as a percentage (0% for minimum concurrence and 100% for maximum concurrence), illustrating the difference in planned funding in the last five strategies adopted and the MTBF. The outcome value of the indicator is the average of the five cases. In the event, as it is not possible to make the calculation due to a lack of financial data in the MTBF and/or in all or some sector strategies, the ratio is determined as 0%.

⁷⁴ BiH Law on the Fiscal Council, Official Gazette No. 63/08.

⁷⁵ The 2015 NERP is an enhanced version of the Economic and Fiscal Programme (EFP) submitted by potential candidate countries. While the key objectives and content of Part I of the NERP remain very similar to the previous EFP, Part II of the document covers sectoral structural reform measures aimed at improving competitiveness of the country. The NERP can be found at www.dep.gov.ba.

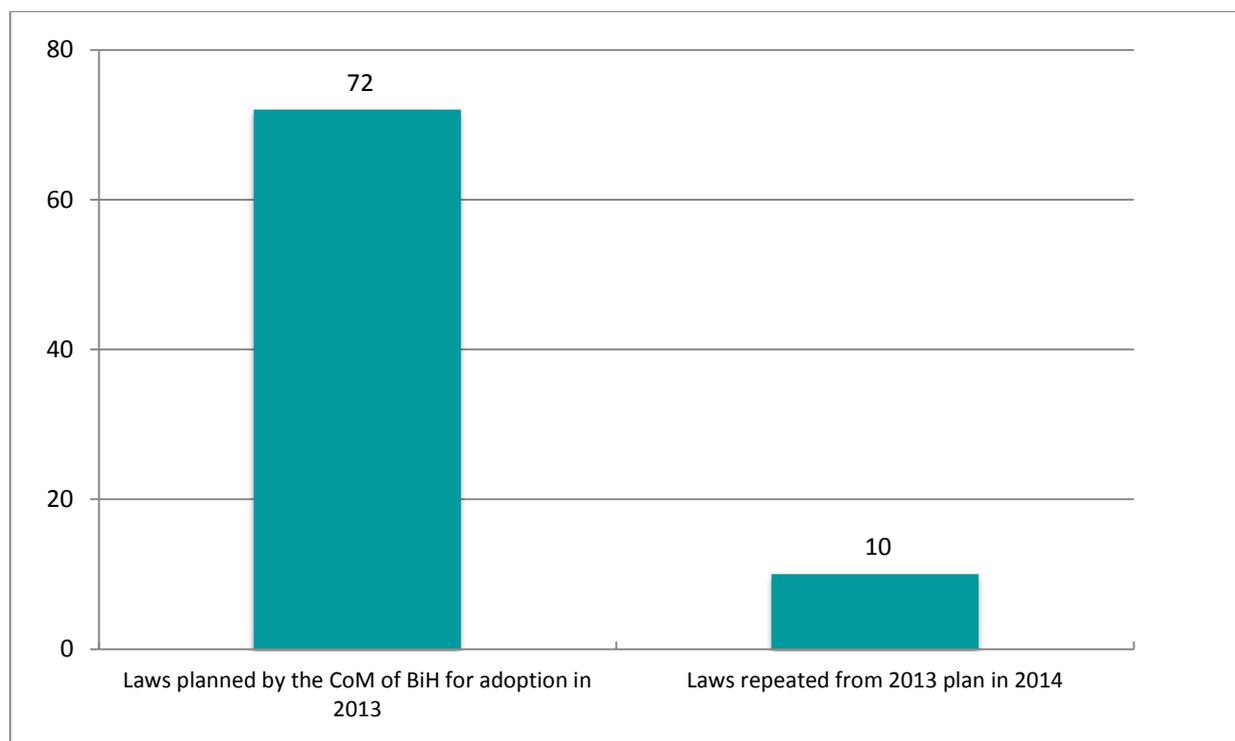
⁷⁶ RoP CoM, Article 18.

⁷⁷ The AWP of the CoM of BiH for 2013 and 2014 follow the same pattern, with all initiatives divided into four sections: legislative activities, the conclusion of international treaties and agreements, EI and the thematic section. The thematic chapters list activities, but do not include the strategic goals of the Government, showing the most

on Mid-Term Planning, Monitoring and Reporting Procedure in the Institutions of BiH was adopted by the CoM in July 2014, the basis for medium-term planning from a strategic perspective has also been established. In accordance with this decision, the mid-term work programme of the CoM for three years should be elaborated and should serve as a basis for the budget framework document and the annual planning of government work⁷⁸. However, as it is a recent initiative, implementation in practice cannot be assessed.

The baseline value on the indicator relating to the annual implementation backlog of planned commitments in the central planning documents was calculated by comparing the legislative programme of the Annual Work Programme (AWP) of the CoM for 2013 to that of 2014. Out of 72 laws planned for 2013, 10 laws were repeated in the AWP for 2014, so the baseline value for this indicator for 2014 is 14%.

Figure 3. Number of laws carried forward from 2013 to 2014



Source: Annual Work Programmes of the Council of Ministers of BiH 2013 and 2014.

Analysis of the AWP was also used to determine the annual backlog in developing sector strategies, which, for the baseline year, is 25%. Out of eight planned strategies covering the whole country for a specific sectoral subject, two were carried forward from 2013 to 2014. It is worth noting that ten strategies were planned in the AWP for 2014. In 2013, two strategies were adopted by the CoM, while in 2014 only one strategy was adopted, and none of the strategies adopted were actually planned in the AWP of 2013 and 2014.

Due to the fact that no evidence was provided by the State level administration on sectoral strategies, the baseline value for assessing the completeness of financial estimates in sector strategies is 0. In addition, the baseline value for the ratio between total funds estimated in the sector strategies and total funding identified for corresponding sectors in the MTBF is 0%.

important areas on which the CoM will concentrate. The AWP is prepared in a bottom-up process by the GS and the SG did not exercise any steering or control over the ministries with regard to timing or resource needs for proposals. There were 682 activities in the AWP in 2013 and 644 in 2014.

⁷⁸ Decision on Mid-Term Planning, Monitoring and Reporting Procedure in the Institutions of BiH, Article 4.

The planning of the work of the CoM is done on an annual basis, with medium-term planning and monitoring at the very beginning of implementation. The AWP lists activities as a result of a bottom-up process and does not contain priorities. Nevertheless, medium-term fiscal planning is carried out for the whole of BiH.

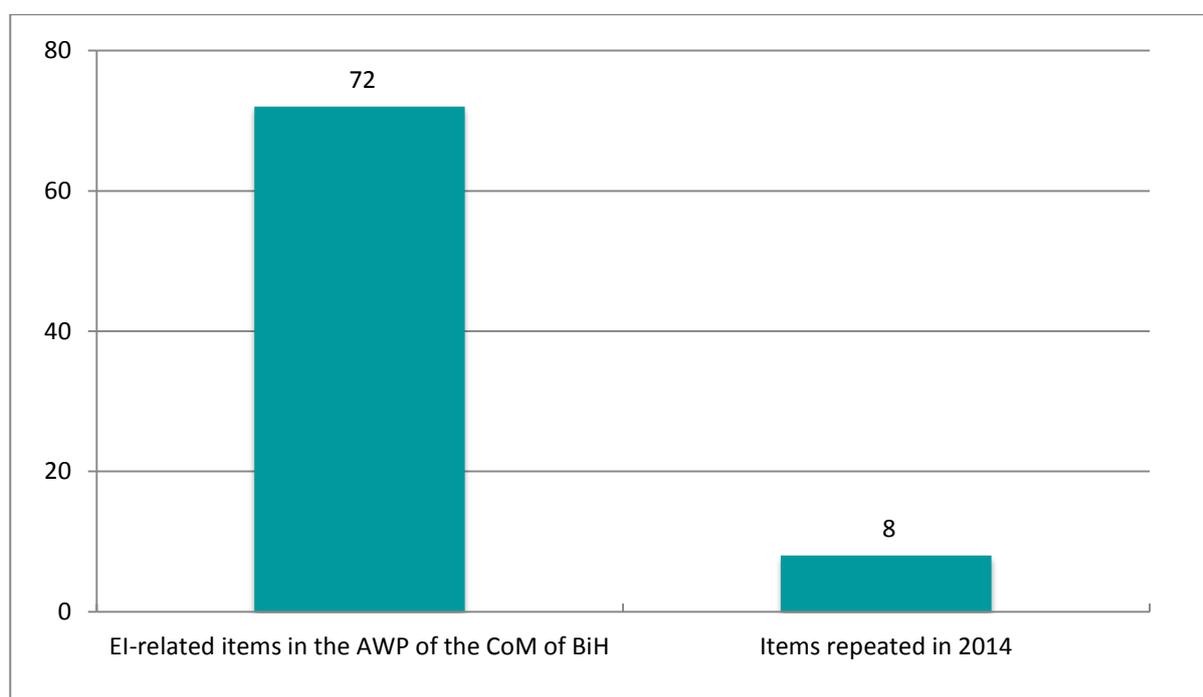
Principle 4: A harmonised medium-term planning system for all processes relevant to European integration exists and is integrated into domestic policy planning.

For the time being, BiH has not succeeded in establishing a medium-term planning and monitoring system for EI issues either for the countrywide or at the State level. The planning function is decentralised between the State level, the two Entities and the BD, and also between ministries at the State level. While the DEI is responsible for co-ordination of activities on harmonisation of the BiH legal system with EU accession standards, it is not formally involved in the elaboration of the State level AWP from an EI perspective.

Every year, after the EU has published its Progress Report, the DEI prepares a report and analysis for the CoM that includes evaluation of performance and proposals for improvements regarding EI⁷⁹. The DEI also develops plans for implementation of the Interim Agreement⁸⁰, but for 2014 the country worked without such a plan being adopted. Nevertheless, these programmes also serve as a basis for the activities included in the EI chapters of the AWPs. Since the AWP is not linked to any medium-term financial strategy or to any other medium-term plan, the EI-related commitments are not planned in an aligned manner.

On the basis of the EI chapters of the AWPs for 2013 and 2014, the backlog of the implementation of EI-related commitments is 11%⁸¹.

Figure 4. Number of EI-related items carried forward from 2013 to 2014



Source: Annual Work Programmes of the Council of Ministers of Bosnia and Herzegovina 2013, 2014.

⁷⁹ http://vijeceministara.gov.ba/saopstenja/sjednice/zakljucci_sa_sjednica/default.aspx?id=18325&langTag=en-US.

⁸⁰ Programme for Measures for Implementation of the Interim Agreement, Stabilisation and Association Agreement, 2013.

⁸¹ In 2013, 72 issues were included in the AWP in the section on EI. In 2014, there were 65 issues, 8 of which were carried forward from 2013 to 2014.

There is no formally established countrywide or State level medium-term planning system for EI matters. Planning of EI matters is decentralised between the State level, the two Entities and the BD, and also between ministries at the State level, with high independence of the ministries. At the State level there is no separate annual plan for EI. The AWP contains a separate chapter on EI-related commitments but, although the DEI is the institution responsible for EI matters, it does not steer its elaboration. The AWP is not aligned with financial limits.

Principle 5: Regular monitoring of the Government's performance enables public scrutiny and ensures that the Government is able to achieve its objectives.

As there is no countrywide medium-term planning system, there is no system for regular reporting either. At the State level, the legal framework for monitoring is established through the RoP of the CoM of BiH; the Decision on Mid-Term Planning, Monitoring and Reporting Procedure in the Institutions of BiH adopted by the CoM in July 2014; and the Instruction on Methodology for Preparation of Reports⁸². The RoP⁸³ stipulate that ministries shall inform the CoM about tasks that have not been executed on time, with an explanation of the reasons for failure to carry out the established tasks. The Instruction on Methodology for Preparation of Reports specifies requirements for content and structure of reports prepared for the CoM. The Decision on Mid-term Planning describes monitoring for strategies and mid-term plans in a detailed manner, and the DEP has also developed a methodology for strategic planning and monitoring.

The SG is responsible for monitoring the performance of the CoM. The Law on CoM⁸⁴ foresees that the CoM, will submit annual reports on its work to the Parliamentary Assembly at least once a year, including reports related to the budget. The Parliamentary Assembly may ask the CoM to submit special reports on certain issues.

The SG prepares quarterly reports on implementation of the AWP and submits a yearly report to the CoM, as well as to the Parliament. According to the AWP, they include items of an informative nature, in different annual and thematic reports, as well as reports on implementation of strategies. Three strategy reports were planned for discussion by the CoM in the 2013 AWP, and four in the 2014 AWP. Although existing reports are publicly available, neither the report on the work of the CoM, nor the report on the Budget contain information about the achievements against set policy objectives or outcome indicators.

Since there is no regular report on EI matters⁸⁵ and sectoral strategy reports were not provided for analysis, and since publicly available reports do not contain information about outcomes against policy objectives and only achieved outputs are reported, the baseline value for the indicator on the extent to which reporting provides information on the outcomes achieved is 1.

Although legislation sets standards for reporting on the work of the CoM on an annual basis, as well as reporting on implementation of strategies, publicly available reports provide only a limited picture of the development of various matters, as achievements against set policy objectives are not covered.

Key recommendations

Short-term (1-2 years)

- 1) As is the case for medium-term fiscal planning, the CoM of BiH should develop a comprehensive approach to medium-term planning and monitoring on other areas as well, to allow for aligned strategic work and prioritisation for the whole country.

⁸² Official Gazette No. 96/09.

⁸³ RoP CoM, Article 21.

⁸⁴ Law on CoM, Article 34.

⁸⁵ The DEI has prepared eight semi-annual reports about implementation of the Interim Agreement since 2008, but the last such report is from September 2013.

- 2) The SG should ensure that all regulation is implemented and followed in a consistent way with regard to prioritised medium-term planning of the work of the CoM on an annual basis, and to medium-term strategic and financial planning. Alignment between the various plans should be constantly ensured.
- 3) Annual and medium-term planning at the State level should be enhanced through central co-ordination of proposals by the SG.
- 4) A comprehensive system should be developed to monitor all annual and medium-term plans by the SG to ensure regular publicly available reports.

Medium-term (3-5 years)

- 5) The CoM of BiH, the Governments of RS, FBiH and BD should jointly establish a whole-of-country approach to medium-term planning of EI-related matters.
- 6) The monitoring system at the State level should be further developed by the SG so that reports include information on achievements against set policy objectives.

2.3. Key requirement: Government decisions and legislation are transparent, legally compliant and accessible to the public; the work of the Government is scrutinised by the Parliament.

Baseline values

Assessing whether government decisions and legislation are transparent, legally compliant, accessible to the public and scrutinised by parliament is measured based on six indicators distributed over two Principles. The indicators cover the ratio of regular agenda items submitted on time for government sessions; the transparency of government policy making; the number of laws with court rulings against the government in a given year; the ratio of laws initiated by the government and approved by parliament within a year; the extent to which a forward planning mechanism exists between the government and parliament; and the number of law or sectoral policy implementation reports discussed in parliament.

Baseline values for most of the indicators could not be determined due to lack of information. At the analysed State level, the legal framework establishes the requirements for preparation of the CoM meetings and clearly sets responsibilities for ensuring conformity with the rules and requirements. Apart from legal scrutiny, other formal and substantial requirements are fully adhered to. Information on the agenda of formal Government sessions is public in a commendable and transparent way. While formal co-operation between the CoM of BiH and the Parliamentary Assembly are established, forward-planning is limited, as is scrutiny of the CoM's work.

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| | Principle no. | Indicator | Baseline year | Baseline value |
|---------------------|---------------|---|---------------|------------------------------|
| Quantitative | 6 | Ratio of regular agenda items submitted on time ⁸⁶ by ministries to the Government session. | 2014 | Not available ⁸⁷ |
| | 6 | Transparency of Government policy making ⁸⁸ . | 2014 | Not applicable ⁸⁹ |
| | 6 | Number of laws with court rulings ⁹⁰ against the Government during the year. | 2014 | Not available ⁹¹ |
| | 7 | Ratio of laws initiated by the Government and approved by the Parliament no later than one year after submission. | 2014 | Not available ⁹² |
| | 7 | Extent to which forward planning mechanisms between the Government and the Parliament exist ⁹³ . | 2014 | 3 |
| | 7 | Number of law implementation reports discussed in the Parliament. | 2014 | 0 |

Analysis of Principles

Principle 6: Government decisions are prepared in a transparent manner and based on the administration's professional judgement; the legal conformity of the decisions is ensured.

In accordance with the Dayton Peace Agreement and the present Constitution of BiH, the governance system in BiH is complex, distributing the powers of the core Executive amongst the CoM of BiH and the Governments of the FBiH, RS and the BD. Therefore, there is also no single CoG. At the State level, the Law on CoM, the RoP, the Uniform Rules on Preparation of Legal Acts in the Institutions of BiH and the Regulations on Consultations in Legislative Drafting set the legal framework for carrying out the legislative process. Regulation is clear and comprehensive with regard to requirements for proposals from all perspectives (form, timeline and consultation process).

Competencies regarding scrutiny of the quality of legislation are prescribed in the RoP⁹⁴, which provide for consultation on proposals with the LO on conformity with the Constitution, laws of BiH and methodological unity in drafting legislation; the MoFT on fiscal impact; the DEI on EI issues; and the Ministry of Justice (MoJ) on issues relating to sanctions, organisation and functioning of the administrative bodies of BiH and their mutual relations, and the rules on internal organisation of ministries, administrative organisations and other bodies. The DEP gives an opinion on conformity of policy documents with strategic objectives of the country, mainly through the Regulatory Impact

⁸⁶ On time is understood as within the procedural criteria set by regulation(s).

⁸⁷ Indicator value is set only for the State level. No information was provided for the analysis by the administration.

⁸⁸ World Economic Forum, Competitiveness Index, minimum score of 1, maximum score of 7.

⁸⁹ The World Economic Forum did not include BiH in the Competitiveness Index for 2014 because of data availability issues.

⁹⁰ By the Constitutional Court.

⁹¹ Indicator value is set only for the State level. No information was provided for the analysis by the administration.

⁹² Ibid.

⁹³ Its value is based on the SEE2020 indicator on "forward-planning mechanisms between Government and national as well as sub-national parliaments".

⁹⁴ RoP CoM, Article31.

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Assessment (RIA) process⁹⁵. The DEI gives an opinion on compliance of proposals submitted by State level institutions with the EU *acquis*⁹⁶ as well as opinions on sectoral strategies submitted by State level institutions from the point of view of the EI process. The SG fulfils a technical role and checks if all the required documents accompany proposals submitted to the CoM.

The Law on CoM⁹⁷ and the RoP⁹⁸ state that two co-ordination bodies, the Internal Policy Committee and the Economy Committee, are to enhance discussions before the sessions of the CoM. The Committees have not been operational over the last three years and started to function only recently with the establishment of the new CoM of BiH.

In 2014, there were 112 ordinary CoM meetings and 9 extraordinary meetings, with approximately 42-45 items per meeting. Legislative scrutiny is ensured by the LO as all documents moving to the CoM should have an opinion from the LO; and in 2014, the LO reviewed approximately 1 300 proposals prepared for the CoM, of which 42 were laws or amendments to laws⁹⁹. This was done by the eight professional staff members of the LO. Financial scrutiny is not as well developed. There are cases when proposals are discussed with a positive MoFT opinion, even when the fiscal impact of those proposals is clearly substantial¹⁰⁰.

⁹⁵ Currently, the RIA process is mostly performed voluntarily by institutions aware of the benefits of this tool and within different donor-funded projects. The Draft Decision of the Procedure for Regulatory Drafting Preparation, Impact Assessment and Policy Choice is prepared by the DEP. It includes methodological guidelines for description of policy proposals, comparison of options, analysis of economic, social and environmental impacts, plus information on consultations and implementation monitoring and assessment. However, the document does not contain any methodological guidelines for assessing fiscal impacts.

⁹⁶ Decision on Directorate for European Integration, Article 6, Official Gazette No. 41/03 and Decision on the Instruments for Harmonisation of BiH Legislation with the EU *acquis*, Official Gazette No. 23/11.

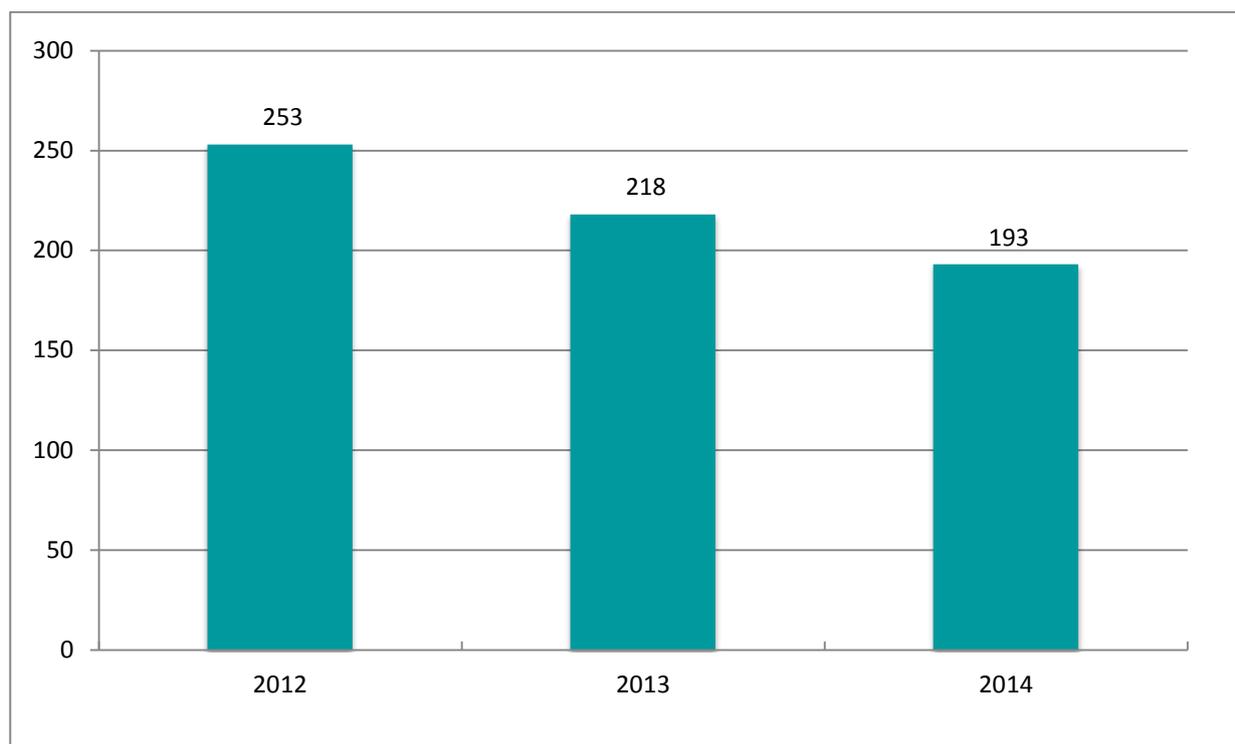
⁹⁷ Law on CoM, Articles 26 and 27.

⁹⁸ RoP CoM, Article 31.

⁹⁹ Data provided by the LO.

¹⁰⁰ Assessment based on the sample opinions provided by the MoFT, for example the 10 April 2014 opinion on the draft Law on the Prevention of Money Laundering and Financing of Terrorism. It expands the responsibilities of the Finance Intelligence Department of the State Investigation and Protection Agency, but does not stipulate additional funds for that.

Figure 6. Number of regulatory items submitted by ministries to the Secretariat-General in the last quarter of 2012, 2013 and 2014



Source: Secretariat-General of the Council of Ministers of Bosnia and Herzegovina.

The AWP is the main document that allows the public to follow the planned work of the Government, and the practice of the CoM to publish agendas of formal sessions beforehand is commendable.

Due to lack of information, it was not possible to assign baseline values for the ratio of regular agenda items submitted on time by ministries or the number of laws with court rulings against the Government. The World Economic Forum did not include BiH in the measurement of the *Competitiveness Index for 2014* because of data availability issues. Therefore, the baseline value for the indicator on transparency of Government policy making for is designated as not applicable.

The legal framework establishes the requirements for preparation of the CoM meetings and clearly sets out responsibilities for ensuring conformity with rules and requirements. Legal scrutiny is ensured, but other formal and substantial requirements are not fully adhered to. Information on the agenda of formal Government sessions is public.

Principle 7: The Parliament scrutinises government policy making.

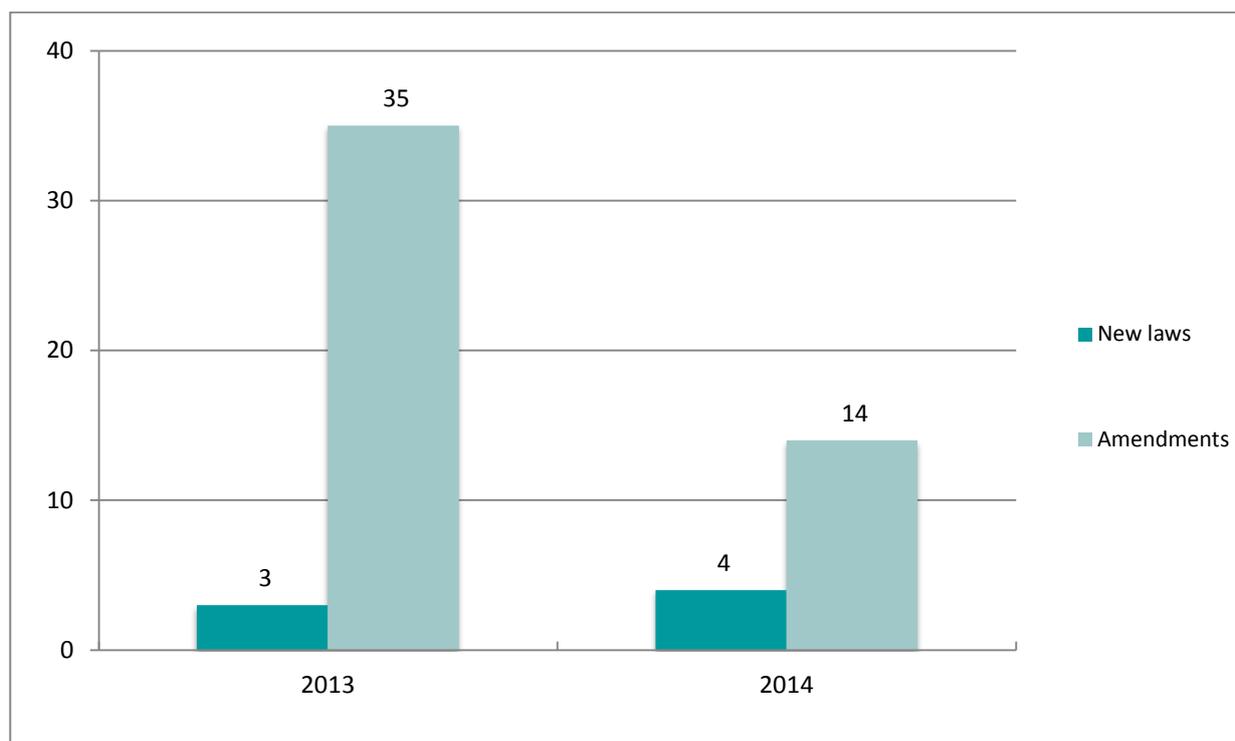
There is no single Parliament in BiH with countrywide rights and responsibilities¹⁰¹. At the State level, the relationship between the Parliamentary Assembly and the CoM is stipulated by the RoP of the CoM and the Law on the CoM. The State level Parliamentary Assembly has several options for scrutiny of the work of the Government. It can request special reports on certain issues, for example on the preparation of proposals of draft laws, other acts and materials. The members of the CoM have the right and duty to participate in sessions of the Chambers and working committees of the Parliamentary

¹⁰¹ The highest-level legislative body of BiH consists of two Houses: the House of Representatives and the House of Peoples. All legislative decisions enter into force upon adoption by both Houses of the Parliamentary Assembly of BiH. While members of the House of Representatives are directly elected, members of the House of Peoples are delegated by the House of Peoples of the FBiH and by the National Assembly of RS. The Parliamentary Assembly of BiH enacts laws, approves the budget, and makes decisions on the sources and amount of revenue needed to finance the institutions of BiH and its international obligations. The Parliamentary Assembly confirms the appointment of the Chair and Members of the BiH CoM, grants consent to ratification of international treaties and decides on other issues that are necessary to exercise its own responsibilities or those assigned to it by an agreement between entities.

Assembly of BiH. The CoM shall answer questions posed by members of the Parliamentary Assembly to the CoM¹⁰². The RoP¹⁰³ of the CoM foresee that the CoM will also submit an annual report on its work to the Parliament.

Due to lack of information, it was not possible to assess the indicator related to the ratio of laws initiated by the Government and approved by the Parliament no later than one year after submission. However, according to information provided by the Parliamentary Assembly, 14 laws and amendments were adopted in 2014, while 35 laws and amendments were approved in 2013.

Figure 7. Laws adopted by the Parliamentary Assembly in 2013 and 2014



Source: Parliamentary Assembly.

The baseline value for the indicator on the extent to which forward-planning mechanisms exist between the Government and the Parliament is 3. The Parliamentary Assembly and the CoM interact on an annual basis on short-term planning of the Parliamentary Assembly's agenda through availability of the AWP. The SG has assigned one person for co-operation between the CoM and the Parliamentary Assembly and a second person for correspondence with the Parliamentary Assembly.

The baseline value for the indicator on the number of law implementation reports discussed in the Parliament is 0, as no such reports were provided to and discussed by the Parliamentary Assembly.

Opportunities for the scrutiny of legislation by the Parliamentary Assembly are defined. However, forward-planning and dialogue between the CoM and the Parliamentary Assembly is rather formal and based on a short-term perspective. Accountability and reporting of the CoM to the Parliamentary Assembly on implementation of legislation are not exercised.

¹⁰² Law on CoM, Articles 34-37.

¹⁰³ RoP CoM, Article 65.

Key recommendations

Short-term (1-2 years)

- 1) The SG should ensure that all formal and substantial requirements are adhered to in the CoM's process of preparing decisions. If required, the SG should return items if they do not meet the criteria set for discussion by the CoM.
- 2) The CoM should adopt the Draft Decision of the Procedure for Regulatory Drafting Preparation, Impact Assessment and Policy Choice and improve provisions with regard to fiscal impact assessment.

Medium-term (3-5 years)

- 3) The CoM should provide the Parliamentary Assembly with information regarding medium-term strategic plans and objectives of the CoM on the actual implementation of sectoral strategies and important laws and policies.

2.4. Key requirement: Inclusive, evidence-based policy and legislative development enables the achievement of intended policy objectives.

Baseline values

Assessing whether policy and legislative development are inclusive and evidence-based, and thus achieve the intended goals, is based on ten indicators. These cover the extent to which ministries are oriented towards policy development; the backlog of transposition; the number of annually transposed directives; the extent to which policy development makes best use of analytical tools; the extent to which public consultation is used; the extent to which the interministerial consultation process occurs; the ratio of staff participating in legal drafting training; the number of laws annulled due to legal inconsistency or unconstitutionality; the number of laws sent back to the Government by the Parliament; and the extent to which legislation is made publicly available.

The values of the indicators show that the basic foundations for policy development are established. However, significant challenges remain with regard to developing high-quality policy and legislative proposals. Lack of co-ordination between the State level, the Entities and the BD handicaps the process of harmonisation with the *acquis*¹⁰⁴. The fact that the committees of the CoM are not functioning and, according to regulations, only half of the State level ministries have to be asked for their opinion prior to submitting materials to the CoM,¹⁰⁵ does not support full-scale interministerial consultation or enable conflict-resolution before the CoM sessions. Challenges also remain regarding adherence to regulations on consultation.

¹⁰⁴ According to the Constitution, the responsibilities of the State level are limited to ten policy fields dealing mainly with foreign, monetary and immigration policy. The Entities are responsible for the rest, but there is a lack of consensus on EI matters, despite the fact that the Constitution specifies that the Entities should provide all necessary assistance to the Government of BiH in order to enable it to honour the international obligations of BiH (Article III 2.)

¹⁰⁵ The Ministry of Foreign Trade and Economic Relations (MFTER), Security, Civil Affairs, Communication and Transport, and Defence are not part of the compulsory interministerial consultation process.

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| | Principle no. | Indicator | Baseline year | Baseline value |
|---------------------|---------------|---|---------------|------------------------------|
| Qualitative | 8 | Extent to which ministries are oriented towards policy development. | 2014 | 3 ¹⁰⁶ |
| | 10 | Extent to which policy development process makes the best use of analytical tools. | 2014 | 1 ¹⁰⁷ |
| | 11 | Extent to which public consultation is used in developing policies and legislation. | 2014 | 3 ¹⁰⁸ |
| | 11 | Extent to which the interministerial consultation process occurs. | 2014 | 2 ¹⁰⁹ |
| | 12 | Extent to which primary and secondary legislation are made publicly available in a centralised manner. | 2014 | 2 |
| Quantitative | 9 | Backlog of transposition ¹¹⁰ . | 2014 | 0% |
| | 9 | Number of annually transposed directives. | 2014 | 33 ¹¹¹ |
| | 12 | Ratio ¹¹² of staff participating in legal drafting training or mentoring over the past year. | 2014 | Not available ¹¹³ |
| | 12 | Number of laws annulled on the basis of legal inconsistency or unconstitutionality in a given year. | 2014 | Not available ¹¹⁴ |
| | 12 | Number of laws sent back to the Government by the Parliament. | 2014 | Not available ¹¹⁵ |

¹⁰⁶ Indicator value is set only for the State level.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Backlog is analysed as comparison of documents consisting of commitments (AWP, EI plan) of two consecutive years, taking into account items carried forward from one year to the other. That analysis is used to calculate the ratio of transposition against planned commitments.

¹¹¹ According to the DEI Base of Opinions.

¹¹² Ratio is calculated as staff trained over the total ministerial staff dealing with legislative drafting.

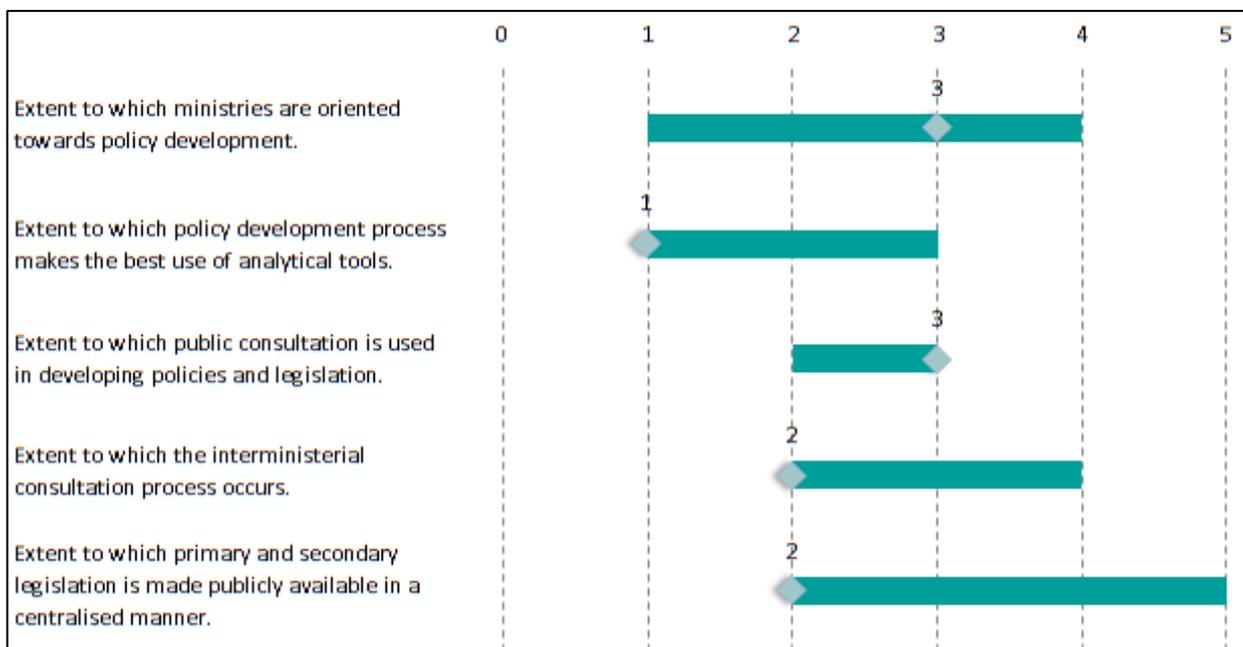
¹¹³ Indicator value is set only for the State level. No information was provided for the analysis by the administration and there is no unified Human Resource Management Information System providing the numbers of ministerial policy development staff.

¹¹⁴ Indicator value is set only for the State level. No information was provided for the analysis by the administration.

¹¹⁵ Ibid.

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 8. Country baseline value in comparison with the regional range



Analysis of Principles

Principle 8: The organisational structure, procedures and staff allocation of the ministries ensure that developed policies and legislation are implementable and meet the Government objectives.

BiH has nine ministries at the State level which are responsible for preparation of laws, other regulations and general acts falling within their scope¹¹⁶. However, according to the 2014 Work Plan of the CoM, agencies and institutes were responsible for the development of at least eight draft laws (Draft Metrology Act of BiH by the Institute for Metrology, Amendments to the Law on Drugs and Medical Devices by the Agency on Drugs and Medical Resources, Draft Law on Value Added Tax by the Indirect Taxation Authority, etc.). The scope of all the ministries is stipulated in the Law on Ministries. In addition the MoJ is responsible for carrying out tasks “which are not within the competence of other Ministries”¹¹⁷. The internal organisation of the ministries is described in the rulebooks and consists of sectors and departments, which are responsible for a specific field¹¹⁸. Policy departments lead the policy development process, and departments of legal affairs support the process of drafting the actual regulations¹¹⁹. The DEI (if established¹²⁰) is responsible for co-ordinating the integration process, including the translation and harmonisation of the *acquis*. All heads of sectors (assistant ministers) are accountable to the minister or his/her deputies¹²¹. There are no internal rules for developing policies

¹¹⁶ Law on Ministries, Article 4.

¹¹⁷ Law On Ministries, Articles 8-16.

¹¹⁸ For example, as specified in the Rulebook on Internal Organisation of the MFTER, the Ministry of Foreign Trade and Economic Relations has separate sectors for Foreign Trade Policy and Foreign Investments, Customs Policy, Natural Resources, Energy and Environment Protection etc.

¹¹⁹ Assessment based on the information provided by the civil servants of the sample ministry, the MFTER.

¹²⁰ Of the two sample ministries, the MFTER and the MoJ, only the MoJ had established a separate Department for European Integration.

¹²¹ Law on Civil Service, Article 9.

and drafting legislation in the ministries. Information on the number of staff in different sectors and departments was not available.

The baseline value for the indicator on the extent to which ministries are oriented towards policy development is 3. This is because only three of the five required elements¹²² are in place, ministries do not have internal rules for developing policies and drafting legislation¹²³ and, as information on staff numbers was not provided for the analysis, it was not possible to measure the proportion of staff working on policy development within ministries.

The responsibilities of ministries – and ministers specifically – for developing policies and legislation in their respective policy fields have been established by regulations. Internal rulebooks also prescribe the division of tasks between the sectors and departments of the ministries, but they do not stipulate the policy development process within the ministry. The data on staff allocation between sectors and departments was not available.

Principle 9: The European integration procedures and the institutional set-up form an integral part of the policy development process and ensure systematic and timely transposition of the *acquis*.

Pursuant to the Article 70 of the Stabilisation and Association Agreement (SAA)¹²⁴, Bosnia and Herzegovina is in the mandatory harmonisation phase, which started on June 16 2008 with the signing of the SAA. Given the obligation to make future legislation gradually compatible with the *acquis*, the CoM adopted the Decision on the Instruments for Harmonisation of BiH Legislation with the EU *acquis*¹²⁵. The DEI is responsible for co-ordinating the activities necessary for EI, including the process of harmonisation with EU legislation¹²⁶. All legislative proposals which deal with legal harmonisation must bear the letter “E” on the first page and include the Table of Concordance and the Statement on Harmonisation of the draft¹²⁷. The package is submitted to the DEI for its opinion prior to presenting a proposal to the CoM¹²⁸.

The lack of effective co-operation and political determination between the State level, the Entities and the BD remains the biggest obstacle in harmonisation with EU legislation. According to the Constitution, the State level is only responsible for certain policy fields, so harmonisation must also take place at the level of the Entities and BD. The lack of a plan covering activities necessary for harmonisation for the whole country remains a concern.

Ministries are responsible for translating the *acquis* in their field of competence. The DEI is responsible for co-ordinating translation activities and capacity building in the field of translation.

Interministerial co-ordination for the State level is embedded in the system at both an administrative level and a political level¹²⁹, however, its use for conflict resolution cannot be assessed.

The baseline value for the indicator on the annual implementation backlog of EI related commitments is 0%, as there were ten such initiatives in the 2013 AWP that directly referred to transposition of specific Directives¹³⁰, but none of these were carried forward into 2014. Thirty-three transposition cases were reached at the State level in 2014, compared to 62 in 2013.

¹²² For the list of required elements see the Methodological Annex.

¹²³ The CoM has adopted Unified Rules for Legislative Drafting as central guidelines.

¹²⁴ Official Gazette No. 10/08.

¹²⁵ Official Gazette No. 23/11. The SAA, signed in 2008 and ratified in 2011. On 21 April 2015, the Council of the European Union adopted a decision concluding the SAA with BiH. The SAA was to enter into force on 1 June 2015.

¹²⁶ Law on CoM, Article 23.

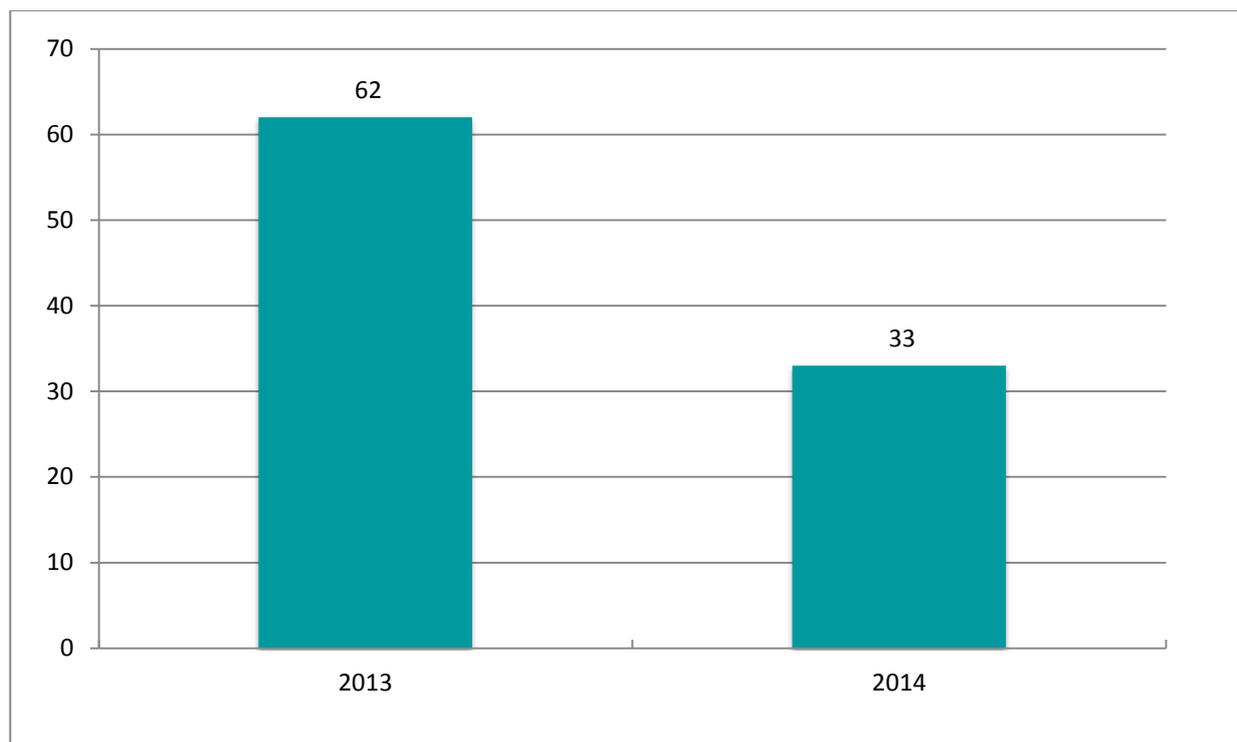
¹²⁷ Decision on the Instruments for Harmonisation of the *Acquis*.

¹²⁸ RoP of the CoM, Article 31.

¹²⁹ Through the Committee for EI and working groups for EI.

¹³⁰ It is important to note that within the AWP, it is not possible to identify in all cases if one or several Directives are to be transposed. In many of the initiatives, the explanation makes only a broad reference to harmonisation with EU

Figure 9. Number of annually transposed laws and Directives



Source: Directorate for European Integration.

The legal framework establishes the procedure for transposing the *acquis* at the State level and this is adhered to by the administration, including the use of Tables of Concordances. However, the lack of co-ordination between the State level, the Entities and the BD regarding legal harmonisation hampers the overall transposition process necessary for successful EI.

Principle 10: The policy making and legal drafting process is evidence-based and impact assessment is regularly used across ministries.

The Rules on Legal Drafting stipulate that all proposals for regulations must be accompanied by an Explanation which contains, among other elements, the reasons for introducing the regulation and justification for the selected policy option¹³¹, a description of mechanisms of implementation, clarification of the financial resources necessary for implementation and the financial impacts of regulation¹³². It is, however, possible (if the proposed regulation does not require justification in all prescribed areas) that not all of the required topics are covered in the Explanation. In the end, it is up to the body competent for passing the regulation to demand additional details from the drafters if the initial information was not complete¹³³.

In practice, the standards set for the content of the Explanation are not followed. No alternatives are described for the policy selected, implementation mechanisms are not outlined and costs associated with implementation or other financial impacts are not assessed¹³⁴. The MoFT, which is responsible for

regulations. Hence the plan does not give a full picture of how the country foresees the transposition on the basis of Directives.

¹³¹ Rules on Legal Drafting, Article 62. This section has to include a description of all deliberated alternatives and their benefits.

¹³² Rules on Legal Drafting, Article 65. This section has to include a description of all costs covered by companies and citizens, administrative and fiscal costs for the regulation, as well as of the non-regulatory alternatives, including the costs of implementation of the regulation.

¹³³ Rules on Legal Drafting, Article 60.

¹³⁴ Conclusion based on the assessment of two draft proposals. The proposed amendments to the Criminal Code (implementation of amendments to more than 20 articles of the Code, including amendments to definitions) stated

providing opinions regarding financial impacts, often provides positive opinions on Explanations, even if evident financial impacts have not been described – as long as no additional funds for implementation are required from the state budget¹³⁵. On the basis of the above-mentioned factors the baseline value for the indicator measuring the extent to which the policy development process makes the best use of analytical tools is set as 1, as only simplistic tools are used and then only occasionally.

Existing regulations stipulate the obligation to identify alternative solutions and their costs and benefits, and to analyse fiscal impacts, but this is not done in practice. Responsibility for overall quality control of analysis supporting the proposal (i.e. the Explanation) lies with the body adopting the proposal and the MoFT is supposed to provide an opinion on the assessment of fiscal impacts. These roles are exercised only in the formal sense.

Principle 11: Policies and legislation are designed in an inclusive manner that enables the active participation of society and allows for co-ordinating perspectives within the Government.

Public consultation is foreseen by the Regulations on Consultations in Legislative Drafting. The minimum requirements¹³⁶ for public consultation on primary legislation include publishing the draft on the website of the ministry for 15 days with the possibility of submitting comments via Internet¹³⁷. The explanatory memorandum of the draft should contain the received comments and the decision on rejecting or accepting them. In addition, ministries are obligated to publish their annual plan for legislative initiatives on their website¹³⁸. When draft legislation is submitted to the CoM for adoption, the proposing authority must certify that at least the minimum consultation obligations were met and must publish this certificate on its website. Without the certificate, the CoM can refuse to place the proposal on its agenda. According to the regulations, the obligation for public consultation may only be waived in exceptional circumstances¹³⁹.

In practice, on the basis of analysing the websites of the sample ministries¹⁴⁰, only the website of the Ministry of Foreign Trade and Economic Relations (MFTER) contained the plan for legislative initiatives. Information about ongoing or recent consultations (including the certificates for meeting the minimum requirements for public consultation submitted to the Government) was not comprehensive¹⁴¹. Representatives of non-governmental organisations confirmed that the obligation to carry out public consultations has not been fully implemented, including the rule that proposals cannot be put on the

“does not require additional resources”, not even for training of practitioners such as prosecutors and judges. The Draft Law on Amendments to the Law on Foreign Direct Investment in Bosnia and Herzegovina was used as a pilot for RIA carried out in 2012-2013 during a donor-financed project. It should set the quality standard, but it lacks identification of proper alternatives. The only options it contains are to do nothing, to amend the existing law or to adopt a new law, and the analysis does not identify any costs associated with implementation or any monetised benefits (from increased investments etc.).

¹³⁵ Assessment based on the sample opinions provided by the MoFT. For example, the 10 April 2014 opinion on the draft Law on the Prevention of Money Laundering and Financing of Terrorism expands the responsibilities of the Finance-Intelligence Department of the State Investigation and Protection Agency, but does not indicate any additional funds required for that.

¹³⁶ For legislation with significant impacts, more extensive and engaging forms of public consultations have been envisaged. Regulations on Consultations in Legislative Drafting, Articles 14-18.

¹³⁷ Regulations on Consultations in Legislative Drafting, Article 6.

¹³⁸ Ibid., Article 5.

¹³⁹ Exceptional circumstances include: a) emergency circumstances in order to protect health and safety of people and property or due to the need to adopt a budget; b) unanticipated international obligations; or c) judicial invalidation of all or part of legislation. Regulations on Consultations in Legislative Drafting, Article 26.

¹⁴⁰ MoJ and MFTER.

¹⁴¹ The most recent draft law was published for public consultation on the website of the MFTER on 1 April 2014 (even though according to the annual report of the Government for 2014 the Ministry submitted at least one additional draft to the CoM for approval in December 2014, the Law on Customs Policy). The website of the MoJ contained extensive material about rules and guidelines for public consultation, as well as the legislative plan for 2015, but it did not contain any information about ongoing or recent public consultations for a draft law.

agenda if the certificate for meeting minimum consultation requirements has not been produced. Nevertheless, public consultation was considered to be regular but varying in quality. There is regulation in place which sets clear procedures for public consultation; implementation is regular but not fully comprehensive. Therefore, the baseline value for the indicator on the extent to which public consultation is used in developing policies and legislation is 3.

According to the RoP of the CoM, materials must be submitted to the four relevant ministries¹⁴² (out of nine in total), and the LO and the DEI for their opinions prior to submitting them to the CoM¹⁴³. The ministries must submit their opinions within ten days. During discussions with representatives of the sample ministries, it became evident that working groups formed for the elaboration of policies and draft regulations are used as a form of interministerial consultation, also between the State level, the Entities and the BD. However, no information was provided on how the CoM is informed about the opinions received for a given proposal and the outcomes of the interministerial consultation process¹⁴⁴.

The baseline value for the indicator measuring the extent to which interministerial consultation process occurs is 2. Regulations do exist to ensure co-ordination across the Government, but implementation is inconsistent, and the level of information provided to the CoM on the results of the process is unknown.

Regulation exists on the manner of public consultation as well as on interministerial consultation. The comprehensive Regulations on Consultations have not been fully implemented, as at least some of the drafts are not consulted, and outcomes of the consultation process are not shared with all stakeholders. The procedure for interministerial consultations is only partially followed, as the co-ordination and conflict resolution mechanisms intended to function at the higher administrative and political levels (Committees) were not functioning and became operational only recently, and it is not clear how the results of interministerial consultation are shared with the CoM.

Principle 12: Legislation is consistent in structure, style and language; legal drafting requirements are applied consistently across ministries; legislation is made publicly available.

The Unified Rules for Legislative Drafting are the guidelines for drafting regulations at the State level. The Rules define the standards for the structure and style of legislation. The LO of the CoM is responsible for rendering legal opinions on materials forwarded to the CoM, with regard to methodological uniformity during preparation and compliance with the Constitution and laws of BiH¹⁴⁵. The staff of the LO dealing with provision of opinions consists of eight people. The main problems regarding submitted drafts are related to the legislative drafting techniques¹⁴⁶. Currently the LO provides opinions only on the draft laws and regulations adopted by the CoM. There is no quality control from a legal perspective for all secondary legislation approved by the ministries themselves.

The LO also ensures that all regulations adopted by the CoM are submitted for publication in the Official Gazette. The online version of the Gazette includes legislation adopted by the Parliamentary Assembly and the CoM, and the regulations adopted by the FBiH as well as the Sarajevo Canton¹⁴⁷. The

¹⁴² Ministries of Finance, Justice, Foreign Affairs, and Human Rights and Refugees.

¹⁴³ RoP of the CoM, Article 31.

¹⁴⁴ The Committees on Economy and Internal Policy are intended as additional venues for high-level interministerial co-ordination and conflict resolution before the session of the Council. They should include representatives from the other ministries which were not included in the initial round of submitting opinions, as well as the Office of the Co-ordinator of the BD. However, the Committees only recently became operational after the recent establishment of the new CoM of BiH. No meetings took place during the previous term of the Parliament nor have any been held during the current term.

¹⁴⁵ Law on CoM, Article 25.

¹⁴⁶ According to the administration of the LO.

¹⁴⁷ Online version of the Official Gazette: www.sluzbenilist.ba/. RS (www.slglasnik.org/) and the BD (<http://skupstinabd.ba/ba/index.html>) have their own Gazettes.

Gazette does not contain consolidated texts of regulations¹⁴⁸. All primary and secondary legislation is available, but it is not all available electronically and not in consolidated form. Therefore, the baseline value for the indicator measuring the extent to which primary and secondary legislation are made publicly available in a centralised manner is 2.

In 2014, 21 civil servants received training on legal drafting (the same number as in 2013), but since the total number of staff of the administration dealing with legal drafting cannot be established, the ratio of trained staff cannot be assessed. Data was not available for the number of laws annulled by courts on the basis of legal inconsistency or unconstitutionality, nor for the number of laws sent back to the CoM by the Parliament.

The requirements for legislative drafting have been set, with the LO responsible for assuring that the rules are followed in practice for regulations adopted and approved by CoM. Legislation at State level (and for one Entity) is made available through a single source, but not always electronically and not in consolidated form.

Key recommendations

Short-term (1-2 years)

- 1) The SG of the CoM should take on a more active role in checking if materials submitted to the CoM meet the criteria established by the Regulations on Consultations. The SG should also check that the websites of ministries adhere to the Regulation.
- 2) The Draft Decision on the Procedure for Regulatory Drafting Preparation, Impact Assessment and Policy Choice should be adopted and implemented step-by-step, starting with the proposals that have significant impacts.
- 3) The CoM, together with the Parliamentary Assembly, should start elaboration of consolidated text of major laws.

Medium-term (3-5 years)

- 4) The Parliamentary Assembly, together with the CoM of BiH should create a single portal for publishing all regulations adopted by State level bodies as well as the legislation of the Entities and the BD.

¹⁴⁸ The official consolidated text needs to be adopted by both Houses of the Parliamentary Assembly, in addition to adoption of single amendments to existing regulations. Unified Rules for Legislative Drafting, Article 54.

3

Public Service and Human Resource Management

PUBLIC SERVICE AND HUMAN RESOURCE MANAGEMENT

1. STATE OF PLAY AND MAIN DEVELOPMENTS: 2014-APRIL 2015

1.1. State of play

There are separate civil service laws adopted for the State institutions¹⁴⁹, the Federation of Bosnia and Herzegovina (FBiH)¹⁵⁰, the Republika Srpska (RS)¹⁵¹ and the Brčko District (BD)¹⁵². In the FBiH, following the Constitutional Court Ruling U-27/09 of 20 April 2010 granting to cantons sole authority in administrative matters, three cantons have adopted their own civil service laws, two cantons have adopted the Law on Civil Service (CSL) of the FBiH as their own, one canton has adopted a decree by accepting the CSL of the FBiH as an interim solution, and four cantons have not yet filled the legal vacuum created five years ago. This situation is further fragmenting the public service system BiH and thus hindering the development of a professional and coherent public service.

The horizontal scope of public service¹⁵³, despite the different civil service laws, is adequate. Most elements of the material scope of public service are present in the primary legislation. The vertical scope, in particular in the State institutions, is of concern because political positions are not excluded from the scope of public service.

Regarding efficiency, the creation of up to ten new civil service agencies for human resource management (HRM) in the FBiH, in addition to the four existing ones (in the State, the Entities and the BD), goes against the common direction in EU and OECD countries of establishing shared administrative service centres¹⁵⁴. In terms of legal predictability, citizens wishing to apply for civil service positions in the FBiH face different recruitment regimes, which create uncertainty as to how the human resource (HR) processes are managed.

The Agency for the Prevention of Corruption and Co-ordination of the Fight Against Corruption has a mandate to steer reform in promoting integrity and preventing corruption across BiH¹⁵⁵, but it has only been active at the State level in 2014, where integrity plans and anti-corruption action plans of

¹⁴⁹ Law No. 19/2002 on Civil Service in the Institutions of BiH.

¹⁵⁰ Law No. 29/2003 on Civil Service of the Federation of BiH.

¹⁵¹ Law No. 16/2002 on Civil Service in the RS of BiH.

¹⁵² Law No. 26/02/2014 on Civil Service in the Administrative Bodies of the BD of BiH.

¹⁵³ In [The Principles of Public Administration](#) and in the Baseline Measurement:

The narrow **horizontal scope of public service** is applied, covering: i) ministries and administrative bodies reporting directly to the Government, Prime Minister or Ministers, i.e. the civil service strictly speaking; ii) administrations of the Parliament, the President and the Prime Minister; iii) other administrative bodies at the level of the central administration if they are included in the scope of the public service in terms of the public/civil service law and they exercise public authority conferred by public law and are responsible for safeguarding the general interests of the state or other public bodies; iv) independent constitutional bodies reporting directly to the Parliament.

The **material scope of public service** means that the law on public/civil service establishes all general provisions relevant to the employment relations of public servants and management of public service, such as the scope and principles of the civil service; classification; recruitment and selection, including of civil servants in senior managerial positions; rights and obligations of civil servants, including the integrity system; remuneration (main principles and components of salary system); professional development, including performance appraisal, training, mobility and promotion; disciplinary procedures, including suspension of the civil service relationship; termination of employment, including demotion and redundancy; management and central co-ordination of the civil service.

The **vertical scope of public service** means that the law on public/civil service clearly determines the upper and lower division line between political appointees, public servants and support staff.

¹⁵⁴ European Institute of Public Administration (EIPA) (2012), "The future of public employment in central public administration", pp. 59-71.

¹⁵⁵ Law No. 103/2009 on the Agency for the Prevention of Corruption and Co-ordination of the Fight Against Corruption.

individual institutions are mostly adopted. However, the Agency has limited powers to enforce these plans.

1.2. Main developments

The Assembly of the BD adopted a new Law on Civil Service in the Administrative Bodies of the BD of BiH on 26 February 2014, replacing the previous CSL of the BD of BiH of 2006¹⁵⁶. No major developments were reported by the Council of Ministers of Bosnia and Herzegovina (CoM of BiH), the Government of the FBiH and the Government of the RS.

The four main civil service co-ordination and management bodies, under the umbrella of the Supervisory Team of the Revised Action Plan 1 (RAP1) of the Public Administration Reform Strategy in the area of HRM, worked together to develop “The Common Policy Framework of HRM in all administrative levels of BiH”. However, the adoption of the common policy document by the CoM of BiH, the Government of the FBiH and the Government of the RS is still pending, hampering the extensive and certain implementation of the common public service HRM principles in a homogeneous way across the administration of BiH. The Government of the BD adopted the Common Policy document on 15 January 2015.

¹⁵⁶ Law No. 26/02/2014 on Civil Service in the Administrative Bodies of the BD of BiH.

2. ANALYSIS

This analysis covers the seven Principles of the public service and HRM area, grouped under two key requirements¹⁵⁷. For each key requirement, baseline values are provided for the indicators of the monitoring framework of the Principles. The Principles cover all relevant elements related to public service: the scope and legal framework of public service; professionalism in recruitment, training and performance appraisal; fairness and transparency of the salary system; and the promotion of integrity as well as prevention of corruption.

2.1. Key requirement: The scope of public service is clearly defined and applied in practice so that the policy and legal framework and institutional set-up for professional public service is in place.

Baseline values

The scope of public service is examined through three qualitative indicators that refer to the scope covered by legislation, the coherence and professionalism of the policy and legal framework, and the institutional set-up enabling consistent HRM practices across organisations.

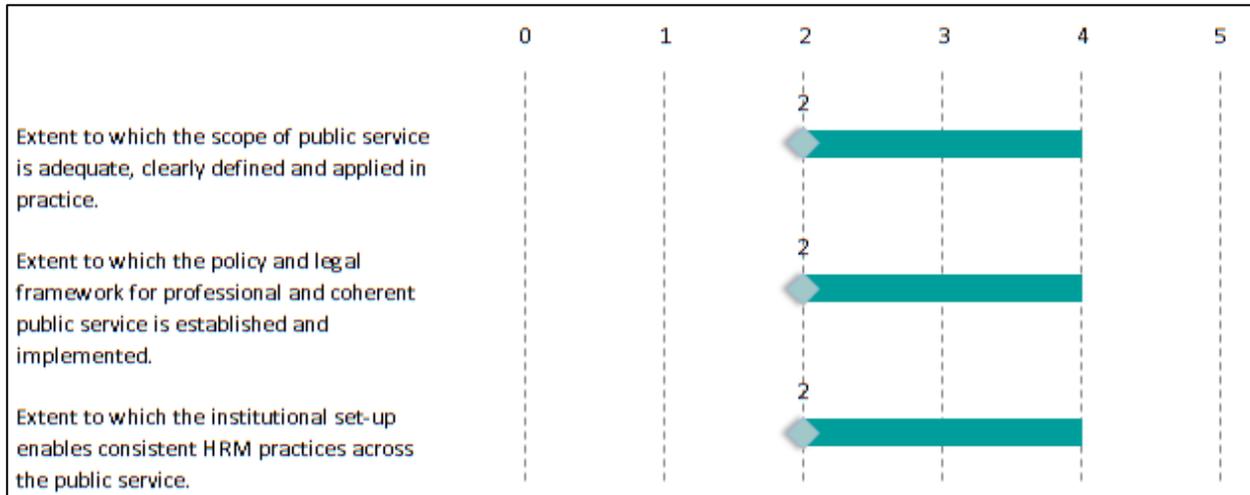
The fragmentation of the civil service system and the legal framework remains challenging. A joint policy framework for public service HRM development in the State institutions, the Entities and the BD has been agreed at the expert level, but not adopted, except by the Government of the BD; four cantons out of ten in the FBiH have not adopted civil service laws. The institutional set-up, especially in the State and the FBiH, does not clearly designate political responsibility for the civil service.

| | Principle no. | Indicator | Baseline year | Baseline value |
|--------------------|---------------|---|---------------|----------------|
| Qualitative | 1 | Extent to which the scope of public service is adequate, clearly defined and applied in practice. | 2014 | 2 |
| | 2 | Extent to which the policy and legal framework for professional and coherent public service is established and implemented. | 2014 | 2 |
| | 2 | Extent to which the institutional set-up enables consistent HRM practices across the public service. | 2014 | 2 |

¹⁵⁷ SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, pp. 40-56.

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 1. Country baseline value in comparison with the regional range



Analysis of Principles

Principle 1: The scope of public service is adequate, clearly defined and applied in practice.

BiH has different public service laws for the State institutions (CSL of the State)¹⁵⁸, the Federation (CSL of the FBiH)¹⁵⁹, the RS (CSL of the RS)¹⁶⁰ and the BD (CSL of the BD)¹⁶¹. A recent Federation Constitutional Court Ruling from 2010¹⁶² regarding the autonomy of the cantons has promoted fragmentation of the civil service system. This ruling puts two administrative law principles¹⁶³ at risk: efficiency, and reliability and predictability in the application of HR processes. Regarding efficiency, this leads to each canton having its own civil service system and the supporting HR processes. The appearance of different cantonal laws leads to a lack of reliability and predictability of the legislation as well as to a lack of homogeneous application of the legislation and HR processes. This even inhibits the otherwise straightforward transfer of civil servants from one canton in the FBiH to another. In this transition period, three cantons (Una-Sana, West Herzegovina and Posavina) have adopted their own civil service laws; two cantons (Tuzla and Sarajevo) have adopted the CSL of the FBiH as their own; one canton (Bosnian Bodrinje/Gorazde) has adopted a decree by accepting the CSL of the FBiH as an interim solution; and four cantons have not addressed this issue at all¹⁶⁴.

¹⁵⁸ Law No. 19/2002 on Civil Service in the Institutions of BiH.

¹⁵⁹ Law No. 29/2003 on Civil Service of the FBiH.

¹⁶⁰ Law No. 16/2002 on Civil Service in the RS of BiH.

¹⁶¹ Law No. 26/02/2014 on Civil Service in the Administrative Bodies of the BD of BiH.

¹⁶² Constitutional Court Ruling No. U-27/09 of 20 April 2010, endowing each canton with constitutional power to regulate and manage its civil service.

¹⁶³ The administrative law principles are reliability and predictability (legal certainty), openness and transparency, accountability, and efficiency and effectiveness, as described in [The Principles of Public Administration](#), OECD Publishing, Paris, p. 45.

¹⁶⁴ Written interview with the Ministry of Justice of the FBiH, 10 March 2015.

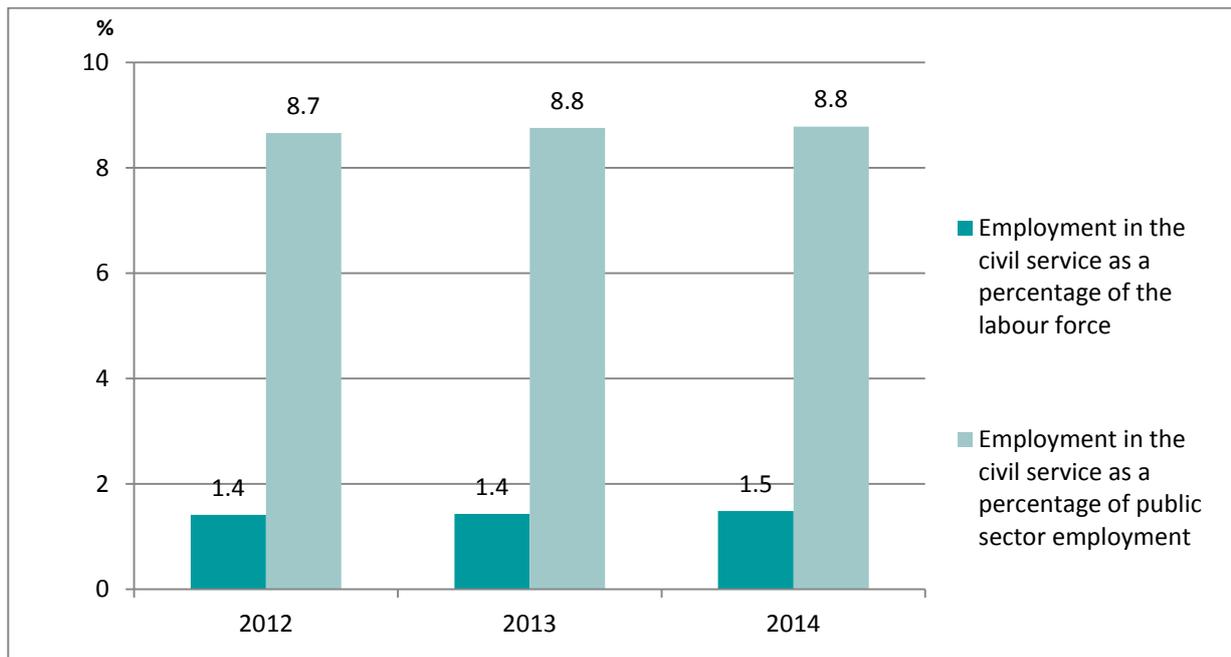
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The definitions of civil servants and public employees are established in the CSLs, but the civil service definition is based on institutional, not substantial, criteria¹⁶⁵. The legislation does not make clear the distinction between civil servants and support staff in the FBiH¹⁶⁶.

In general, the horizontal scope of the public service is adequately defined in the CSLs¹⁶⁷ and the few exceptions refer mostly to legislative and judiciary institutions, but also to organisations such as regulatory agencies that should either be part of the civil service law, or should apply the same principles. Most elements of the material scope of public service are present in the primary legislation.

Civil servants (16 600 in 2014¹⁶⁸) represent 8.8% of public sector employment¹⁶⁹ (189 110 in 2014) and 1.5% of the total labour force¹⁷⁰ (1 120 000 in 2014)¹⁷¹.

Figure 2. Employment in the civil service as a percentage of the labour force and of public sector employment, 2012-2014



Sources: Agency for Statistics of Bosnia and Herzegovina; Civil Service Agencies of the State institutions, the FBiH and the RS; Sub-Department for HRM of the Government of the BD.

¹⁶⁵ CSL of BiH, Article 1; CSL of FBiH, Article 1; CSL of RS, Article 4.

¹⁶⁶ They are referred to as technical administrative staff in the CSL of FBiH, Article 66.

¹⁶⁷ CSL of BiH, Article 4; CSL of FBiH, Article 5; CSL of RS, Article 2.

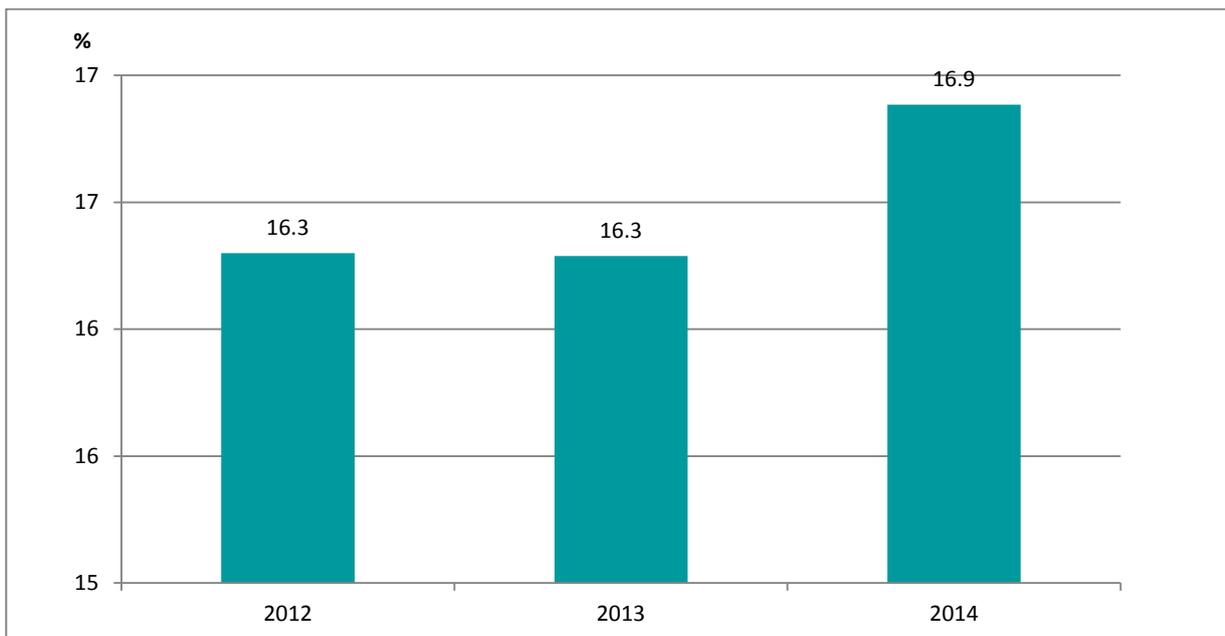
¹⁶⁸ This number reflects data submitted by the Civil Service Agency (CSA) of the State institutions, the CSA of the FBiH, the CSA of the RS and an approximate number of civil servants in the BD.

¹⁶⁹ Public sector employment includes employed persons in the following sectors of activities: public administration, defence, compulsory social security, education, human health and social work activities.

¹⁷⁰ Labour force includes the country's working age population that engages actively in the labour market, either by being employed or unemployed.

¹⁷¹ Agency for Statistics of Bosnia and Herzegovina, <http://www.bhas.ba/>.

Figure 3. Public sector employment as a percentage of the labour force, 2012-2014



Sources: Agency for Statistics of Bosnia and Herzegovina; Civil Service Agencies of the State institutions, the FBiH and the RS; Sub-Department for HRM of the Government of the BD.

The separation between politics and public service is not adequately reflected in the public service legislation. First, several CSLs of BiH regulate the advisors, who are political appointees and whose status should be dealt with in separate legislation¹⁷². Second, senior executive managers of the State institutions are appointed for a maximum fixed term of five plus five years¹⁷³, and some high-ranking officials in the RS are appointed for a fixed term¹⁷⁴, but different provisions apply in the FBiH and in the BD.

The consideration of these factors results in a baseline value of 2 for the qualitative indicator on the scope of public service for 2014.

The fragmentation of the public service system challenges the unity of public service delivery. The horizontal scope of public service in the BiH is adequate. The vertical scope, in particular in the State institutions, is of concern because political positions are not excluded from the scope of public service.

Principle 2: The policy and legal framework for a professional and coherent public service is established and applied in practice; the institutional set-up enables consistent and effective human resource management practices across the public service.

The PAR Strategy¹⁷⁵ ended in 2014 and there is no new strategic framework for PAR in place. An initiative to harmonise HRM in key dimensions and principles resulted in a draft document, “The Common Policy Framework of HRM in all administrative levels of BiH”, developed by experts from the State institutions, the FBiH, the RS and the BD (mainly the heads of the central civil service co-ordination and management units). It was endorsed on 14 April 2014 by the Supervisory Team of the RAP1 of the PAR Strategy¹⁷⁶ in the area of HRM, but has been adopted neither by the CoM of the State,

¹⁷² CSL of FBiH, Articles 5 and 20; CSL of BiH, Articles 5, 14, 15, 18, 22, 43, 44 and 45. This is not the case for the CSL of RS.

¹⁷³ CSL of BiH, Article 34.

¹⁷⁴ Law No. 117/2011 on Amendments of the CSL of RS, Article 9.

¹⁷⁵ Bosnia and Herzegovina PAR Strategy, Council of Ministers of BiH, Government of the RS, Government of the FBiH, 2006.

¹⁷⁶ Revised Action Plan 1 of the PAR Strategy, Council of Ministers of BiH, Government of the RS, Government of the FBiH, and Government of the BD, 2011.

nor by the Government of the FBiH or the Government of the RS. Only the Government of the BD has adopted¹⁷⁷ the document as a common policy framework for the civil service in BiH.

With minor differences, similar primary civil service legislation has been adopted in the State, the FBiH, the RS and the BD. All these pieces of legislation¹⁷⁸ identify explicitly or implicitly the administrative law principles¹⁷⁹. A major gap in the application of these principles involves legal certainty. For instance, the CSL of the FBiH¹⁸⁰ has been amended more than six times since its approval in 2002; the same problem relates to the other CSLs. The amendments affect a number of articles and different processes of HRM which have to be continuously adapted by HR managers of administrative bodies. This creates low legal predictability, a principle that should be safeguarded.

A Civil Service Agency (CSA) is the central co-ordination and management unit of the public service according to the respective Articles of the CSLs¹⁸¹ and secondary legislation¹⁸² in the State, the FBiH and the RS. In the BD, the central capacity is with a Sub-Department for HRM of the Government of the BD. Since FBiH Constitutional Court Ruling No. U-27/09, the FBiH CSA continues to deliver its services in those cantons that have yet to draft their own CSL. The CSAs have been created as statutorily independent bodies that answer directly to their respective governments. Their main functions are to plan and implement civil service recruitment and training; to keep a registry of civil servants; and to give expert assistance on HRM to administrative bodies. The heads of the central civil service units meet regularly to improve co-operation and co-ordination and exchange good practices of HRM.

The CSLs, however, do not clearly assign political responsibilities on policy making to a particular minister/ministry except in the RS, where the Ministry of Administration and Local Self-Government is responsible for public service. Each CSA is in charge of submitting an annual report and a plan of activities for the subsequent year to the Government (the CSA of the State to the CoM, the CSA of the FBiH to the Government of the FBiH, the CSA of the RS to the Government of the RS).

The Human Resource Management Information System (HRMIS), or the central civil service registry as provided in the CSL of the State, the CSL of the FBiH, the CSL of the RS and the CSL of the BD¹⁸³, has been established. In practice, these registries face some challenges for realising their potential. Recent rulings of the Data Protection Agencies of the State institutions of BiH and the FBiH have posed challenges to making the civil service registries operate as tools for strategic planning and decision making in the public service and HRM¹⁸⁴. For example, in the State institutions, the use of personal data is currently banned (e.g. performance appraisal results) and only general data on recruitment and training can be used¹⁸⁵; in the Federation, the different units of the CSA impose levels of restriction of access to information¹⁸⁶. This problem does not appear in the RS because there is no open access to any data: access is restricted to the Head of the CSA and the Prime Minister. Finally, the information in the registry is incomplete and is not updated on a regular basis. For instance, 96 authorities in the FBiH had carried out performance appraisals, but only 20 had updated the civil service registry¹⁸⁷.

¹⁷⁷ On 15 January 2015.

¹⁷⁸ CSL of FBiH, Article 4; CSL of BiH, Article 3; CSL of RS, Article 10; CSL of BD, Article 4.

¹⁷⁹ The administrative law principles are reliability and predictability (legal certainty), openness and transparency, accountability, and efficiency and effectiveness, as described in [The Principles of Public Administration](#), OECD Publishing, Paris, p. 45.

¹⁸⁰ CSL of FBiH, Amendment Nos. 29/03, 23/04, 39/04, 54/04, 67/05, 8/06 and 4/12.

¹⁸¹ CSL of FBiH, Article 64; CSL of BiH, Article 62; CSL of RS, Articles 5 and 6.

¹⁸² For instance, the Regulation establishing the Agency for Civil Service of the FBiH (Official Gazette of BiH, No. 48/03).

¹⁸³ CSL of the FBiH, Articles 19 and 64; CSL of the State, Articles 16 and 62; CSL of the RS, Articles 102-206; CSL of the BD, Article 33.

¹⁸⁴ Interviews with the CSA of the State institutions and with the CSA of the Federation, 9 March 2015.

¹⁸⁵ Interview with the CSA of the State institutions, 9 March 2015.

¹⁸⁶ Interview with the CSA of the Federation, 9 March 2015.

¹⁸⁷ Civil Service Agency of the FBiH.

The independent supervision of the implementation of the CSLs is entrusted to administrative inspections in the FBiH and the RS¹⁸⁸. At the State level and in the BD, the administrative inspections are established based on respective Laws on Administration.

Considering the factors analysed above, the baseline values for the qualitative indicators on the policy and legal framework, and on the institutional set-up, are both 2.

The central civil service units have worked together to have a common framework for HRM development, but the document has not been adopted by the Council of Ministers of BiH, the Government of the FBiH or the Government of the RS. This hampers the extensive and sure implementation of the common public service HRM principles in a homogeneous way across the administration of BiH.

Key recommendations

Short-term (1-2 years)

- 1) The CoM of the BiH and the Government of the FBiH should identify a minister responsible for policy making in the area of public service, and should equip this minister with the necessary tools for ensuring a professional and coherent public service system.
- 2) The CSAs of the State institutions, the FBiH and the RS, and the Sub-Department for HRM of the BD of BiH should continue regular co-operation to develop and implement an action plan for “The Common Policy Framework of HRM in all administrative levels of BiH” once the CoM of the State, the Government of the FBiH and the Government of the RS have approved the Common Policy Framework.
- 3) The CSAs of the State institutions and of the FBiH, in co-operation with the respective Data Protection Agencies, should find a workable solution to removing the identified barriers in making the HRMISs operational as tools for civil service strategic planning and decision making.

Medium-term (3-5 years)

- 4) The Government of the FBiH should empower the CSA with sufficient authority and resources to: 1) provide instructions, guidelines and advisory support to the cantons to draft and implement the new laws on civil service; and 2) harmonise HRM tools and practices in all administrative bodies of the FBiH.

2.2. Key requirement: Professionalism of public service is ensured by good managerial standards and human resource management practices.

Baseline values

Professionalism is examined through 8 qualitative and 16 quantitative indicators that refer to merit-based recruitment and termination of employment in the public service, including senior public servants, a fair and transparent salary system, professional development and appraisal of public servants, and measures for promoting integrity and preventing corruption in the public service.

The main challenges, which are reflected in the baseline values of the qualitative indicators, are: the current legal framework weakens the commitment to merit-based recruitment of public servants, including top managerial positions; the salary system is not consistent across the administration; training strategies and plans exist, but not all public servants are trained, although entitled by law; performance appraisal is mainly a formal exercise; the legal framework for integrity and discipline is in place and there are no major problems in implementation, but the perception of corruption remains high in the country.

¹⁸⁸ CSL of the RS, Articles 19-28; CSL of the FBiH, Articles 11 and 13.

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| | Principle no. | Indicator | Baseline year | Baseline value |
|--------------------|---------------|---|---------------|----------------|
| Qualitative | 3 | Extent to which the recruitment of public servants is based on the merit principle in all its phases. | 2014 | 3 |
| | 3 | Extent to which the termination of employment of public servants is based on merit. | 2014 | 3 |
| | 4 | Extent to which political influence on the recruitment and dismissal of senior managerial positions in the public service is prevented. | 2014 | 2 |
| | 5 | Extent to which the remuneration system of public servants is fair and transparent and applied in practice. | 2014 | 3 |
| | 6 | Extent to which the training system of public servants is in place and applied in practice. | 2014 | 3 |
| | 6 | Extent to which the performance appraisal system of public servants is in place and applied in practice. | 2014 | 3 |
| | 7 | Extent to which the integrity and anti-corruption system of the public service is in place and applied in practice. | 2014 | 3 |
| | 7 | Extent to which the disciplinary procedures against public servants are established to promote individual accountability and avoid arbitrary decisions. | 2014 | 3 |

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| | | | | |
|---------------------|---|--|------|------------------------------|
| Quantitative | 3 | Annual turnover of civil servants at the level of central administration. | 2014 | Not available ¹⁸⁹ |
| | 3 | Turnover of civil servants at the level of central administration within six months of a change of Government. | 2014 | Not available ¹⁹⁰ |
| | 3 | Percentage of vacant positions filled by external competition in the civil service at the level of central administration. | 2014 | Not available ¹⁹¹ |
| | 3 | Percentage of vacant positions filled by internal competition in the civil service at the level of central administration. | 2014 | Not available ¹⁹² |
| | 3 | Percentage of women in the civil service at the level of central administration. | 2014 | Not available ¹⁹³ |
| | 3 | Percentage of women in senior managerial positions in the civil service at the level of central administration. | 2013 | Not available ¹⁹⁴ |
| | 3 | Percentage of civil servants at the level of central administration by different ethnic origin in relation to the general ethnic division in the country based on the latest census. | 2014 | Not available ¹⁹⁵ |
| | 4 | Annual turnover of senior managerial civil servants at the level of central administration. | 2014 | Not available ¹⁹⁶ |

¹⁸⁹ There are no countrywide statistics for this indicator. The available data indicates that the annual turnover of civil servants at the level of central administration in 2014 was 16.4% in the State and 2.4% in the FBiH. The data was not provided by the RS and the BD administration.

¹⁹⁰ The value of this indicator cannot be established. After the general elections in October 2014, the subsequent establishment of the Council of Ministers of BiH and Governments of the FBiH, the RS and the BD finished at the end of March 2015; therefore, six months had not passed at the time of data collection and the data required for the indicator could not be collected.

¹⁹¹ There are no countrywide statistics for this indicator. The available data indicates that the percentage of vacant positions filled by external competition at the level of central administration in 2014 was 31.2% in the State, 98.4% in the RS and 100% in the BD. The data was not provided by the FBiH administration.

¹⁹² There are no countrywide statistics for this indicator. The available data indicates that the percentage of vacant positions filled by internal competition at the level of central administration in 2014 was 68.8% in the State, 1.6% in the RS and 0% in the BD. The data was not provided by the FBiH administration.

¹⁹³ There are no countrywide statistics for this indicator. The available data indicates that the percentage of women in the civil service at the level of central administration in 2014 was 51.1% in the State, 55.3% in the FBiH, 55.7% in the RS and 48% in the BD.

¹⁹⁴ There are no countrywide statistics for this indicator. The available data indicates that the percentage of women in senior managerial positions at the level of central administration in 2014 was 30.8% in the State, 40.4% in the FBiH, 43.3% in the RS and 37% in the BD.

¹⁹⁵ There are no countrywide statistics for this indicator. The available data indicates the following for 2014: 1) the State: Bosniaks 44.2%; Serbs 33.6%; Croats 19.2%; others 2.3%; 2) the FBiH: Bosniaks 73.6%; Croats 19.8%; Serbs 3.95%; others 2.7%; 3) the RS: Serbs 91.7%; Croats 1%; Bosniaks 0.6%; others 0.1%; the remaining 6.6% are the persons who exercised their right not to state their ethnic origin; and 4) the BD: Bosniaks 41%; Serbs 41%; Croats 16%; others 2%.

¹⁹⁶ There are no countrywide statistics for this indicator. The available data indicates 3.7% for the RS. The data was not provided by the State, the FBiH and the BD administration

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| | 4 | Turnover of senior managerial civil servants at the level of central administration within six months of a change of government. | 2014 | Not available ¹⁹⁷ |
| | 4 | Percentage of vacant senior managerial positions at the level of central administration filled by external competition. | 2014 | Not available ¹⁹⁸ |
| | 4 | Percentage of vacant senior managerial positions at the level of central administration filled by internal competition. | 2014 | Not available ¹⁹⁹ |
| | 5 | Ratio of average annual compensation of central government senior and junior professionals to compensation of tertiary-educated workers. | 2014 | Not available ²⁰⁰ |
| | 5 | Ratio of average annual compensation of central government senior public servants to compensation of tertiary-educated workers. | 2014 | Not available ²⁰¹ |
| | 7 | Transparency International Corruption Perception Index – the country score. | 2014 | 39 |
| | 7 | Citizens' perception of the integrity and trustworthiness of the public service. | 2014 | Not available ²⁰² |
| | 7 | Number of public servants who have been criminally convicted of corruption crimes. | 2014 | Not available ²⁰³ |

¹⁹⁷ The value of this indicator cannot be established because, after the general elections in October 2014, the subsequent establishment of the Council of Ministers of BiH and Governments of the FBiH, the RS and the BD finished at the end of March 2015; therefore, six months had not passed at the time of data collection and the data required for the indicator could not be collected.

¹⁹⁸ There are no countrywide statistics for this indicator. The available data indicates that the percentage of vacant senior managerial positions at the level of central administration filled by external competition in 2014 was 100% for the State and the RS; no competitions were held in the BD; no information is available for the FBiH.

¹⁹⁹ There are no countrywide statistics for this indicator. The available data indicates that the percentage of vacant senior managerial positions at the level of central administration filled by internal competition in 2014 was 0% for the State and the RS; no competitions were held in the BD; no information is available for the FBiH.

²⁰⁰ The data was not provided by the BiH administration.

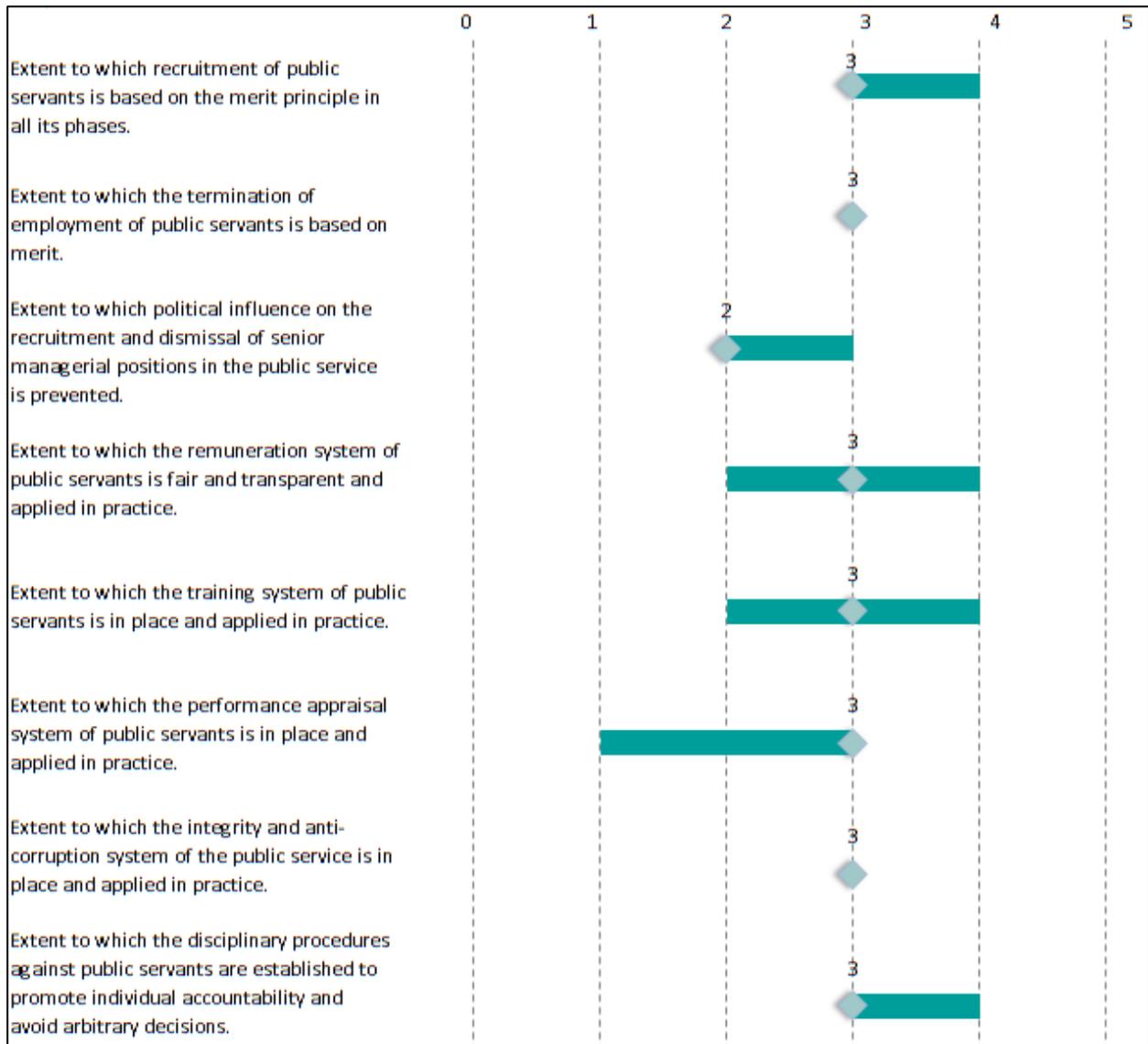
²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ There are no countrywide statistics for this indicator. The available data indicates that the number of public servants who have been criminally convicted of corruption crimes in 2014 was 0 in the State and 4 in the RS; no information is available for the FBiH and the BD.

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 4. Country baseline value in comparison with the regional range



Analysis of Principles

Principle 3: The recruitment of public servants is based on merit and equal treatment in all its phases; the criteria for demotion and termination of public servants are explicit.

All CSLs are committed to the principle of merit-based recruitment. Moreover, internal competition and transfer are preferred to external competition, as clearly stated in the legislation²⁰⁴. However, there is a potential for non-merit-based recruitment. The appointing authority can choose any person

²⁰⁴ CSL of the FBiH, Article 22; CSL of the State, Article 19; CSL of the RS, Article 46; CSL of the BD, Article 33. In the CSL of the FBiH, Article 34, open competition is chosen for career advancement (managerial civil servants from Article 6 1-a) and performance appraisal for promotion of other civil servants (Article 6 1-b); there is similar provision in the CSL of the State, Article 31.

from the list of eligible candidates²⁰⁵. For instance, in the State institutions the short list is made up of no more than five candidates. In 2013, a court decision compelled the appointing authority of middle cadres to give an explanation for not having selected the first candidate. Under the different regulations of the BD and the FBiH, the written test carries a weight of 70-75% of the score, while the interview counts for only 20-25%.

Regarding gender representation in the public service, it is balanced overall but women are under-represented at the senior public service level (the level of women in senior positions is 30% in the State institutions, 40% in the FBiH, 43% in the RS and 37% in the BD).

Termination rules are stated in the legislation²⁰⁶. Termination may result from reorganisation²⁰⁷, although the number of dismissals in practice is low. Full information on dismissals in the State, the Entities and the BD was not provided.

Public servants have the right to appeal recruitment and termination decisions. The Appeals Board is regulated in the legislation²⁰⁸. The largest percentage of appeals on recruitment decisions comes from the State institutions, with 13.5% of the 227 recruitment decisions (internal and external competition) subject to appeal²⁰⁹. This shows that the recruitment process is not always clear-cut.

All these factors influence the values of the qualitative indicators on objective and merit-based recruitment, and termination of employment of civil servants, such that the baseline value for each is 3.

Loopholes in the legislation, mainly related to a high level of managerial discretion in the selection process, create the potential for recruitment and termination of employment in the public service. The high non-merit based number of appeals on recruitment decisions may be an indicator of this.

Principle 4: Direct or indirect political influence on senior managerial positions in the public service is prevented.

A Secretary with a special assignment is appointed for a maximum fixed term of five plus five years in the State institutions²¹⁰, as are some high-ranking officials in the RS²¹¹. In the FBiH and the BD, the senior managerial positions are appointed on a permanent basis. In addition to the different rules on the term in office of senior public servants in State institutions, the RS, the FBiH and the BD, there is a concern that the appointing authority can choose any person from the list of eligible candidates²¹².

Although the legal provisions promote impartiality in the whole public service, what is observed in reality is that recruitment of senior managerial positions is strongly and informally influenced by political parties²¹³.

Appointments to senior managerial positions often entail appeals. For example, in the State institutions, where five external competitions were held in 2014, a total of 12 appeals on recruitment decisions were submitted by applicants²¹⁴.

The factors analysed above lead to a baseline value of 2 for the qualitative indicator on recruitment and dismissal of the senior civil service.

²⁰⁵ CSL of the FBiH, Article 31; CSL of the BD, Article 41.

²⁰⁶ CSL of the FBiH, Articles 51 and 52; CSL of the State, Articles 50 and 51; CSL of the RS, Article 77.

²⁰⁷ CSL of the FBiH, Article 36; CSL of the State, Article 33; CSL of the RS, Article 57.

²⁰⁸ CSL of the FBiH, Article 65, with the name of Civil Service Board in the CSL of the State (Article 63); CSL of the RS, Article 9.

²⁰⁹ Civil Service Agency of the State institutions.

²¹⁰ CSL of the State, Article 34.

²¹¹ Law No. 117/2011 on Amendments of the CSL of the RS, Article 9.

²¹² CSL of the FBiH, Article 31; CSL of the State, Article 28; not mentioned in the CSL of the RS.

²¹³ Transparency International (2013), *National Integrity System Assessment – Bosnia and Herzegovina 2013*, p. 87.

²¹⁴ Civil Service Agency of the State Institutions.

Direct or indirect political influence on the appointment of senior managerial positions in the public service is not prevented.

Principle 5: The remuneration system of public servants is based on the job classification; it is fair and transparent.

The CSLs determine the elements of the salary of civil servants, and the salary is based on the job classification system of the civil service²¹⁵. However, a fair and objective job evaluation and classification system related to the salary regulations is still to be implemented to motivate staff through different career paths.

In June 2012, the parliaments of the State and of the FBiH adopted laws amending the Law on Salaries of Civil Servants in the Institutions of BiH²¹⁶ and the Law on Salaries in the FBiH. The changes allowed for an average 4.5% reduction in basic civil service salaries. They also allowed for several allowances to be cut (e.g. for accommodation, transport, food, holidays) to adapt the State and FBiH budget to the fiscal situation and to comply with the requirements of the International Monetary Fund. The average percentage of employee allowances in 2014 was 32.2% of the total salary, which is kept under the limits of a relatively transparent salary system. Additionally, performance-based bonuses were frozen for 2014.

The average gross monthly salary of all public sector employees²¹⁷ in 2014 was Bosnia Convertible Mark/BAM 1 908.42 and the net salary was BAM 1 105.69, while the average gross monthly salary of the highest category of civil servants was BAM 7 757,81 and the net salary was BAM 4 756.90. The compression ratio (the highest gross salary compared to the lowest gross salary) in 2014 was 10.19 (BAM 757.81/760.85)²¹⁸.

The salaries in the BiH public sector, including the civil service, are still much higher (nearly 40%) than in the private sector. According to the Agency for Statistics of BiH, the average gross monthly salary in the private sector in October 2014 was BAM 1 295, compared to BAM 1 908 in the public administration²¹⁹. This appealing general salary creates conditions to attract and retain qualified and competent staff to the civil service.

Given that coherence and fairness across the public service of BiH is not ensured in the different salary regulations, the baseline value of the relevant indicator is 3.

The salary system is based on the job classification, however the fairness and coherence across the public service of BiH is not ensured due to different salary regulations in the State institutions, in the entities and in the BD. Recent legislation has introduced transparency but greater fairness, based on the analysis of job evaluation, is required.

Principle 6: The professional development of public servants is ensured; this includes regular training, fair performance appraisal, and mobility and promotion based on objective and transparent criteria and merit.

The right and duty to training is explicitly expressed in three out of four CSLs²²⁰. There are also strategic training plans in the State institutions, the FBiH and the RS, but not yet in the BD. The preferred method to analyse training needs is to use the results of evaluation forms (sent anonymously through

²¹⁵ CSL of the FBiH (Chapter V was abolished completely by the amendments of 2012, after approval of the Law on Salaries of Civil Servants); CSL of the State, Chapter V; CSL of the RS, Articles 78-84.

²¹⁶ Law No. 32/2012 Amending the Law on Salaries and Allowances in the State Institutions of BiH.

²¹⁷ There is no differentiated data for civil servants.

²¹⁸ Interview with the Ministry of Finance of the State Institutions of BiH, 20 March 2015.

²¹⁹ Agency for Statistics of BiH, "Average Monthly Gross Earnings of Persons in Employment, October 2014", http://www.bhas.ba/saopstenja/2014/BPL_2014M10_001_01_bos.pdf.

²²⁰ CSL of the FBiH, Article 50; CSL of the State, Article 49, entitled to training abroad; CSL of the RS, Article 65; CSL of the BD, Article 81.

electronic format in the State institutions) and input from the administrative bodies. However, performance appraisal results are not used for training needs analyses, except in the RS and the BD. In the FBiH, the CSA sent a specific questionnaire in 2014. The results were discussed in focus groups in order to draft the 2015 plan for senior managers, new employees and other civil servants²²¹.

The budget for training comes mostly from international donors, as the domestic budget for training has traditionally been low. Five years ago (in 2007) the training allocation in the FBiH was BAM 150 000²²². The latest available data for 2013 shows a low amount for the whole country: BAM 183 463 (EUR 93 803)²²³. At the same time, the demand for training was already high in 2013 (967 training days and 4 369 participants²²⁴, which implies that the amount of money spent per participant was only EUR 21.40. In 2014, the available information on training expenditures indicates that the training budget: 1) decreased in the RS; 2) increased in the FBiH; and 3) was reduced to zero in the BD because all funds originally allocated to training were re-allocated to cover the reparations after flooding. In the State institutions, the data for only the first half of 2014 was available.

Performance appraisal is regulated by the CSLs²²⁵. The results of performance appraisal may have negative consequences for civil servants. One unsatisfactory rating may result in an employee being obligated to follow a specific programme, and two consecutive adverse performance appraisals may result in dismissal²²⁶. Performance appraisals may also have positive consequences, such as the promotion of civil servants²²⁷ or a salary increase in the Federation and the State institutions²²⁸.

The system of performance appraisal is not working adequately in practice²²⁹. The appraisal does not adequately discriminate 'good' from 'bad' performance. The available data shows that almost all civil servants (99.2% in the State institutions, 98% in the RS and 97% in the BD)²³⁰ are good or very good performers. Considering that the professional development of civil servants is heavily dependent on external factors, and that performance appraisal functions only formally, the baseline value of the qualitative indicators for 2014 is 3.

The right and duty of training is reflected in the legislation but the resources for training are limited, in the case of BD the training budget was reduced to zero. Performance appraisal regulations are in place, but grade inflation indicates that it is carried out only as a paper exercise.

Principle 7: Measures for promoting integrity, and preventing corruption and ensuring discipline in the public service are in place.

The Agency for the Prevention of Corruption and Co-ordination of the Fight Against Corruption (the Anti-Corruption Agency/ACA) was created in 2009²³¹. The Strategy for Fight Against Corruption of BiH

²²¹ FBiH (2015), Annual report on civil servants and public employees in the FBiH for 2014.

²²² SIGMA Assessments of Bosnia and Herzegovina 2012, 2013.

²²³ Civil Service Agencies of the State institutions, the FBiH and the RS. No concrete data on training budget was provided by the BD but it was explained that the money was spent for Master's and PhD theses.

²²⁴ Civil Service Agencies of the State institutions, the FBiH and RS. However, 4 369 training participants seems somewhat high when compared to only 1 168 civil servants trained in 2013.

²²⁵ CSL of the FBiH, Article 33; CSL of the State, Article 30; CSL of the RS, Article 49; CSL of the BD, Chapter XIII.

²²⁶ CSL of the FBiH, Articles 33 and 51; CSL of the State, Articles 31 and 50; CSL of the RS, Articles 49 and 77; CSL of the BD, Article 64.

²²⁷ CSL of the FBiH, Article 34 for category b, Article 6; CSL of the State, Article 30; CSL of the RS, Article 50.

²²⁸ CSL of the FBiH, Article 40; the Law on Salaries provides for a motivational bonus of 2.5% maximum of the annual salary (SIGMA Assessment 2012); CSL of the BD, Article 65.

²²⁹ Transparency International (2014), "Human resources management in public administration structures in BiH – Challenges in monitoring reform", p. 17.

OECD/SIGMA (2012), "Bosnia and Herzegovina evaluation of the human resource management in the civil service", pp. 12, 14 and 19.

²³⁰ Civil Service Agencies of the State Institutions, the FBiH and the RS, the Sub-Department for HRM of the BD.

²³¹ Law No. 103/2009 on the Agency for the Prevention of Corruption and Co-ordination of the Fight Against Corruption.

2009-2014 and its Action Plan²³² were adopted in 2009. According to the Action Plan, all administrative bodies should have integrity plans or anti-corruption action plans. The ACA adopted the Methodology and Guidelines for Drafting the Integrity Plans in Administrative Bodies on 31 December 2013. In 2014, the ACA mainly supported the State institutions to draft these plans but has not reached out to the Entities and the BD yet. According to an external evaluation report, 46 administrative bodies in the FBiH adopted and implemented anti-corruption plans in the period 2012-2014²³³.

The integrity of the public service is relatively well protected from a legal standpoint in some areas: in the adoption of anti-corruption policies and action plans, codes of conduct for civil servants, the regulation of incompatibilities and the establishment of the ACA. Other areas, according to the *National Integrity System Assessment*²³⁴ are missing, for example: 1) the legislation does not require public sector employees to make public the information regarding their personal assets and income; and 2) there is still no whistle-blower protection legislation in place in the Entities and in the BD²³⁵, which particularly affects the public administration.

In practice, the perception of corruption is high. According to the latest Corruption Perception Index for 2014, BiH is ranked 80th among 174 countries with a score of 39 (0 being “highly clean” and 100 “highly corrupt”)²³⁶. The Criminal Code of BiH and the laws of the FBiH, the RS and the BD do not exempt public sector employees from liability in cases of abuse. However, the number of individuals prosecuted for abuse of authority has been very low²³⁷.

Disciplinary sanctions and procedures are regulated in the legislation²³⁸, follow the Principles²³⁹ and are applied (22 disciplinary sanctions in the State institutions and the RS)²⁴⁰. However, full information on implementation across the public service in BiH is missing.

Considering that there are some anti-corruption measures in place, but that the perception of corruption is still high in the country, the baseline value of the relevant qualitative indicator is 3. The legal framework to ensure discipline is in place, but there is not enough evidence on consistent practice across the public service; therefore, the baseline value of the relevant qualitative indicator is 3.

The ACA, although having the mandate to steer reform in promoting integrity and preventing corruption across BiH, has only proved to be active at the State level in 2014, where the integrity plans and anti-corruption action plans of individual administrative bodies are mostly adopted. However, the Agency has limited powers to enforce these plans.

Key recommendations

Short-term (1-2 years)

- 1) The CoM of BiH, the Government of the FBiH and the Government of the RS should propose amendments to the respective CSLs and secondary legislation to ensure merit-based recruitment of expert-level public servants.

²³² Strategy for Fight Against Corruption of Bosnia and Herzegovina 2009-2014 and its Action Plan <http://www.msb.gov.ba/docs/strategija1.pdf>

²³³ Criminal Policy Research Centre (2014), “Evaluation report: Implementation of the FBiH General Anti-Corruption Plan”, <http://www.cprc.ba/en/clanak.php?id=45>.

²³⁴ Transparency International (2013), *National Integrity System Assessment – Bosnia and Herzegovina 2013*.

²³⁵ At the State level, the Law on Protection of Persons Reporting Corruption in the Institutions of BiH was adopted in December 2013 (Official Gazette No. 100/13); in the RS Strategy for Fight Against Corruption, the issue of protection of whistleblowers is defined.

²³⁶ <https://www.transparency.org/cpi2014>

²³⁷ Transparency International (2013), *National Integrity System Assessment – Bosnia and Herzegovina 2013*; four cases in the RS, 2015 Baseline Measurement data from BiH, Principle 7.

²³⁸ CSL of the RS, Articles 70-77; CSL of the FBiH, Chapter VIII; CSL of the State, Chapter VIII.

²³⁹ SIGMA (2014), *The Principles of Public Administration*, OECD Publishing, pp. 54-55.

²⁴⁰ Civil Service Agencies of the State institutions, the FBiH and the RS, the Sub-department for HRM of the BD.

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- 2) The CSA of the State institutions, the FBiH and the RS, and the Sub-Department for HRM of the BD should ensure the proper implementation of the recruitment regulations of senior civil servants to prevent direct or indirect political influence on senior managerial positions in the public service.
- 3) The Administrative Inspections and the Institution of Ombudsman of BiH should strengthen the oversight capacity to ensure strict implementation of the public service legislation across the administration of BiH.
- 4) The CSA of the State institutions, the FBiH and the RS, and the Sub-Department for HRM of the BD, within the authorities given by the respective CSLs, should co-ordinate the monitoring and reporting of the state of affairs of the public service in BiH to increase transparency and coherence of the system in practice.
- 5) The ACA should improve its capacity to promote public service integrity across the administration of BiH.

Medium-term (3-5 years)

- 6) The CoM of BiH, the Government of the FBiH, the Government of the RS and the Government of the BD, while developing and adopting the new strategic framework for PAR in BiH, should pay particular attention to public service professionalisation, including targeted training, development and performance appraisal of public servants.
- 7) The CoM of BiH, the Government of the FBiH, the Government of the RS and the Government of the BD should create a competency framework for senior public servants, which would serve as a solid foundation for the merit-based recruitment and professional development of a strong and sustainable *esprit de corps* in the public service of BiH.



ACCOUNTABILITY

1. STATE OF PLAY AND MAIN DEVELOPMENTS: 2014-APRIL 2015

1.1. State of play

The overall structure of public administration in BiH at the State level remains cumbersome and difficult to manage, which is due to an overlapping and unclear legislative framework. Its major shortcomings are a lack of criteria for distinction between various types of administrative bodies and a lack of procedures ensuring control over the creation of new institutions.

The legislative framework for access to public information is in place at the State level, in the Entities and in the BD. However, there are no independent supervisory institutions that have a right to issue binding decisions and guidelines on the implementation of access to public information. Furthermore, there is no clear legal obligation in legislation at the State level, in the Entities or in the BD to proactively disclose public information, apart from the index of public information and the guidelines of public information, and there are no mechanisms to monitor the disclosure of information. At the State level only, the administrative Inspectorate of the Ministry of Justice (MoJ) of BiH is tasked with inspection and monitoring in the area of public information.

The legislative framework for the Ombudsman Institution is formulated in line with international standards. The Ombudsman Institution covers the whole country, but the level of implementation of its recommendations by public bodies is low.

Courts across the country deal with administrative cases in a relatively efficient manner to maintain the clearance rate at close to 100%, but this rate varies in the Entities and the BD. There is a uniform case management system that interconnects courts at the State level, in the Entities and in the BD and permits the workloads of courts across the country to be monitored. A positive development in recent years is that the High Judicial and Prosecutorial Council (HJPC) has begun to play a significant role in the management of judges, such as setting performance targets and analysing their workloads, across the whole country.

1.2. Main developments

In 2014, BiH joined the Open Government Partnership (OGP)²⁴¹. The first action plan for the OGP is under development.

²⁴¹ Statement of the Ministry of Foreign Affairs of BiH, 1 September 2014, <http://www.opengovpartnership.org/country/bosnia-and-herzegovina>.

2. ANALYSIS

This analysis covers the five Principles of Public Administration that serve as indicators of the key requirement for accountability²⁴². For this key requirement baseline values are provided for the indicators of the monitoring framework of the Principles. The Principles refer to various dimensions of public accountability, including the overall organisation of the government, arrangements regarding internal administrative appeals and administrative justice, and the functioning of independent oversight bodies. The Principles also cover the legislative framework and access to public information.

2.1. Key requirement: Proper mechanisms are in place to ensure accountability of state administration bodies, including liability and transparency.

Baseline values

The system of accountability for State administration bodies is examined through a mixed set of quantitative and qualitative indicators. They cover all areas of accountability, including the internal organisation of the State administration, oversight of administrative appeals and access to public information, status and activities of independent oversight institutions and administrative courts, parliamentary scrutiny, and public liability. The indicators developed for each Principle relating to accountability aim at assessing not only the legislative framework, but also its implementation.

The overall organisation of public administration in BiH is affected by complex constitutional arrangements. The legislative framework for access to public information exists, but it does not contain adequate procedural guarantees for administrative and judicial review. The institution of the Ombudsman is well established in legislation and covers the whole country, but the level of implementation of its recommendations is insufficient. At the State level, there are limited guarantees of liability for wrongdoing within the public administration.

| | Principle no. | Indicator | Baseline year | Baseline value |
|-------------|---------------|---|---------------|----------------|
| Qualitative | 1 | Extent to which the overall structure of ministries and other bodies subordinated to central government is rational and coherent. | 2014 | 1 |
| | 2 | Extent to which the right to access public information is enacted in legislation and applied in practice. | 2014 | 2 |
| | 3 | Extent to which the mechanisms are in place to provide effective checks and balances, and controls over public organisations. | 2014 | 3 |
| | 5 | Extent to which public authorities assume liabilities and guarantee redress. | 2014 | 1 |

²⁴² SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, pp. 58-66.

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| Quantitative | 1 | Number of bodies reporting to the Council of Minister, to the Prime Minister ²⁴³ or to the Parliament. | 2014 | 51 ²⁴⁴ |
| | 1 | Average number of hierarchical layers in a typical ministry. | 2014 | 4 ²⁴⁵ |
| | 2 | Share of public information requests refused in a given year by the public authorities. | 2014 | Not available ²⁴⁶ |
| | 2 | Share of public information requests refused in a given year by the supervisory authority. | 2014 | Not available ²⁴⁷ |
| | 2 | Share of public information requests upheld by the courts. | 2014 | Not available ²⁴⁸ |
| | 2 | Share of public authorities maintaining websites in line with regulatory requirements. | 2014 | Not available ²⁴⁹ |
| | 2 | Share of public authorities maintaining a document registry and database. | 2014 | Not available ²⁵⁰ |
| | 3 | Percentage of citizens who have trust in the ombudsman institution(s). | 2014 | Not available ²⁵¹ |
| | 3 | Share of oversight institutions' recommendations to state administrative bodies implemented within two years. | 2014 | 40.4% ²⁵² |
| | 4 | Number of administrative court cases ruled per year per judge. | 2014 | 131 ²⁵³ |
| | 4 | Number of complaints submitted to the administrative court in a given year. | 2014 | 11 751 ²⁵⁴ |
| | 4 | Percentage of cases changed or returned for verification by the higher court. | 2014 | 22% ²⁵⁵ |

²⁴³ The Chairman of the Council of Ministers (CoM).

²⁴⁴ Forty-one institutions report to the CoM, three to the Chairman of the CoM and seven to the Parliament (excluding constitutional bodies). This indicator is calculated only for the State level.

²⁴⁵ Minister, secretary, department and division. This indicator is calculated only for the State level.

²⁴⁶ Data was not provided by the administration.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

²⁴⁹ Ibid.

²⁵⁰ Data was not provided by the administration.

²⁵¹ No surveys are available.

²⁵² Relates to the Ombudsman Institution; 57 recommendations fully implemented out of 326 issued. Recommendations partially implemented and under co-operations were excluded.

²⁵³ There were 10 704 cases resolved by 82 judges (source : High Judicial and Prosecutorial Council).

²⁵⁴ High Council of Judges and Prosecutors.

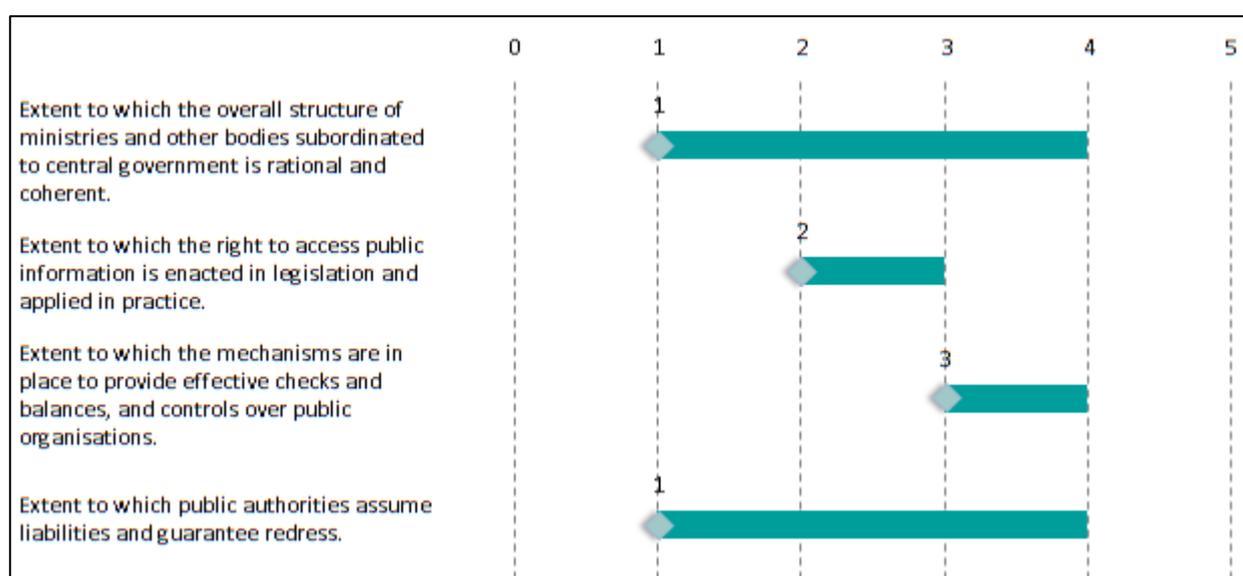
²⁵⁵ There were 265 cases returned or changed by second instance courts out of 1 193 cases resolved (source : High Judicial and Prosecutorial Council).

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| | 4 | Percentage of citizens who have trust in the court system. | 2014 | 35.3% ²⁵⁶ |
| | 4 | Backlog of administrative cases. | 2014 | 13 535 ²⁵⁷ |
| | 5 | Share of complaints resulting in payment of compensation. | 2014 | Not available ²⁵⁸ |

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 1. Country baseline value in comparison with the regional range



Analysis of Principles

Principle 1: The overall organisation of central government is rational, follows adequate policies and regulations and provides for appropriate internal, political, judicial, social and independent accountability.

This SIGMA Baseline Measurement focuses on a countrywide approach and analyses the functioning of the central administration. However, as different structures of administration exist at the State level, in the Entities and in the BD, a countrywide analysis of the first Principle is not possible. Therefore, the analysis will concentrate on the State level.

The structure and competencies of the public administration at the State level are set out by the Law on Administration (LA)²⁵⁹ and the Law on Ministries and Other Administrative Bodies (LMOAB)²⁶⁰. The scope of these two Acts overlaps. For instance, both the LA and the LMOAB contain provisions on the

²⁵⁶ Analitika, Fact Sheet, October 2014. The survey was conducted in July 2014 with a representative sample of 1 000 respondents from all over BiH.

²⁵⁷ High Judicial and Prosecutorial Council.

²⁵⁸ Data was not provided by the administration.

²⁵⁹ Law on Administration of BiH (LA), Official Gazette of BiH Nos. 32/02, 42/03, 26/04, 42/04, 45/06, 88/07, 35/09, 59/09, 103/09, 87/12 and 6/13.

²⁶⁰ Law on Ministries and Other Administrative Bodies of BiH (LMOAB), Official Gazette of BiH No. 5/03.

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establishment of administrative organisations²⁶¹. The duplicated regulation of this matter is also unclear and overly general, and does not ensure adequate control over the cost-effectiveness of the new institutions being created²⁶².

The Law on Administration defines various forms of administrative bodies²⁶³; however, there are no clear criteria for deciding which organisational form should be selected for specific tasks. In particular, the distinction between independent administrative bodies and administrative bodies within ministries is not precise (LMOAB, Article 5). This issue is of high importance, as there are significant differences in the status of each type of institution²⁶⁴.

Neither the LMOAB nor the LA provides a clear accountability scheme for administrative bodies subordinated to the Government. The LMOAB requires the adoption of activity programmes and activity reports by each ministry and administrative organisation²⁶⁵, and the LA permits the Council of Ministers (CoM) to examine the responsibilities of administrative organisations²⁶⁶. These general principles are not, however, accompanied by detailed rules of steering and control over institutions subordinated to the Government.

A large number of institutions report to the CoM of BiH (41 institutions)²⁶⁷ because of the specific constitutional arrangements of BiH.

The baseline value for the indicator on the structure and organisation of ministries is 1, reflecting the inefficiencies in the overall structure of public administration at the State level.

The overall structure of the state administration does not reflect a coherent model. The main problem is the lack of a clear and comprehensive mechanism for the establishment of and control over institutions subordinated to the Government.

Principle 2: The right to access public information is enacted in legislation and consistently applied in practice.

The legislative framework for access to public information was passed at the State level in 2000 (Law No. 28/2000²⁶⁸). In 2001, separate laws in this area were adopted by the FBiH²⁶⁹ and the RS²⁷⁰. They are, in general, consistent with Law No. 28/2000. In the BD, the State level law applies, accompanied by administrative instruction²⁷¹. This instruction specifies, for example, that institutions are obliged to disclose public information and the administrative fees that can be imposed for access to information.

²⁶¹ LMOAB, Article 5 and LA, Articles 46-51.

²⁶² According to Article 5 of the LMOAB, administrative organisations shall be established for the purpose of carrying out administrative and professional tasks whose character and manner of execution require a special organisation and independence in its work. There are no functional criteria that need to be taken into account when deciding on the creation of the new administrative body. There is no procedure ensuring examination of the necessity and cost-effectiveness of the establishment of new institutions.

²⁶³ According to Article 50 of the LA, administrative organisations may be established as independent administrative organisations and also as administrative organisations within ministries. They may have the legal form of agencies, institutes or directorates.

²⁶⁴ For example, administrative organisations within ministries shall report to the ministry within which they are placed, and independent administrative organisations shall report to the CoM of BiH.

²⁶⁵ LMOAB, Articles 23 and 24.

²⁶⁶ LA, Article 29. According to Article 30, administrative authorities may seek guidance from the CoM.

²⁶⁷ Data provided by Public Administration Reform Coordinator's Office (PARCO).

²⁶⁸ Freedom of Access to Information Act of BiH, Official Gazette of BiH No. 28/2000 (amended: Official Gazette Nos. 45/06, 102/09, 62/11 and 100/13).

²⁶⁹ Freedom of Access to Information Act of FBiH, FBiH Official Gazette No. 32/2001.

²⁷⁰ Freedom of Access to Information Act of RS, RS Official Gazette No. 20/2001.

²⁷¹ Instruction on implementation of Freedom of Access to Information Act of BiH in Brčko District, BD-BiH Official Gazette No. 26/2004.

Law No. 28/2000 contains a broad definition of public information. The obligation to disclose information is imposed not only on public bodies, but also private entities performing public functions. The list of grounds for refusal to access is relatively short and applicants cannot be asked to provide reasons for their requests. Information is disclosed in the form specified by the public authority, not by the applicant. Fees for the reproduction of documents are fixed by the Council of Ministers of Bosnia and Herzegovina (CoM of BiH) and do not create obstacles in the access to public information.

The right to appeal against a refusal is ensured to a limited extent. At both the State level and in the FBiH, appeals are processed by the head of the authority that issued a refusal, not by the independent higher instance body. In the RS, there is an obligation to inform the applicant about the right and institution of appeal²⁷².

Law No. 28/2000 and regulations at the level of the Entities do not ensure the proactive disclosure of information about structures, activities, expenditures or services provided by administrative bodies. However, public institutions at the State level, and in the Entities and the BD, are obliged to publish an index of public information and the guidelines of public information, and they generally fulfil this obligation. A survey conducted by Analitika, a centre for social research,²⁷³ demonstrates that the basic information on the organisational structure, functions and key decisions of public administrative bodies is generally available on their websites. However, only a few institutions have published work plans, annual reports and budgets. None of the monitored bodies shared information on the salaries of the heads of the institutions.

According to its statutory tasks, the Ombudsman Institution issues guidelines on the right to information²⁷⁴. However, they are not binding on public authorities and there is no data on the provision of public information on request.

At the State level, the Administrative Inspectorate of the MoJ of BiH is tasked with inspection and monitoring in the area of public information. These provisions also apply in the BD, but there are not similar solutions in the two Entities, which means that the monitoring of the right to access information is uneven across the country. There is no mechanism for monitoring whether the administrative bodies maintain up-to-date and complete registries of documents and databases.

The right to public information is enshrined in legislation, though there are shortcomings in its implementation, reflected in the baseline value of 2 for the indicator on access to public information.

The provision of public information is regulated separately at the State level and in the two Entities. The provisions are similar and guarantee a wide scope of access to public information. The main shortcomings, in terms of practical implementation, are the limited or ineffective rights to appeal refusals of access to public information, and the uneven level of proactive provision of public information. Moreover, there is no independent body to deal with appeals.

Principle 3: Functioning mechanisms are in place to protect both the rights of the individual to good administration and the public interest.

The scope of this Principle is broad, so the analysis of some important oversight institutions is performed under other areas; for example, anti-corruption institutions are analysed under public service and human resource management (HRM), and supreme audit institutions are under public financial management (PFM). The analysis below will focus mainly on the Institution of Human Rights Ombudsman of BiH.

²⁷² Law on Free Access to Information (SLGL RS No. 20/01), Article 14, paragraph 3-b, contains the obligation, in case of rejection, to inform applicants as to which institution they can make an appeal to, but the Law does not specify which should be the institution to appeal to. Thus, in the case of silence of the institution or not providing all of the requested information, the information about appeal rights is not provided.

²⁷³ Analitika, Rezultati istraživanja: Dostupnost informacija na službenim web-prezentacijama javnih organa Bosne i Hercegovine, June 2014. The survey monitored the websites of 66 institutions of BiH State level.

²⁷⁴ http://www.Ombudsman.gov.ba/documents/obmudsmen_doc2013041705145389eng.pdf.

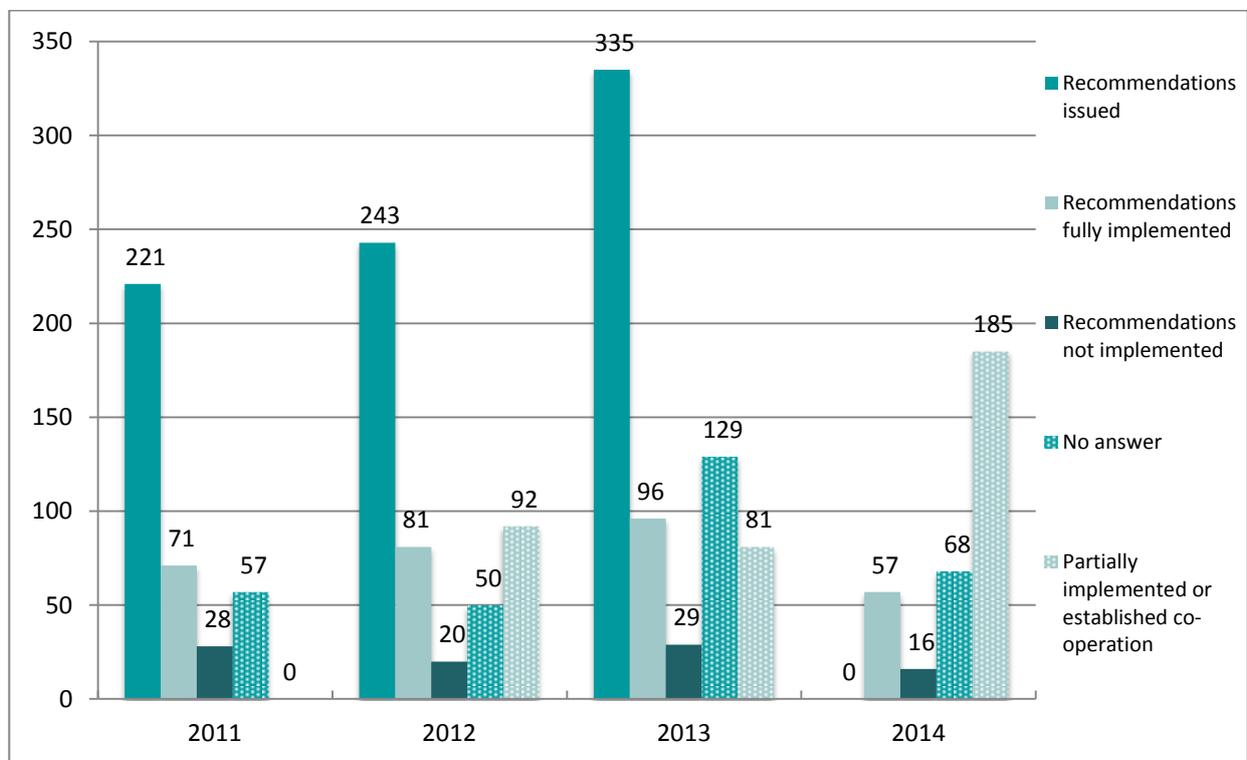
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The Ombudsman Institution was established according to Annex VI of the General Framework Agreement on Peace for BiH²⁷⁵. It comprises three Ombudsmen acting independently, and there is a formula for rotating co-ordination of the management of the Institution.

The status and powers of the Ombudsman Institution as defined in the legislation generally meet international standards. The Ombudsman Institution has the mandate to intervene in individual cases and also to promote human rights protection. No institutions of the executive branch are excluded from its oversight. It can initiate an investigation *ex officio* and has access to the premises of government institutions to investigate cases on site. It should be noted, however, that the Ombudsman Institution may not lodge a case in the Constitutional Court to check the constitutionality of legislation.

The Ombudsman Institution faces challenges in practice. The number of complaints submitted by citizens and the budget of the Institution has not changed significantly. The Ombudsman Institution is relatively active in terms of the number of recommendations issued, but the percentage of recommendations implemented remains low (35%).

Figure 2. Statistical data on the functioning of the Ombudsman Institution



Source: Annual reports of the Ombudsman Institution for 2011, 2012 and 2013, and information received from the Ombudsman Institution for 2014.

The functioning of the Ombudsman Institution is reflected by the baseline value of 3 for the indicator on checks and balances.

The legislative framework for the Ombudsman Institution is formulated in line with international standards. The Ombudsman Institution covers the whole country; however, the administrative bodies implement only a minority of its recommendations.

²⁷⁵ The General Framework Agreement for Peace in Bosnia and Herzegovina, Part B, Annex VI.

Principle 4: Fair treatment in administrative disputes is guaranteed by internal administrative appeals and judicial reviews.

The judicial review of administrative Acts is also decentralised. Administrative cases are handled by general courts which have jurisdiction for decisions issued by administrative bodies of the State level, the Entities and the BD.

The specialisation of judges in various areas of administrative cases (e.g. taxation, public procurement, construction laws) is not ensured, which is understandable, considering the low number of judges.

The High Judicial and Prosecutorial Council (HJPC) appoints judges from all over BiH²⁷⁶. Performance appraisals of judges are conducted on the basis of uniform criteria set out by the HJPC. One of the key elements of the performance management system is productivity targets for all judges, established by the HJPC. There is an integrated case management system (CMS) that also enables real-time monitoring of the workload of judges. The Entity Judicial and Prosecutorial Training Centres provide training to administrative judges from all over BiH²⁷⁷. They also organise joint meetings of judges from the whole country to improve the uniformity of case law.

First instance administrative courts at the State level in the FBiH, the RS and the BD maintained a clearance rate of 91% in total in 2014²⁷⁸, which means that the backlog of administrative cases is increasing slightly. Also, the number of unresolved cases per judge at the end of 2014, calculated for all courts in the country, is high (165 cases per judge).

The level of trust in the courts is low (35.3% in 2014²⁷⁹). This raises concern about the quality of court rulings and the length of court proceedings²⁸⁰. On the other hand, the share of first instance judgments quashed or changed by the appellate courts (commonly used as an indicator of the quality of court rulings) is at 22%.

The administrative justice system is decentralised and diverse in terms of efficiency across BiH. There are some joint initiatives in place that contribute to it being managed more efficiently, for example a uniform electronic case management system and a common performance appraisal scheme, managed by the HJPC.

Principle 5: The public authorities assume liability in cases of wrongdoing and guarantee redress and/or adequate compensation.

As complete data was not provided from all relevant levels of public administration, this Principle is analysed only at the State level. There is no general principle of public liability stipulated in the legislation at the State level. The scope of potential liability of public authorities is not determined and there are no procedural rules for seeking compensation for acts or omissions of public administrative bodies that cause damage to a citizen.

A limited right to compensation is established by Article 255.4 of the Law on Administrative Procedure (LGAP). According to this provision, the party who suffers damage due to the cancellation of an

²⁷⁶ Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, Article 17, Official Gazette Nos. 25/04, 93/05, 48/07 and 15/08.

²⁷⁷ In 2013, training on administrative law was provided to 88 judges who attended six courses.

²⁷⁸ This indicator is commonly used to measure the efficiency of courts. According to the definition of the European Commission for the Efficiency of Justice, the clearance rate is calculated by dividing the number of resolved cases by the number of incoming cases. If the clearance rate goes below 100%, the backlog at the end of a reporting period increases (CEPEJ [2014], "European judicial systems – Edition 2014 (2012 data): Efficiency and quality of justice", Strasbourg, p. 191).

²⁷⁹ Analitika, Fact Sheet, October 2014. The survey was conducted in July 2014 with a representative sample of 1 000 respondents from all over BiH.

²⁸⁰ The largest number of complaints submitted to the Ombudsman Institution on courts concerns the excessive length of proceedings.

administrative decision shall have the right to claim only the amount of the actual damage. The Court of BiH has jurisdiction to decide in these matters.

Data on public liability requests and decisions made on these matters is not available.

A lack of legislative guarantees and evidence on the practical implementation of mechanisms of public liability results in a baseline value of 1 for this indicator.

There are not sufficient legislative guarantees for public liability at the State level, and the lack of data on the practical implementation of the principle of public liability makes it impossible to assess its functioning in practice.

Key recommendations

Short-term (1-2 years)

- 1) The CoM of BiH should review the provisions of the Law on Administration and the Law on Ministries and Other Administrative Bodies to eliminate overlap and to ensure that the rules for the creation of administrative bodies clearly determine the required legal form of those institutions and enable control of cost-effectiveness.
- 2) The laws on access to public information should be amended by the Parliamentary Assembly of BiH, the Parliament of the Federation of BiH, the National Assembly of the RS and the BD Assembly to specify an extensive catalogue of information that should be proactively disclosed. In addition, selected institutions need to be given the power to impose sanctions for non-compliance with the obligation to provide access to public information. The regulations on appealing decisions on access to public information should also be changed.
- 3) The Parliamentary Assembly, the Parliament of the FBiH, the National Assembly of RS and the BD Assembly should undertake actions aimed at increasing the responsiveness of the Executive to the Ombudsman's recommendations. This may include a parliamentary committee debating the recommendations on a regular basis, desiderata and interpellations addressed to the executive bodies, and regular hearings of officials.

Medium-term (3-5 years)

- 4) The MoJ at the State level should review the existing regulations on public liability to ensure that they are:
 - a. clear and easily accessible;
 - b. define a broad scope of public liability;
 - c. do not jeopardise the effective exercise of the right of action for compensation.
- 5) The CoM of BiH should introduce mechanisms to monitor court cases that result in the liability of the State, with the goal of improving administrative procedures and decisions and, thus, reducing public liability cases in the future.



SERVICE DELIVERY

1. STATE OF PLAY AND MAIN DEVELOPMENTS: 2014-APRIL 2015

1.1. State of play

As a result of constitutional arrangements in BiH, responsibility in the area of service delivery is decentralised. Separate approaches towards service delivery exist at the State level, the Entities and the BD. Some priorities for co-ordinated actions on public services improvement, including e-services, were set out in the Public Administration Strategy and the Revised Action Plan 1 (RAP1) for implementing the strategy. However, both documents expired at the end of 2014.

At the State level, the inventory of services has been prepared, but the governmental e-portal has not yet been launched. One of the main difficulties is the lack of implementation of the law on e-signatures that hampers developments in this area (there are no certification bodies). The provision of e-services across the country differs in the Entities and the BD. In RS, the e-government portal includes the most important information on services offered to the citizens. The FBiH and the BD do not have such portals. The cost and the formalities that must be completed to register businesses vary across the country, influencing citizens' decisions on where they decide to register a business.

There are standards on the accessibility of websites of public institutions of BiH State level integrated into a joint platform. However, only about half of the State level institutions actually use this platform.

The legislation on general administrative procedures at the State level, in the Entities and in the BD meets the standards of good administration. However, no inventories of special regulations have been drawn up.

1.2. Main developments

In October 2014, BiH began to issue a new generation of electronic (biometric) passports²⁸¹.

²⁸¹ http://www.iddeea.gov.ba/index.php?option=com_content&view=article&id=670:iddeea&catid=34:cat-news&Itemid=172&lang=bs.

2. ANALYSIS

This analysis covers the four Principles of the service delivery area, which fall under one key requirement²⁸². Baseline values are provided for the indicators of the monitoring framework of the Principles under this key requirement. The Principles cover the policy and practice of service delivery. Particular focus is placed on the strategic and legal framework for service delivery and on the standards for access and quality of services. The Principles also refer to the procedural guarantees of good administrative behaviour applicable to service provision.

2.1. Key requirement: Administration is citizen-oriented; the quality and accessibility of public services is ensured.

Baseline values

The policy and practice of service provision is reviewed through a set of 14 quantitative indicators, complemented by 3 qualitative indicators. Qualitative indicators primarily analyse the implementation of the policies and legislation in the area of service delivery. Most of the quantitative indicators are based on data provided by the country and are subsequently verified for the purposes of this assessment. Selected quantitative indicators are based on the international comparative studies “Doing Business”²⁸³ and “Global Competitiveness Report”²⁸⁴.

Due to constitutional arrangements in BiH, responsibility in the area of service delivery is decentralised. Separate approaches are applied at the State level, in the Entities and in the BD. This OECD/SIGMA BM focuses on a countrywide approach and analyses functioning of the central administration. In the case of BiH service delivery, functions are allocated to the State level, the Entities and the BD, often without any co-ordination. For the most part, the BM does not cover these services and concentrates on the legal and institutional preconditions necessary for a countrywide approach. This refers to the services provided by the State level and to the initiatives launched or co-ordinated by the State level. When necessary and relevant, examples from the Entities and the BD are highlighted.

Attempts to co-ordinate efforts for the improvement of public services have not progressed very far. A policy on public services improvement was formulated, but the level of their development differs in the Entities and the BD. This is illustrated by an unequal level of development of e-services or by different procedures (and the time needed) to set up a business in the Entities and the BD.

| | Principle no. | Indicator | Baseline year | Baseline value |
|-------------|---------------|---|---------------|----------------|
| Qualitative | 1 | Extent to which citizen-oriented policy for service delivery is in place and applied. | 2014 | 2 |
| | 1 | Extent to which policy and administrative preconditions for e-service delivery are applied. | 2014 | 1 |
| | 2 | Extent to which the legal framework for good administration is in place and applied. | 2014 | 2 |

²⁸² SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, pp. 67-74.

²⁸³ World Bank.

²⁸⁴ World Economic Forum.

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| | | | | |
|---------------------|---|---|------|------------------------------|
| Quantitative | 1 | Expenditure on general public services as a share of gross domestic product. | 2014 | 5.4% ²⁸⁵ |
| | 2 | Favouritism in decisions of government officials ²⁸⁶ . | 2013 | 3.05 |
| | 3 | Percentage of users satisfied with public services. | 2014 | Not available ²⁸⁷ |
| | 3 | Proportion of institutions using quality assurance tools and techniques (e.g. European Foundation for Quality Management, Common Assessment Framework and other international standards) ²⁸⁸ . | 2014 | 11.5% ²⁸⁹ |
| | 3 | Share of public servants directly engaged in service delivery who received training in the last two years. | 2014 | Not available ²⁹⁰ |
| | 3 | Average time needed to acquire a personal identification document (passport or ID card) after submitting the application. | | |
| | | A. Passport | 2014 | 8 ²⁹¹ |
| | | B. ID | | 8 ²⁹² |
| | 3 | Share of institutions where customer satisfaction surveys are conducted on a regular basis (at least every two years). | 2014 | Not available ²⁹³ |
| | 3 | Average number of days needed to set up a business. | 2014 | 37 ²⁹⁴ |
| | 3 | Average cost of setting up a business ²⁹⁵ . | 2014 | 14.6% |
| | 4 | Number of one-stop-shops that provide the services for more than three different public institutions. | 2014 | Not available ²⁹⁶ |

²⁸⁵ National Economic Reform Programme.

²⁸⁶ According to the World Economic Forum Competitiveness Index (on a scale from a minimum of 1 to a maximum of 7).

²⁸⁷ Not all levels of administration provided data, meaning that it was not possible to establish an indicator value.

²⁸⁸ This includes institutions at the BiH State level only.

²⁸⁹ Three out of 26 institutions surveyed, according to information obtained from PARCO.

²⁹⁰ Data for the whole of BiH was not provided.

²⁹¹ www.iddeea.gov.ba/index.php?option=com_content&view=article&id=715%3Aautomatske-provjere-podataka-u-matinim-uredima-u-federaciji-bih-duplo-ubrzaie-izdavanje-linij-doku&catid=34%3Acat-news&Itemid=172&lang=bs.

²⁹² www.iddeea.gov.ba/index.php?option=com_content&view=article&id=715%3Aautomatske-provjere-podataka-u-matinim-uredima-u-federaciji-bih-duplo-ubrzaie-izdavanje-linij-doku&catid=34%3Acat-news&Itemid=172&lang=bs.

²⁹³ Data for the whole of BiH was not provided.

²⁹⁴ According to the World Bank "Doing Business" report, whose methodology provides data for the capital city only.

²⁹⁵ Percentage of income per capita, according to World Bank "Doing Business" Report.

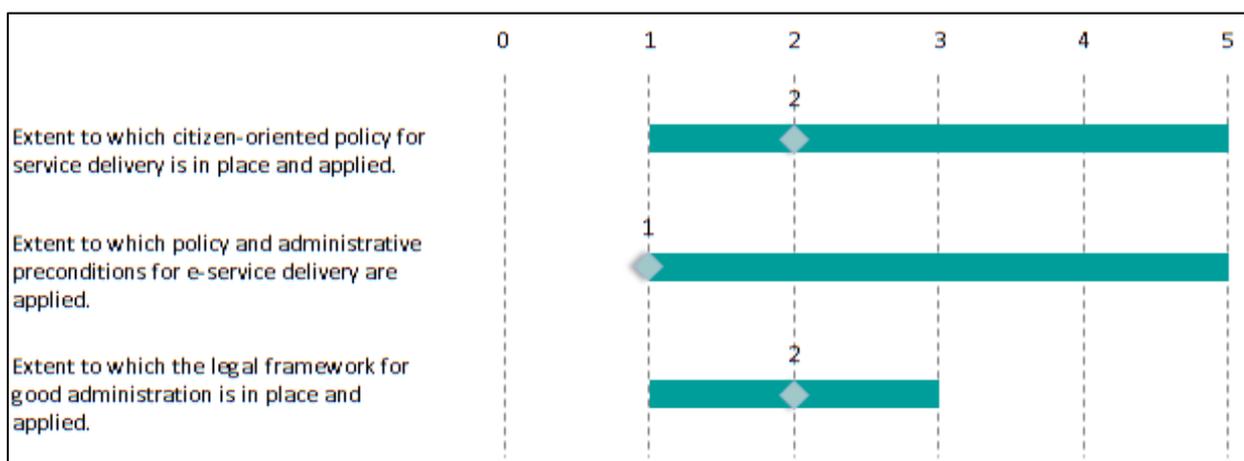
²⁹⁶ Not all levels of administration provided the data, so it was not possible to establish this indicator value. RS has two one-stop-shops, one for business registration and another for accessing data on births, marriages and deaths.

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| | | | | |
|--|---|---|------|------------------------------|
| | 4 | Number of services provided through one-stop shops. | 2014 | Not available ²⁹⁷ |
| | 4 | Percentage of wheelchair-accessible institutions. | 2014 | Not available ²⁹⁸ |
| | 4 | Share of citizens who submitted paperless/electronic/digital income tax statements last year. | 2014 | Not available ²⁹⁹ |
| | 4 | Share of companies that sent their tax declarations using the Internet. | 2014 | Not available ³⁰⁰ |

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 1. Country baseline value in comparison with the regional range



Analysis of Principles

Principle 1: Policy for citizen-oriented state administration is in place and applied.

As a result of constitutional arrangements, responsibility for policy making, and especially implementation, in the area of service delivery has been decentralised. Most of the services for citizens and businesses are managed at the level of Entities and the BD or at the lower levels.

An inventory of 227 services has been prepared at the State level³⁰¹. The scope of responsibilities of the State level administration covers primarily:

- technical processing of identity cards, passports and driving licences, as well as maintaining the registry of identity documents;
- VAT services;
- customs services;

²⁹⁷ Not all levels of administration provided data, so it was not possible to establish an indicator.

²⁹⁸ Data for the whole of BiH was not provided.

²⁹⁹ No data was available for the whole country on Annual Personal Income Tax returns.

³⁰⁰ No data was available for the whole country on Annual Corporate Income Tax returns.

³⁰¹ Document provided by the General Secretariat of the CoM of BiH.

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- issuing licences and permits regarding transport, electronic communications, audiovisual services and medicinal products;
- patents and trademarks³⁰².

The analysis below focuses mainly on the country level regarding the policy and at the State level regarding the elements of its implementation, as no comprehensive, countrywide information is available.

Joint commitment of the State level, the Entities and the BD to service delivery improvement across the country was expressed in the PAR Strategy³⁰³ and RAP1³⁰⁴. The priority areas include administrative proceedings and administrative services. However, both documents expired at the end of 2014 and no new strategic framework in this area has been proposed.

The institutional set-up for policy development and implementation for service delivery reflects the overall complexity of the country's administrative system. Initiatives for harmonisation of service delivery were set out in the PAR Strategy and RAP1. However, implementation was based on the voluntary commitment of the administrative bodies at State level, the Entities and the BD.

Historically, within the framework of the "Bulldozer Initiative" launched in 2002³⁰⁵, numerous regulations have been repealed or amended in order to improve the business climate. In recent years, regulatory reforms were fostered within the framework of the ISCRA Project³⁰⁶. In the period 2012-2014, 91 business procedures were simplified or eliminated at State level and in Entities³⁰⁷. Regulatory reform strategies were adopted in the FBiH and in the RS³⁰⁸. No evidence exists of a mechanism for analysis and elimination of administrative burdens in the legislative process at the State level.

The policy for public services improvement in the country lacks a strategic framework, which is reflected in the baseline value of 2 for the indicator on citizen-oriented policy for service delivery.

Some initiatives for e-services development cover the whole country, but no strategic framework for this area exists. The laws on e-signature, as a key element of legislative framework for e-service delivery, have been adopted at the State level³⁰⁹, in the Entities³¹⁰ and in the BD (although in the BD they were repealed later)³¹¹. However, there is no information on its implementation countrywide. At the State level, the law on e-signature has not been implemented because no certifying body has been set up³¹².

³⁰² Inventory of services provided by State level institutions provided by the General Secretariat of the CoM of BiH.

³⁰³ <http://parco.gov.ba/?id=68>.

³⁰⁴ <http://parco.gov.ba/?id=2842>.

³⁰⁵ B. Herzberg, "Investment Climate Reform: Going the last mile. The Bulldozer Initiative in Bosnia and Herzegovina", World Bank 2004, <http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-3390>

³⁰⁶ Investment Climate Regulatory Advisory Project, implemented by the International Finance Corporation (IFC).

³⁰⁷ SIDA, Review of IFC "Investment Climate Regulatory Advisory Project" (ISCRA) in BiH, 2011-2014. Final Report, June 2014, p. 90.

³⁰⁸ PARCO, Annual Progress Report from implementation of the Revised Action Plan 1, p. 36. For example, the RS Government adopted the Decision on the implementation of the process of impact assessment in the drafting of the Act (Official Gazette of RS, No. 2/13, following the adoption of the Regulatory Reform Strategy in 2012).

³⁰⁹ Law on Electronic Signature, BiH Official Gazette, No. 91/06.

³¹⁰ Law on Electronic Signature of RS, RS Official Gazette, No. 59/08.

³¹¹ Law on Electronic Signature of BD of BiH, BD Official Gazette, Nos. 39/10 and 61/10. This law was repealed later by the decision of the Assembly of the BD.

³¹² Information provided by the General Secretariat of the CoM of BiH (Department for Maintenance and Development of e-Business and e-Government).

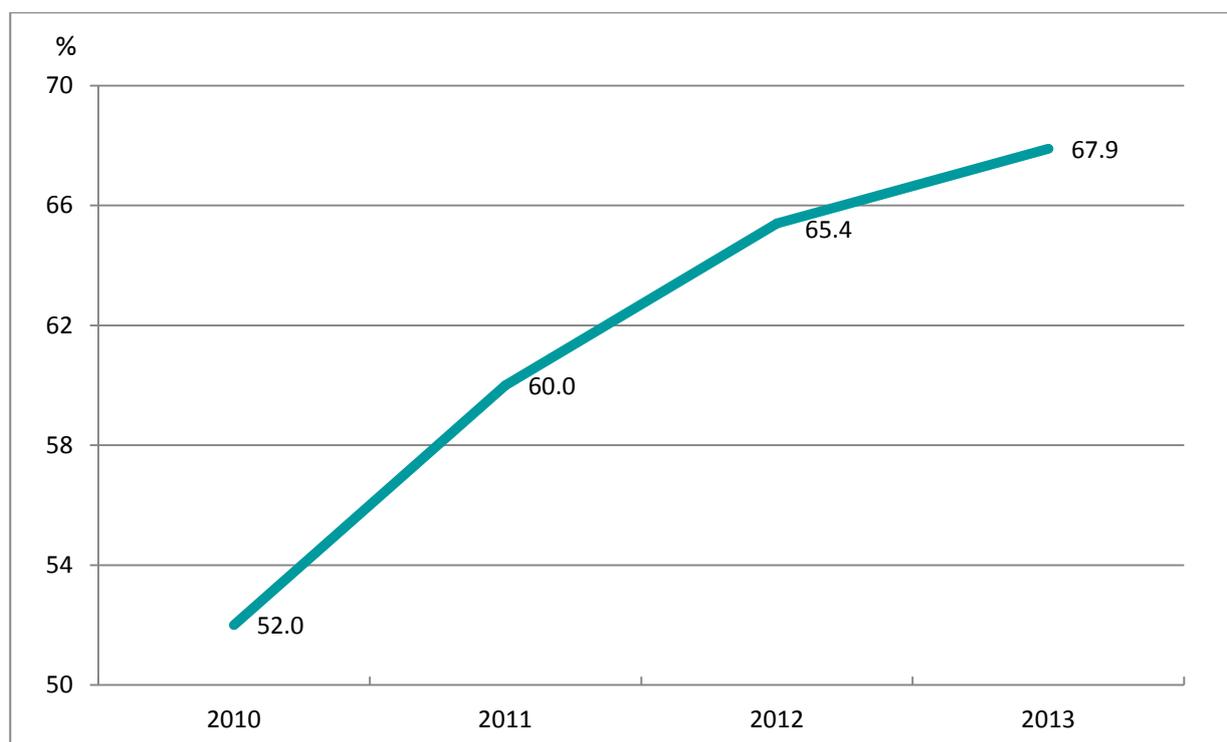
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Furthermore, the project for unifying interoperability standards for the State level, the Entities and the BD was co-ordinated by the PAR Coordinator's Office (PARCO)³¹³. However, interoperability standards were adopted only by the RS³¹⁴, and there is no evidence that they have actually been implemented.

At the State level, preparations for the e-government gateway are under way, and there are plans for offering e-services through this portal, starting with one pilot e-service³¹⁵. It should be noted that in the RS, the e-government portal already exists but it simply provides information about services and cannot carry out any transactions³¹⁶.

Internet coverage creates great opportunities for the expansion of e-services. The share of citizens with Internet access in BiH is comparable to that in most EU member states (67.9% of the population in 2013)³¹⁷.

Figure 2. Share of citizens using Internet in BiH (2010-2013)



Source: International Telecommunication Union, World Telecommunication/ICT Development Report and database, and World Bank estimates.

Policy in the area of e-services for the country is at an early stage of implementation. This explains the baseline value of 1 for the indicator on policy and administrative preconditions for e-service delivery.

The policy framework for service improvement, including the PAR Strategy and RAP1, expired at the end of 2014. Efforts were undertaken to create a legal framework for the development of e-services, but the level of implementation varies across the country.

³¹³ In the framework of the project "Design and Establishment of Interoperability Framework and Standards for Data Exchange", <http://parco.gov.ba/eng/?page=26&vijest=7594> and information received from PARCO.

³¹⁴ Information provided by PARCO and the Department for Maintenance and Development of e-Business and e-Government at the General Secretariat of the CoM of BiH.

³¹⁵ Interview with the Department for Maintenance and Development of e-Business and e-Government at the General Secretariat of the CoM of BiH.

³¹⁶ Based on the analysis of the esrpska.com portal.

³¹⁷ According to UN statistics for 2013: <http://data.un.org/>

Principle 2: Good administration is a key policy objective underpinning the delivery of public service, enacted in legislation and applied consistently in practice.

Strengthening the procedural guarantees for good administration was recognised as a priority in the PAR Strategy and RAP1. Strong emphasis was placed on improving co-operation between institutions in the course of administrative proceedings, enabling electronic communication between citizens and administrative authorities and ensuring that administrative cases are handled within statutory time limits³¹⁸. However, no comprehensive report presenting the outcomes of those initiatives is available.

The State level³¹⁹, the Entities³²⁰ and the BD³²¹ have their own laws on administrative procedure. In general, these follow a similar model. Major differences stem from specific features of institutional arrangements, e.g. the different organisation of courts dealing with administrative cases. There are no inventories of special regulations excluding or limiting the application of the general rules of administrative procedure.

All general laws on administrative procedure (LGAPs) enshrine key principles of good administrative behaviour³²². This includes the principle of legality, the right of the parties to comment before the final decision is reached by the administrative body and the right to appeal against decisions taken in the first instance. Legislation at State level, the Entities and the BD also require administrative bodies to provide reasons for decisions and details of appeal rights and procedures.

There is no comprehensive information about the training provided to civil servants on administrative proceedings.

The laws on general administrative procedure at State level, in the Entities and in the BD have a limited scope of application given the number of special regulations, which explains the baseline value of 2 for the indicator on the legal framework for good administration.

Favouritism in the decisions of government officials was rated as 3.05³²³ in BiH (on a scale of 1 to 7, where 7 represents no favouritism at all). This ranks at the level of some new EU member states.

The legislation on general administrative procedure at the State level, in the Entities and in the BD meets the standards of good administration. However, no inventories of special regulations are available, which limits the application of the general administrative procedures.

Principle 3: Mechanisms for ensuring the quality of public service are in place.

There is no overarching mechanism for improving the quality of public services throughout the country. The RAP1 envisaged introduction of a quality-monitoring scheme and regular customer satisfaction surveys in institutions at State level, the Entities and the BD. The analysis below focuses mainly on the initiatives undertaken at the State level, taking into account the limited scope of services managed at this level.

According to data provided by PARCO, three institutions³²⁴ at the State level have introduced quality management schemes based on the International Organization for Standardization (ISO). There are also plans to implement pilot projects of Total Quality Management, Common Assessment Framework (CAF) and ISO in some institutions. The monitoring of customer satisfaction takes different forms and is not conducted by all institutions. Regular monitoring of customer satisfaction is performed in a limited

³¹⁸ Revised Action Plan 1, pp. 67-88.

³¹⁹ Law on General Administrative Procedure (LGAP), Official Gazette of BiH, Nos. 29/02, 12/04, 88/07, 93/09 and 14/13.

³²⁰ LGAP of FBiH, Official Gazette of FBiH, Nos. 2/98 and 48/99; LGAP RS, Official Gazette of RS, Nos. 13/02, 87/07 and 50/10.

³²¹ LGAP of BD, Official Gazette of BD, No. 48/11.

³²² LGAP (State level), Articles 1-15, LGAP of the FBiH, Articles 5-10; LGAP of RS, Articles 5-11; LGAP of BD, Articles 4-10.

³²³ World Economic Forum, "The Global Competitiveness Report 2013-2014".

³²⁴ Agency for Identification Documents, Registers and Data Exchange of BiH (IDDEEA), Institute of Metrology of BiH, the Agency for Medicinal Products and Medical Devices of BiH.

number of institutions³²⁵. Other institutions focus on handling customer complaints as a tool for acquiring feedback from citizens.

Issuing identity documents has been decentralised³²⁶. However, the technical processing and personalisation of documents is provided by the State level institution for the whole country – the Agency for Identification Documents, Registers and Data Exchange of Bosnia and Herzegovina (IDDEEA). This falls under the responsibility of the Ministry of Civil Affairs. IDDEEA recently instituted several improvements, and that resulted in achieving the relatively short time needed for issuing identity documents (eight days on average for both IDs and passports). Personal documents are issued in 134 locations in the country (in almost all municipalities), which indicates that geographical accessibility is ensured. This primarily included digitalisation of the citizens' registry, which allows the issuing authorities to check the status of applicants more rapidly³²⁷.

By contrast, the registration of businesses is decentralised and has not been harmonised³²⁸. State level institutions are not involved in the provision of this service, which has resulted in an uneven quality of service provision across the country. The methodology of the World Bank's "Doing Business" survey provides data only for the capital city, which in this case means the Federation of BiH. The survey shows that the process of business registration in Sarajevo is time-consuming and expensive. The main factor influencing the length (37 days) and cost of this process is the long waiting time for court registration of companies, court and notary fees and the lack of a one-stop shop formula for registration³²⁹. The process of establishing a company involves 11 procedures. On the other hand, RS has launched a single-window procedure for business registration, which cuts the registration process to approximately one week³³⁰.

Some initiatives have attempted to disseminate quality management tools at the State level. Progress has been achieved in reducing the time needed to issue identity documents. However, the efficiency of the business registration process varies across the country, as the procedures have not been harmonised.

Principle 4: The accessibility of public services is ensured.

Equal access to public services countrywide is not guaranteed, as a result of the decentralisation of responsibility in this area³³¹. Because the standards of service provision across the country differ, the following analysis focuses on the State level.

At the State level, no institutions meet the criteria for classification as a one-stop-shop that is offering services from more than three different public institutions. This may be the result of the limited scope of services provided by State level institutions, which do not include services typically organised in the one-stop-shop formula in other countries, e.g. setting up companies and other business services.

³²⁵ At the State level, the regular monitoring of customer satisfaction is conducted, for example, in the Directorate for Civil Aviation, the Agency for Identification Documents, Registers and Data Exchange of BiH and the Agency for Medicines and Medical Devices.

³²⁶ The full list of authorities issuing identity documents is available at:
www.iddeea.gov.ba/index.php?option=com_content&view=article&id=92&Itemid=90&lang=en

³²⁷ Data provided by IDDEEA.

³²⁸ The Framework Law on Registration of Business Entities in BiH (Official Gazette of BiH, No. 42/04) regulates only general rules of maintenance of the registries of companies in the Entities and BD and does not cover the full process of setting up a business.

³²⁹ Country report, *Bosnia. Doing Business 2015* (data for 2014).

³³⁰ Under the RS's Law on Company Registration, the process of business registration involves six steps. The most important procedure is the request to the Intermediary Agency for IT and financial services, which handles court registration and the issue of an identifying statistic number. This agency is statutorily obliged to process the request within three days.

³³¹ One example is the different procedures for business registration, as described in the analysis of the previous principle.

IDDEEA, as the State level institution responsible for technical processing of identity documents, introduced new electronic IDs and driving licences in 2013 and a new generation of biometric passports in 2014, which guarantee higher standards of data protection³³².

As the e-signature does not function in practice at the State level, the scope of available e-services is limited to providing information, with no possibility of completing transactions online. No single e-portal has yet been established for the services at the State level. The Indirect Taxation Authority (ITA) of BiH, as a State level institution managing VAT issues for the whole country, has launched an e-VAT system³³³, based on its own system for user authentication. Taxpayers may submit applications to one of the regional offices of ITA and receive individual usernames and passwords for logging into the e-VAT system. This enables taxpayers to check their VAT records. However, online submission of tax declarations is not yet available. ITA also manages customs services, enabling online submission of customs and transit declarations³³⁴. According to ITA, the webpage www.uino.gov.ba contains all legislation concerning indirect taxation, and is regularly updated.

At State level and in the Entities, an electronic registry of permits includes information on procedures for obtaining various permits for business activities, e.g. export and import permits and veterinary certificates³³⁵. This register consists of service charters providing information on formal requirements for obtaining each permit, information on fees, deadlines for handling requests and contact details to issuing authorities.

No data is available on the accessibility of public buildings of State level institutions for customers with disabilities.³³⁶ Certain technical standards, including requirements on accessibility, apply to the websites of State level institutions³³⁷. However, the requirements are applicable only to institutions connected to the Government's platform. This is voluntary and only about half of the institutions at the State level use it.

Access to other e-services provided by the State level is uneven. In the RS, the e-government portal³³⁸ provides comprehensive information on the services offered to citizens. The portal meets the criteria of accessibility for users with disabilities. Some services are also available in the RS via SMS, e.g. checking the status of identity documents, vehicle registration or payments due³³⁹. The FBiH and the BD do not have the equivalent e-governmental portals.

The accessibility of services and e-services is uneven at the State level, in the Entities and in the BD as a result of the decentralisation of responsibility for most public services for citizens and businesses. Only the RS has a functioning e-government portal. At the State level, the e-VAT system has been introduced. The State level has developed e-services for VAT and improved the accessibility of websites of State level institutions.

Key recommendations

Short-term (1-2 years)

- 1) The CoM of BiH, the Governments of the FBiH, the RS and the BD should agree on a single approach towards policy for service delivery in BiH, including the necessary technical standards. All

³³² Data provided by IDDEEA.

³³³ www.uino.gov.ba/en/IT_sektor/ePDV.html.

³³⁴ http://www.uino.gov.ba/en/IT_sektor/Asycuda.html

³³⁵ <http://rap.mvteo.gov.ba/egfVwOdIukaJedinice.aspx>.

³³⁶ Some regulations do exist at the Entity level. In the RS, access to public institutions for users with physical disabilities is regulated by the Ordinance on the conditions for planning and designing buildings for the unobstructed mobility of children and people with reduced physical abilities (Sl.gl.RS No. 6/03).

³³⁷ Decision on adoption of the Instruction on development and maintenance of BiH Institutions' official webpages (Official Gazette of BiH, No. 21/09).

³³⁸ www.esrpska.com.

³³⁹ www.mup.vladars.net/lat/index.php?vijest=sms&vrsta=status_dokumenta.

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citizens should have access to the same level of services provided by the public administration, unless expressly stipulated in the Constitution.

- 2) The Office of the Chairman of CoM should ensure the launching of the e-government portal providing information on all services offered at the State level. The number of services fully available online, including transactions, should be systematically increased, starting with a set of pilot e-services.
- 3) The Secretariat General of the CoM of BiH, the Governments of the Entities and the BD should implement the decision that provides for a uniform standard of interoperability of the IT systems of public institutions.
- 4) The CoM of BiH, the Governments of the Entities and the BD should harmonise the procedure for business registration to ensure that this service is provided by one-stop shops and that applicants' costs are minimised.
- 5) The Secretariat General of the CoM of BiH should implement a fully operational e-authentication mechanism. This is one of the chief prerequisites for the development of electronic services for citizens.

Medium-term (3-5 years)

- 6) The Ministry of Justice at the State level and the relevant ministries at the level of the Entities and the BD should carry out a comprehensive review of all special regulations on administrative procedures, to investigate the scope of and the justification for exemptions from the Law on General Administrative Procedure.
- 7) The CoM of BiH, the Governments of the Entities and the BD should ensure implementation of tools measuring citizen satisfaction with public services. Customer feedback should be used to improve the accessibility and quality of services.

6

Public Financial Management

PUBLIC FINANCIAL MANAGEMENT

1. STATE OF PLAY AND MAIN DEVELOPMENTS: 2014-APRIL 2015

1.1. State of play

Bosnia and Herzegovina has a complex public finance system. It comprises the State, the two Entities, the Federation of Bosnia and Herzegovina and the Republika Srpska (the three of which account for the majority of spending), and the Brčko District³⁴⁰.

Three of the last five Budgets in BiH, including the 2015 Budget, have not been adopted on time, which indicates that the current system is not working. The 2015 Budget deadlines were breached owing to delays in forming the Council of Ministers (CoM) at the State level and in the Government of the FBiH. The 2013 Budget Execution Report for the State has yet to be approved in the Parliamentary Assembly process.

The debt burden continues to rise. At the end of 2014, gross debt was estimated at 36.9% of gross domestic product (GDP), up from 33.9% at the end of 2013³⁴¹. These figures are not calculated on a European System of National and Regional Accounts (ESA) basis, although the National Economic Reform Programme (NERP) 2015-2017 states that a priority for the RS will be to produce financial data that complies with internationally acknowledged standards of macroeconomic statistical systems, such as the ESA and Government Finance Statistics (GFS)³⁴².

The main elements required for an effective framework of financial management and control (FMC) are not yet in place across BiH, with different degrees of progress in the State, the Entities and the BD³⁴³. The development of internal auditing is more advanced. However, the official Central Harmonisation Unit (CHU) Co-ordination Board has not met since 2011 and the Public Internal Financial Control (PIFC) Technical Assistance project³⁴⁴ has had to provide the forum for a co-ordinated approach to PIFC, including the development of technical material and the provision of internal audit (IA) training. This project will end in July 2015.

The new Public Procurement Law (PPL)³⁴⁵ came into force on 27 November 2014. It is largely in line with 2004 European Union (EU) Public Procurement Directives³⁴⁶ (domestic preferences remain the most important non-harmonised issue). Most of the key implementing regulations were prepared and adopted before the initial application of the new Law, while some remain to be issued before 27 May 2015³⁴⁷. At present, the institutional set-up of the procurement system is well defined. However, the performance of all of the institutions involved (especially the Procurement Review Body [PRB])

³⁴⁰ Table 3 of the National Economic Reform Programme (NERP) 2015-2017 shows that the estimated total expenditure for the State and the Entities in 2014 was 12 087BAM million, of which 949BAM million was for the State institutions (12%).

³⁴¹ NERP 2015-2017, p. 98.

³⁴² NERP 2015-2017, p. 54.

³⁴³ For FMC, the State enacted legislation in 2012. The FBiH adopted legislation in 2014 (but this has not yet been through all the stages required for full approval). In the RS, draft legislation exists but has not been approved. The BD is not at the legislation stage, but in December 2014, it approved a PIFC Strategy 2014-2017.

³⁴⁴ Contract No. 2012/308-992, Strengthening Public Financial Management in BiH.

³⁴⁵ Službeni glasnik (SG) BiH No. 39/14.

³⁴⁶ Directive No. 2004/17/EC of the European Parliament and of the Council of 31 March 2004, co-ordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors; Directive No. 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the co-ordination of procedures for the awarding of public works contracts, public supply contracts and public service contracts.

³⁴⁷ Six months after the entry into force of the PPL.

remains a challenge. In the field of public-private partnerships (PPP) and concessions, the legislation and the administrative set-up remain highly fragmented. The procedural rules in the field of concessions/PPPs are not in compliance with basic EU principles.

The remedies system does not yet function properly: branch offices of the PRB in Banja Luka and Mostar have not been created; no decisions were published in 2014; and a backlog of some 500 cases still awaits resolution. The formalistic approach of the PRB leads to the frequent rejection of tenders for reasons of minor clerical errors and to an almost exclusive use of price (acquisition cost) as the only award criterion, to the detriment of quality.

These practices are only partly mitigated by a well-functioning system for public procurement training and recent efforts to harmonise views on the proper implementation of the PPL among the Public Procurement Agency (PPA), the PRB and certified trainers.

The development of the Supreme Audit Institutions (SAIs) in BiH is progressing, and they submit their reports covering financial, compliance and performance audits to the Parliamentary Assembly at the State level, the Assembly of the RS, the Parliament of the FBiH and the Assembly of the BD. The SAIs apply a risk-based approach as part of their annual audit plans because the levels of staff are below authorised levels, resulting in reduced coverage for mandatory audits.

1.2. Main developments

The new Law on the Budget³⁴⁸ in the FBiH, which was enacted in 2013, was implemented in 2014.

A PIFC Strategy 2014–2017 for the BD was approved by the Government of the BD on 2 December 2014.

After a lengthy preparation period³⁴⁹, the new PPL was finally adopted by Parliament on 29 April 2014 and published on 19 May. During the second half of 2014, the efforts of the main institutions in the PP system focused on the preparation and adoption of the corresponding secondary legislation.

Major implementing legislation was adopted by the Council of Ministers of Bosnia and Herzegovina (CoM of BiH)³⁵⁰, whereas some operational instructions were approved by the board of the PPA and issued by its Director³⁵¹.

In external audit, the SAI Law for the RS³⁵² was amended in 2014 to improve the application of International Organization of Supreme Audit Institutions (INTOSAI) and International Federation of Accountants (IFAC) auditing standards³⁵³, the audit of public enterprises³⁵⁴, the definition for the

³⁴⁸ Law on the Budget in the FBiH, Official Gazette No. 12/13.

³⁴⁹ The draft PPL was presented in November 2010.

³⁵⁰ SG BiH No. 96/14, Guidelines on Establishment and Implementation of Qualification System; SG BiH No. 104/14, Rulebook on Contract Award Procedure for Contracts Referred to in Part B of Annex II of the Public Procurement Law; SG BiH No. 97/14, Instruction on Regulating the Conditions and Ways of Awarding Contracts by Sectoral Contracting Authorities to Associated Company, Business Partnership or Sectoral Contracting Authority Forming Part of a Business Partnership; SG BiH No. 103/14, Decision for Obligatory Preferences Implementation for Local Economic Operators; SG BiH No. 103/14, Rulebook on Establishment and Conduct of the Procurement Commission; SG BiH No. 86/14, Instruction on Way of Payment, Control and Return of Taxes Prescribed by Article 108 PPL.

³⁵¹ SG BiH No. 90/14, Instructions on Preparation of Models on Tender Documentation and Offer; SG BiH No. 90/14, Rulebook on Direct Agreement; SG BiH No. 90/14, Rulebook on Guarantees for Participation and Execution of the Contract; SG BiH No. 90/14, Guidance on Way of Keeping Minutes on the Bid Opening; SG BiH No. 90/14, Instruction on Conditions on Conducting and Ways of Publication of Notices and Delivery of Reports in Public Procurement Procedures in the E-Procurement Information System; SG BiH No. 21/15, Regulation, with a list of categories, on Contracting Authorities Obligated To Apply the Law on Public Procurement.

³⁵² Law on Public Sector Auditing of the RS, Official Gazette No. 98/05 and No. 20/14

³⁵³ Law on Public Sector Auditing of the RS, Article 15.

³⁵⁴ Law on Public Sector Auditing of the RS, Article 16.

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process of performance audit³⁵⁵, the communications between the SAI and the Office of the Public Prosecutor³⁵⁶, the certification of audit staff³⁵⁷, and conflicts of interest³⁵⁸.

³⁵⁵ Law on Public Sector Auditing of the RS, Article 19.

³⁵⁶ Law on Public Sector Auditing of the RS, Article 24.

³⁵⁷ Law on Public Sector Auditing of the RS, Article 38a.

³⁵⁸ Law on Public Sector Auditing of the RS, Article 30.

2. ANALYSIS

The analysis covers the 16 Principles for the public financial management (PFM) area, grouped under 8 key requirements³⁵⁹. For each key requirement, baseline values are provided for the indicators of the monitoring framework of the Principles. The Principles cover the whole cycle of financial management and address: budget formulation; accounting and reporting practices; FMC; internal audit; public procurement; and external audit.

2.1. Key requirement: The Budget is formulated in compliance with transparent legal provisions and within an overall multi-annual framework, ensuring that the general government budget balance and debt-to-gross domestic product are on a sustainable path.

Baseline values

The functioning of medium-term and annual resource planning is examined through three qualitative and five quantitative indicators.

In BiH, Budgets at the State level, the two Entities and the BD are formulated within a multi-annual framework and in accordance with the legal provisions. However, the Budget is not based on realistic assumptions and medium-term budget planning is based more on legal obligations on the expenditure side than on planned and costed policy objectives. The debt to GDP ratio (which is not an ESA-based figure) has risen from 33.9% at the end of 2013 to 36.9% at the end of 2014³⁶⁰. These shortcomings are reflected in both the quantitative and qualitative indicators.

| | Principle no. | Indicator | Baseline year | Baseline value |
|--------------|---------------|---|---------------|------------------------------|
| Qualitative | 1 | MTBF strength index. | 2014 | 2 |
| | 1 | Fiscal rules strength index. | 2014 | 1 |
| | 2 | Extent to which the annual budget proposal includes full information at the time of presentation to the Parliament. | 2014 | 2 |
| Quantitative | 1 | Percentage differences between the planned budget revenues in the MTBF (as approved two years before the latest available year) and the outturn of the latest available year. | 2014 | Not available ³⁶¹ |

³⁵⁹ SIGMA (2014), [The Principles of Public Administration](#), OECD Publishing, Paris, pp. 75-109.

³⁶⁰ NERP 2015-2017, p 98.

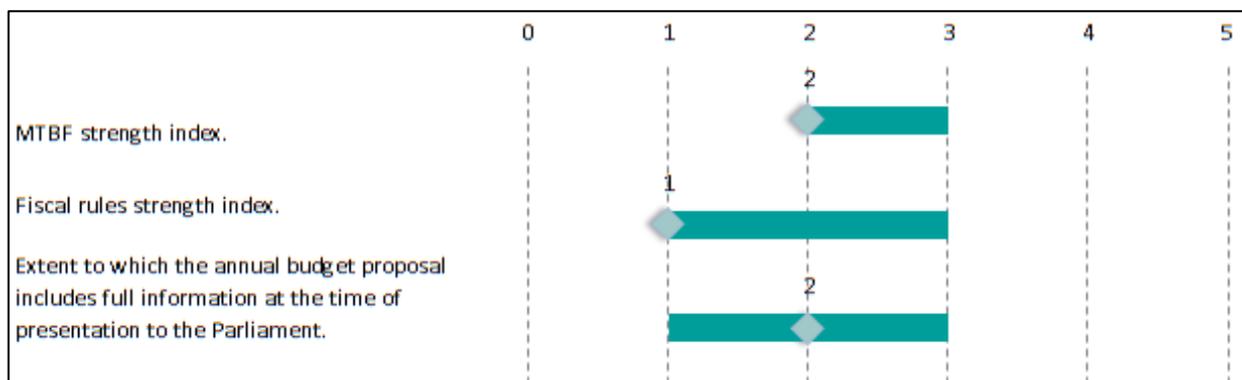
³⁶¹ The 2014 data is not available.

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| | | | | |
|--|---|--|------|------------------------------|
| | 1 | Percentage differences between the planned budget expenditure in the MTBF (as approved two years before the latest available year) and the outturn of the latest available year. | 2014 | Not available ³⁶² |
| | 2 | General government budget balance. | 2014 | -1.8% ³⁶³ |
| | 2 | Percentage differences between the planned budget revenues (as approved in the Budget) compared to the outturn of the latest available year. | 2013 | -6% ³⁶⁴ |
| | 2 | Percentage differences between the planned budget expenditure (as approved in the Budget) compared to the outturn of the latest available year. | 2013 | -5% ³⁶⁵ |

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 1. Country baseline value in comparison with the regional range



Analysis of Principles

Principle 1: The Government publishes a medium-term budgetary framework on a general government basis that is founded on credible forecasts and covers a minimum time horizon of three years; all budget organisations operate within it.

A medium-term forecast framework, the Global Framework on Fiscal Balance and Policies (GFFBP)³⁶⁶, is published mid-year of the preceding year to inform and set the parameters for the State, the Entities

³⁶² Ibid.

³⁶³ NERP 2015-2017, Table 6, p. 99.

³⁶⁴ The 2014 data is not available. This indicator has been calculated by adding the 2013 figures for the State level, the FBiH, the RS and the BD. The figures are not consolidated, which means that there is no adjustment to exclude transactions between the State and the Entities or the BD.

³⁶⁵ Ibid.

³⁶⁶ BiH Law on the Fiscal Council, Official Gazette No. 63/08.

and the BD. The development of the GFFBP is the responsibility of the Fiscal Council that consists of the Chairman of the BiH CoM, the Prime Ministers of the RS and the FBiH, and the respective Ministers for Finance. The Governor of the Central Bank and the Mayor of the BD each have observer status. An advisory group comprising members appointed by the three Heads of Government and experts from the three Ministries of Finance (MoFs)³⁶⁷ and the Finance Directorate of the BD prepares the draft of the GFFBP³⁶⁸.

The GFFBP covers the three-year period ahead and summarises the proposed fiscal policies for the State, the Entities and the BD in composite tables. It lists risks to the fiscal forecasts being achieved. The GFFBP is not presented for approval to the Parliamentary Assembly at the State level, the Parliament of the FBiH, the Assembly of the RS or the Assembly of the BD, but provides the basis for the MoFs³⁶⁹ to prepare MTBFs, which set out overall fiscal projections as well as economic and organisational classifications for their individual budget proposals³⁷⁰.

In 2014, the GFFBP was finalised in July and it covered the macro-economic projections, forecasts for indirect taxes only (direct taxes are a matter for the Entities) and overall planned levels of expenditures and debt levels³⁷¹. Neither the GFFBP nor the MTBFs (which also show projections at the level of public organisations but do not cover extra-budgetary funds (EBFs)³⁷²) explain how the targets for the coming three years are to be met. Neither do they outline a broad fiscal strategy within the context of a macroeconomic framework. Furthermore, they do not contain any sensitivity analysis.

Both the MTBF 2015-2017 for the FBiH and the MTBF 2015-2017 for the RS are dated June 2014, which suggests that they were produced before the finalisation of the GFFBP on which they are supposed to be based. Furthermore, the MTBF 2015-2017 for the State and the MTBF 2015-2017 for the BD remain unpublished³⁷³.

Neither the GFFBP nor the MTBFs contain information on strategic plans for policy development, so there is no link between strategic plans for policy development and budget projections. There are no fiscal rules at the State level. Fiscal targets are a political commitment of the Government, which has the freedom to set the objectives. With no fixed rule, there can be no monitoring of the adherence to it, and there are no defined actions if the targets are not met. Hence, a value of 1 is assigned to the fiscal rules index indicator. There is no independent fiscal council to monitor the Budgets at the State, Entities or BD level.

The value of 2 for the MTBF strength index indicator is assigned because, while there is a medium-term framework based on some co-ordination of the central government tiers, it is only a flexible framework with indicative targets. Parliament is not involved in its preparation, and it is not monitored and enforced.

The GFFBP sets the overall framework for budget formulation, but it is not published and it is not a comprehensive document that consolidates information from the Entities. Neither the GFFBP nor the MTBFs cover expenditures by EBFs. They do not link strategic plans for policy development with

³⁶⁷ The Ministry of Finance and Treasury (MoFT) of BiH, the MoF of the FBiH and the MoF of the RS.

³⁶⁸ BiH Law on the Fiscal Council, Article 9.

³⁶⁹ Including the Finance Directorate in the BD.

³⁷⁰ Budget Framework Paper Institutions of BiH, Budget Framework Document of the FBiH, Budget Framework Paper of the RS and Budget Framework Paper of the BD.

³⁷¹ Global Fiscal Framework 2015-2017.

³⁷² In the FBiH, the main EBFs are the Pension and Disability Insurance Fund, the Health Insurance Fund and the Employment Fund. In the RS, the main EBFs are the Pension and Invalid Insurance Fund, the Health Insurance Fund, the Public Child Care Fund and the Employment Bureau.

³⁷³ For the State level, the latest available version is the MTBF 2014-2016 (http://www.mft.gov.ba/bos/images/stories/budzet/2013/DOB_2014_2016.pdf); for the BD, the latest available version is the MTBF 2012-2014 (<http://www.bdcentral.net/index.php/ba/vani-akti/budet-brko-distrikta-bih>).

budget projections. There are no fiscal rules or an independent fiscal council (monitoring agency) at the State, Entities or BD level.

Principle 2: The Budget is formulated in line with the national legal framework, with comprehensive spending appropriations that are consistent with the medium-term budgetary framework and are observed.

Based on the GFFBP, the State level Ministry of Finance and Treasury (MoFT) prepares an MTBF³⁷⁴ that is the basis for the annual Budget Law. The Budget timetable is set out in legislation³⁷⁵. Similar provisions apply in the Entities and the BD, where Budget laws³⁷⁶ require medium-term expenditure outlooks and set out the Budget calendar. The MoFs³⁷⁷ and the Finance Directorate of the BD prepare the annual Budgets and issue guidelines to Budget users (following decisions by the CoM at the State level, and the Governments of the Entities and the BD on the overall parameters of spending and revenue consistent with the MTBF parameters) that set out the overall framework within which requests are made. Based on the overall framework and budget requests made by budget users, the State level MoFT submits a draft Budget to the CoM, and thence to the Presidency, before submission to the Parliamentary Assembly. Similar arrangements apply in the Entities and the BD.

For the State level, the FBiH and the BD, although not the RS, the Budget laws³⁷⁸ prescribe that the respective Budgets are to be supported by explanatory information and documentation (including macro-economic projections, the list of appropriations, policy objectives for the coming year, and information on new policies, debt projections and the current year's outturns) when they are submitted to the Parliamentary Assembly at State level, the Parliament of the FBiH and the Assembly of the BD. Budget documentation does not provide long-term projections (of more than five years) and does not specifically list contingent liabilities. Neither at the State level nor in the Entities nor the BD is an estimate given for the likely outturn of revenue and expenditure for the current year to act as a comparison for the forthcoming year. There is no formal list of fiscal risks published. Only the domestic co-financing element of the Instrument for Pre-accession Assistance (IPA) projects is shown. A specific feature in BiH is the existence of EBFs in the two Entities and the BD (e.g. for Health, Unemployment and Pensions). Parliamentary approval of the budgets of these funds is not required by law³⁷⁹. Non-financial performance information is also absent from budget documentation.

At the State level, in the Entities and in the BD, there are similar provisions relating to the annual Budget timetables (although only the RS sets out a detailed timetable³⁸⁰ for the formation of the Budget until its adoption by the Parliament). Common to all is the short time available to the parliamentary bodies³⁸¹ to consider the draft Budget in relation to the three-month timeframe recommended by the OECD³⁸². For the 2015 Budget, the Budget submission to the CoM of BiH was on

³⁷⁴ Law on the Financing of the Institutions of BiH, Article 5, Official Gazette Nos. 61/04, 49/09 and 42/12.

³⁷⁵ Law on the Financing of the Institutions of BiH.

³⁷⁶ Law on the Budget in the FBiH, Official Gazette Nos. 102/13 and 102/14; Law No. 121 on the Budget System of RS, 25 December 2012; and Law on the Budget of BD of BiH, Official Gazette of BD of BiH No. 17/08.

³⁷⁷ MoFT of BiH, the MoF of the FBiH and the MoF of the RS.

³⁷⁸ Law on the Financing of the Institutions of BiH, Article 8; Law on the Budget in the FBiH, Article 26; and Law on the Budget of BD of BiH, Article 17.

³⁷⁹ The budgets of EBFs are approved by the Government in the RS (Law on the Budget System of RS, Article 36). The Budgets are submitted to the Parliament of the FBiH for information (Law on the Budget in the FBiH, Article 19). The Budgets are submitted to the Assembly of the BD for information (Law on the Budget of BD of BiH, Article 19.3).

³⁸⁰ Law on the Budget System of RS, Article 19.

³⁸¹ State level – Budget submitted on 1 November for adoption by 31 December; the FBiH – Budget submitted 15 November for adoption by 31 December; the RS – Budget submitted by 5 November for adoption by 15 December; and the BD – Budget submitted 1 October for adoption by 1 December.

³⁸² OECD (2002), [OECD Best Practices for Budget Transparency](#), Article 1.1, OECD Publishing, Paris.

12 December 2014, which meant it missed the legal requirement³⁸³ for submission by 1 October by over ten weeks.

For the reasons set out above, the value for the indicator on the extent to which the annual Budget proposal includes full information at the time of presentation to the Parliament is 2.

The annual Budget preparation is set down in law, but deadlines were missed in 2014 and have been missed in the past. The information given to the Parliaments as background to their deliberations on the Budgets is not extensive. The time available to the Parliaments for considering the draft Budgets is short and is not in line with best practice. The non-involvement of the Parliaments in the Entities and the Assembly in the BD in approving the spending of the EBFs is a major weakness.

Key recommendations

Short-term (1-2 years)

- 1) The MoFT at the State level, the MoF of the FBiH, the MoF of the RS and the Finance Directorate of the BD should each amend the respective Budget laws to allow greater time for parliamentary consideration.
- 2) The MoFT at the State level, the MoF of the FBiH, the MoF of the RS and the Finance Directorate of the BD should each ensure that information given in the respective annual Budgets includes an end-of-year estimate of each budget user's spending for the current year.
- 3) The MoF of the FBiH, the MoF of the RS and the Finance Directorate of the BD should each ensure that in the Entities and the BD, EBFs are brought fully into the budgetary approval process.
- 4) The MoFT at the State level, the MoF of the FBiH, the MoF of the RS and the Finance Directorate of the BD should each ensure that the full costs of IPA projects are recorded in both the MTBFs and the annual Budgets.
- 5) To promote greater public awareness, the draft and adopted Budget and all the background documents should be published on the respective websites of the MoFs once adopted at the Government level.

Medium-term (3-5 years)

- 6) The Fiscal Council should ensure that the reports of the respective Budgets (including the State, the Entities and the BD) are consolidated into an annual report based on Eurostat standards, and this should be presented to the Parliamentary Assembly for its consideration at the time of the annual Budget discussions.
- 7) The State level MoFT should examine the feasibility of establishing an independent fiscal council and should submit a report on this to the CoM of BiH.

2.2. Key requirement: Accounting and reporting practices ensure transparency and public scrutiny over public finances; both cash and debt are managed centrally, in line with legal provisions.

Baseline values

The execution, monitoring and reporting of public finances is examined through four quantitative and two qualitative indicators.

In BiH, the planning of funding requirements and monitoring of in-year expenditures is weak. Monthly profiles are not published or even used internally. Transparency is poor due to the lack of profile data and failure to publish monthly reports or, when quarterly reports are published, to explain variations in

³⁸³ Law on the Financing of the Institutions of BiH, Article 7.

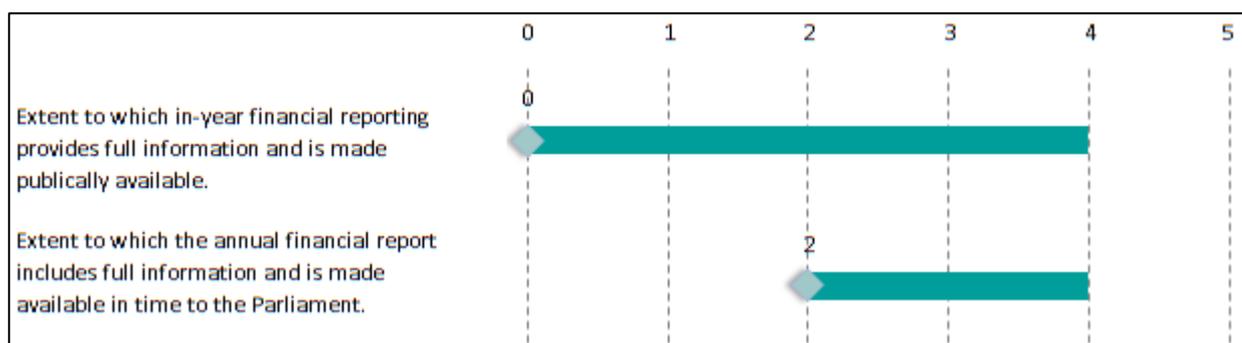
Bosnia and Herzegovina
Public Financial Management

actual as opposed to planned spending by individual budget users. These shortcomings are reflected in both the quantitative and qualitative indicators.

| | Principle no. | Indicator | Baseline year | Baseline value |
|--------------|---------------|--|---------------|------------------------------|
| Qualitative | 5 | Extent to which in-year financial reporting provides full information and is made publically available. | 2014 | 0 |
| | 5 | Extent to which the annual financial report includes full information and is made available in time to the Parliament. | 2014 | 2 |
| Quantitative | 3 | Average percentage differences between cash flow projections and actual cash balance on a monthly basis. | 2014 | Not available ³⁸⁴ |
| | 3 | Accumulated arrears for central government measured as a percentage of total expenditure at the end of the latest available calendar year. | 2013 | Not available ³⁸⁵ |
| | 4 | Public-sector debt servicing costs as a share of gross domestic product. | 2014 | 2.5% ³⁸⁶ |
| | 4 | Difference of public-sector debt level outturn from target. | 2014 | -4.3% |

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 2. Country baseline value in comparison with the regional range



³⁸⁴ Monthly data is not prepared.

³⁸⁵ Data for FBiH was not supplied so this cannot be calculated. For 2013: State level – arrears were 13% of total expenditure; RS – arrears were 14% of total expenditure; BD – arrears were 30% of total expenditure; 2014 data is not available because the Budget Execution Reports have not been published.

³⁸⁶ This is interest on external debt only. Details of interest on domestic debt are not available. External debt being only 69% of total debt in 2014 suggests that the total debt servicing cost in 2014 was over 3.5% of GDP, which is very high.

Analysis of Principles

Principle 3: The Ministry of Finance, or authorised central treasury authority, centrally controls disbursement of funds from the treasury single account and ensures cash liquidity.

At the State level, the Law on the Financing of the Institutions of BiH³⁸⁷ establishes the treasury single account (TSA) into which central government revenues are paid and from which spending requests are met. Similarly, the respective Budget laws of the Entities and the BD require the establishment of a TSA³⁸⁸ that also handles the transactions of EBFs. Therefore, the MoFT at the State level, the Federal MoF in the FBiH, the MoF in the RS and the Finance Directorate in the BD each carry out a cash management function.

The MoFT at the State level, the Federal MoF in the FBiH, the MoF in the RS and the Finance Directorate in the BD are each required to draw up cash-flow projections³⁸⁹, which are issued on a quarterly basis to budget users. The respective Treasuries execute payments on behalf of budget users once the necessary procedures are completed. At the State level, there is a daily reconciliation of the bank account and the treasury system.

Cash-flow projections are not made at the beginning of each year. Cash planning for each month is based on dividing each organisation's yearly allocation by 12, with a provision allowing a user to request extra funds in some cases. These estimates are used for cash rationing or as an expenditure control, rather than as an accurate projection of what is likely to happen in the course of the year and on which liquidity requirements can be forecast. This can lead to a build-up of arrears. Arrears in the past have been significant, and there have been cases of non-payment of wages and suppliers. No data was supplied in relation to 2014 but, for 2013, the level of arrears was 13% of total expenditure for the State, 14% of total expenditure in the RS and 30% in the BD. No data was provided for the FBiH. Arrears in EBFs and local authorities are not captured in the reporting systems of the Entities and the BD.

While there is a TSA at the State level, in the Entities and in the BD, cash-flow projections for each month are estimated by dividing the yearly allocation by 12, which has led to liquidity problems. The level of arrears has been high in recent years and the fact that data is not available for the Federation is a concern. Also, the non-inclusion of EBFs and local authorities in the arrears figures is a significant issue.

Principle 4: There is a clear debt management strategy in place and implemented so that the country's overall debt target is respected and debt servicing costs are kept under control.

The responsibility for external debt management lies with the MoFT at the State level³⁹⁰. There is a high-level advisory committee that comprises two representatives of the CoM – one of which is the Minister of Finance and Treasury who chairs the Commission – one representative of the Central Bank, two representatives of the FBiH, two representatives of the RS and one representative of the BD. The Central Bank acts as agent for the MoFT at the State level³⁹¹, and the relevant accounts are maintained in the Central Bank.

Although internal debt is primarily the responsibility of the Entities³⁹², the MoFT at the State level is also authorised to collect details of debt and guarantees in the Entities and the BD, including

³⁸⁷ Law on the Financing of the Institutions of BiH, Article 27.

³⁸⁸ Law on the Budget in the Federation of BiH, Article 52; Law on the Budget System of RS, Article 2; Law on the Budget of BD of BiH, Article 23.

³⁸⁹ Law on the Financing of the Institutions of BiH, Article 12; Law on the Budget of the FBiH, Article 19; Law on Treasury of RS, Article 10; Law on the Budget of BD of BiH, Article 26.

³⁹⁰ Law on Debt, Borrowing and Guarantees of BiH, Article 4, 2005.

³⁹¹ Law on Debt, Borrowing and Guarantees of BiH, Article 17, 2005.

³⁹² The BD debt in 2014 was only BAM 22 million out of a total of BAM 3 265 million.

municipalities and cantons on a quarterly basis³⁹³. There is a Debt Management Unit in the MoFT at the State level, which keeps a database of all debt for the State, the Entities and the BD. Details of the debt and guarantees are published each year in the Official Gazette³⁹⁴. The Ministry also publishes details of the total public debt stock in BiH in the MTBF document³⁹⁵ and in NERP³⁹⁶. However, there is no detailed sensitivity analysis, apart from a brief acknowledgement that an appreciation in the US dollar could lead to an increase in the level of debt. About 49% of total debt is repayable on a variable rate basis, but there is no detailed analysis of how an increase in these rates would affect the debt³⁹⁷, even though the average maturity of this debt is eight years. This means less refinancing risk but a greater exposure to interest rate risk. There is no regular reporting of debt other than the annual data. Furthermore, the published general government debt figures are not based on ESA standards.

The debt to GDP ratio has risen from 33.9% at the end of 2013 to 36.9% at the end of 2014³⁹⁸, having increased only slightly in the period from 2011 to 2013 (it was 32.9% at the end of 2011³⁹⁹). Public debt servicing cost is high at 2.5% of GDP on external debt alone (there is no data for servicing of domestic debt). As external debt was only 69% of total debt in 2014, the total debt servicing cost in 2014 could have been over 3.5% of GDP, which is very high.

There is active management of the debt of BiH, with the overarching objective being to avoid defaulting on it. However, there is no debt management strategy and no analysis of debt sustainability. The debt to GDP ratio is rising and debt servicing costs are high so there is a danger that debt is on an unsustainable path.

Principle 5: Budget transparency and scrutiny are ensured.

The chart of accounts is not harmonised across the State level, the Entities and the BD, and the consolidation of transactions in the Entities between the higher and lower levels of government is made difficult by the inconsistent recording of these transactions. This is particularly the case in the FBiH, where some local government bodies do not have a treasury system. However, the Central Bank publishes some consolidated information, the latest available year being 2013.

Monthly profiles are not published or even used internally; hence the differences between cash flow projections and the actual cash balances cannot be calculated on a monthly basis. There is no monthly reporting of data that gives an up-to-date picture of the evolving fiscal position throughout the year. The MoFT at the State level is required to publish quarterly data on the emerging fiscal position within 20 days of the end of the quarter⁴⁰⁰. This is done and presented to the CoM of BiH for their consideration. Similar provisions apply in the FBiH, where quarterly reports from budget users and EBFs must be submitted to the MoF within 20 days of the quarter's end⁴⁰¹. In the RS, however, the Law only requires the Government to give the Parliament a six monthly update⁴⁰². Those figures are to be submitted to Parliament by 30 September, which is more than 90 days after the end of the period. There are no local administrations at the State level. Quarterly reports for local administrations are required in the RS⁴⁰³ and in the FBiH⁴⁰⁴, although they are not published. Owing to the lack of profile

³⁹³ Law on Debt, Borrowing and Guarantees of BiH, Article 22, 2005.

³⁹⁴ Law on Debt, Borrowing and Guarantees of BiH, Article 20, 2005.

³⁹⁵ See the latest published version http://www.mft.gov.ba/bos/images/stories/budzet/2013/DOB_2014_2016.pdf

³⁹⁶ The CoM adopted the NERP 2015-2017 on 11 February 2015.

³⁹⁷ NERP 2015-2017, p. 41.

³⁹⁸ NERP 2015-2017, p 98.

³⁹⁹ Economic and Fiscal Programme 2012-2014, p. 35.

⁴⁰⁰ Law on the Financing of the Institutions of BiH, Article 22.

⁴⁰¹ Law on the Budget in the FBiH, Article 90.

⁴⁰² Law on the Budget System of RS, Article 46(4).

⁴⁰³ Law on the Budget System of RS, Article 48.

⁴⁰⁴ Law on the Budget in the FBiH, Article 92.

data and the failure to publish monthly reports or, when quarterly reports are published, to explain variations between actual and planned spending by individual budget users, transparency is weak. The value of 0 is therefore attributed for the qualitative indicator on in-year monitoring.

An annual financial report is published by the MoFT at the State level, and audited by the Office for Auditing of the Financial Operations of the Institutions of Bosnia and Herzegovina (SAI BiH)⁴⁰⁵. Similar provisions apply in the Entities and the BD. The annual report must be submitted to the Parliamentary Assembly within 180 days of the end of the financial year⁴⁰⁶, and the Assembly must adopt a report on the annual audited report before it approves and adopts the following year's Budget. This is usually done although, owing to the difficulty in forming a CoM, the annual report for the 2013 Budget has yet to be adopted by the Parliamentary Assembly. The format mirrors the Budget format and covers revenue and expenditure for the year and any rebalances made within the year. Information on debt and guarantees is also included. However, the information does not include non-financial performance indicators, general government data and financial assets and liabilities. Although the end-year reports contain some important information, they are not comprehensive, which is reflected in the value of 2 for the indicator on end-year reporting.

Budget execution is monitored on a quarterly, not a monthly, basis. The annual reports contain only some of the information that an annual report should contain. The reports are audited by the SAIs. There is no composite annual report made to the Parliamentary Assembly covering the State, the Entities and the BD, and none on an ESA-standard basis. The 2013 Budget Execution Report for the State has yet to be adopted by the Parliamentary Assembly.

Key Recommendations

Short-term (1-2 years)

- 1) At the State level, the MoFT should publish a monthly budget review, comparing the actual outcomes each month against a projected monthly profile compiled at the beginning of the year. Similar provisions should apply in the Entities and the BD.
- 2) The monthly budget reviews should break down expenditures by budget users, and it should be comprehensive, including EBFs where they exist.
- 3) Where local authorities are required to report their quarterly reports to the Federal MoF of the FBiH and the MoF of the RS, these should be published by the respective Ministries.

Medium-term (3-5 years)

- 4) The MoFT at the State level should ensure that consolidated data for the State, the Entities and the BD is published to ESA standards as part of the Annual Financial Statement at the State level.
- 5) The MoFT at the State level should prepare and publish a debt management strategy as part of the Budget and include a sensitivity analysis as well as a breakdown of all relevant information on debt and guarantees.

2.3. Key requirement: National financial management and control policy is in line with the requirements of Chapter 32 of European Union accession negotiations and is systematically implemented throughout the public sector.

Baseline values

The functioning of FMC is examined through one qualitative indicator, covering the ten critical elements of an effective framework, complemented by three quantitative indicators that analyse how key aspects of FMC are developing

⁴⁰⁵ Law on the Financing of the Institutions of BiH, Article 22.

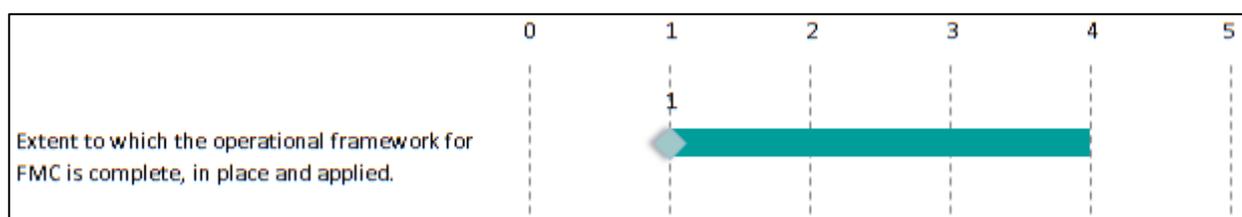
⁴⁰⁶ Law on the Financing of the Institutions of BiH, Article 22.

The legislative framework for FMC is not complete across the whole of BiH, and there is no data available on the alignment of the budget structure with the organisational structure of first-level budget institutions or where managers below Secretary-General level have monthly information on their spending. It is, therefore, only possible to rate the qualitative indicator.

| | Principle no. | Indicator | Baseline year | Baseline value |
|--------------|---------------|---|---------------|------------------------------|
| Qualitative | 6 | Extent to which the operational framework for FMC is complete, in place and applied. | 2014 | 1 |
| Quantitative | 7 | Share of first-level budget organisations where budget structure is aligned with the organisational structure. | 2014 | Not available ⁴⁰⁷ |
| | 7 | Share of first-level budget organisations where delegated budget holders below minister or secretary-general level receive at least monthly information on financial commitments and spending against the Budget within their part of the Budget. | 2014 | Not available ⁴⁰⁸ |
| | 7 | Wastefulness of government spending (World Economic Forum). | 2014 | Not available ⁴⁰⁹ |

The value of the qualitative indicator of the country is displayed below in comparison with the range of values for the same indicator in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 3. Country baseline value in comparison with the regional range



Analysis of Principles

Principle 6: The operational framework for financial management and control defines responsibilities and powers, and its application by the budget organisations is consistent with the legislation governing public financial management and public administration in general.

The operational frameworks for FMC at the State level and in the Entities are different and none are entirely complete. The BD has yet to develop a framework, whereas the State level has FMC legislation

⁴⁰⁷ Data was provided for the BD only and not for the State level or the Entities.

⁴⁰⁸ This information is not compiled by the MoFT at the State level, the MoF of the FBiH or the MoF of the RS.

⁴⁰⁹ BiH is not included in the annual World Economic Forum's *Global Competitiveness Report*, so no figures are available.

in place⁴¹⁰. In the Entities, legislation was drafted by the MoF of the FBiH and by the MoF of the RS in 2011, but has not been adopted by either Government for submission to the Parliament of the FBiH or the Assembly of the RS. Despite detailed differences, the frameworks are based on the same material developed by Technical Assistance projects⁴¹¹, and include legislation, secondary legislation and more detailed procedural guidance. This framework applies to ministries, agencies, funds, cantons and municipalities.

A new PIFC Strategy for FBiH covering 2015–2017 has been drafted by the MoF of the FBiH, but is not yet approved. The State and the RS have not updated strategies from 2009, so plans do not reflect the current state of progress or what is to be achieved. The BD has recently approved a PIFC Strategy for 2014-2017⁴¹², which covers all stages required for the implementation of PIFC.

The CHUs have been established for FMC at the State level and in the Entities, but not in the BD. However, CHU staffing is well below the authorised staffing levels, at 13 out of 28 overall⁴¹³. Furthermore, only four of those during 2014 were working full-time on FMC issues. This is modest, given the need to roll out FMC to approximately 200 institutions across BiH.

In practice, the CHUs have relied extensively on the PIFC Technical Assistance project⁴¹⁴ for the development of technical and training material. This project ends in July 2015. The official CHU Co-ordination Board has not met since 2011 and the Technical Assistance project has provided, in practice, the forum for the co-ordination.

On the basis that the operational framework for FMC is not fully in place and is not being applied, the value of this qualitative indicator is 1.

The full regulatory framework for FMC is not in place across the country, as some of the draft legislation from 2011 has been delayed. The CHUs have limited resources dedicated to FMC, and there has been extensive reliance on the Technical Assistance project for the development of technical and training material.

Principle 7: Each public organisation implements financial management and control in line with the overall financial management and control policy documents.

As there is no complete framework for the introduction of FMC in place, there has been little emphasis on the topic at the institutional level.

The PIFC Technical Assistance project has developed a series of training packages for the roll-out of the BiH FMC Manual, which is expected to be approved early in 2015. The training includes “train the trainer” sessions, with the aim of having officials of the institutions of BiH take over the training to aid sustainability.

Treasury financial management information systems come from common origins but have developed in different ways at the State level and in the Entities. The State level is closest to a new FMC rollout, but the systems do not fully support managerial accountability. For example, the treasury system does not account separately for the four budget programmes used by the Ministry of Defence, so identifiers need to be added to transactions to enable them to be disaggregated within Defence to produce the management information required.

Budgets are at a detailed level and so provide a sound basis for budget delegation within institutions. However, the current budget structure often includes programmes for all administrative costs, which does not facilitate effective delegation and managerial accountability. Even when budgets are

⁴¹⁰ Law on the Financing of the Institutions of BiH.

⁴¹¹ Technical Assistance projects under the EU IPA programme: “Strengthening Public Financial Management in BiH” (2013-2015); and “Support to the Introduction of Public Internal Financial Control in BiH” (2010-2012).

⁴¹² *Development Strategy for the Public Internal Financial Control (PIFC) 2014-2017*, BD of BiH, November 2014.

⁴¹³ This data is provided by the respective CHUs.

⁴¹⁴ Contract No. 2012/308-992, “Strengthening Public Financial Management in BiH”.

delegated, there is little real delegation of control, with the minister or general secretary being required to authorise all payments before they can be made.

Given the state of development of FMC at the institutional level, none of the CHUs carry out an annual survey of progress made. The annual report of the RS CHU makes reference to developments in the FMC framework, but the equivalent documents for the State level and the FBiH deal only with internal audit.

With the legislative framework still not complete across BiH, FMC at the institutional level is still at a very early stage of development. Furthermore, preconditions, such as the ability to generate management information for delegated budget holders, are not fully in place.

Key recommendations

Short-term (1-2 years)

- 1) The Government of the FBiH and the Government of the RS should complete the legal establishment of FMC in the FBiH and in the RS.
- 2) The MoFT at the State level and the MoF of the RS should develop PIFC strategies that reflect the current state of development.
- 3) The CoM at the State level, the Government of the FBiH and the Government of the RS should provide adequate staffing for the CHUs; the Government of the BD should establish a CHU.
- 4) The MoFT at the State level, the Federal MoF, the MoF of the RS and the Finance Directorate of the BD should ensure that treasury financial management information systems are able to support the need for information at the level of delegated budget holders.

Medium-term (3-5 years)

- 5) Budget users should strengthen their internal control processes so that the MoFT at the State level, the Federal MoF, the MoF of the RS and the Finance Directorate of the BD can begin to change the focus from centralised control to decentralised management of resources.

2.4. Key requirement: The internal audit function is established throughout the public sector and internal audit work is carried out according to international standards.

Baseline values

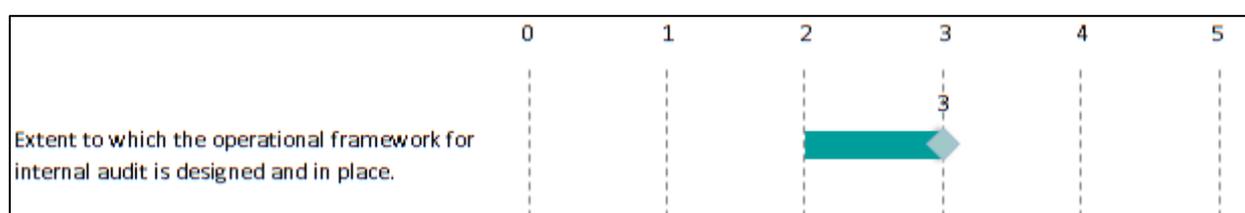
The functioning of IA is examined through two qualitative indicators, one covering ten critical elements for an effective IA framework, and the other covering the quality of IA reports. These are complemented by three quantitative indicators that deal with levels of staffing and training, as well as compliance with national planning requirements.

The operational framework for IA is established and being developed, except in the BD. Despite the framework being largely established, however, there has been only modest progress with implementation at the institutional level. A sample of 22 IA reports was requested, of which only 6 were received, which means that an assessment of the quality of audit reports cannot be completed.

| | Principle no. | Indicator | Baseline year | Baseline value |
|--------------|---------------|---|---------------|------------------------------|
| Qualitative | 8 | Extent to which the operational framework for internal audit is designed and in place. | 2014 | 3 |
| | 9 | Quality of internal audit reports. | 2014 | Not available ⁴¹⁵ |
| Quantitative | 8 | Share of public administration organisations meeting national legal requirements for establishing and minimum staffing of internal audit units. | 2014 | 19% |
| | 8 | Share of internal auditors with a national or international internal audit certificate. | 2014 | 78% |
| | 9 | Share of organisations with annual internal audit plans conforming to national legal requirements. | 2014 | 30% |

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 3. Country baseline value in comparison with the regional range



Analysis of Principles

Principle 8: The operational framework for internal audit reflects international standards and its application by the budget organisations is consistent with the legislation governing public administration and public financial management in general.

The operational frameworks for IA at the State level and in the Entities are different, but each relies on legislation from 2008⁴¹⁶ and they are largely complete (the BD has yet to develop a framework). As with FMC, despite detailed differences the frameworks are based on the same technical material developed by Technical Assistance projects⁴¹⁷, including legislation, secondary legislation and more detailed procedural guidance. They apply to ministries, agencies, funds, cantons and municipalities.

⁴¹⁵ Only 7 out of a total of 22 reports requested have been received, which is too small a sample to make an assessment for BiH.

⁴¹⁶ BiH State Law on Internal Audit Institutions in BiH; RS Law on Internal Audit in the Public Sector; and FBiH Law on Internal Audit in the Public Sector – all 2008.

⁴¹⁷ Technical Assistance projects under the EU IPA programme: “Strengthening Public Financial Management in BiH” (2013-2015); and “Support to the Introduction of Public Internal Financial Control in BiH” (2010-2012).

Table 1. Current state of play on IA⁴¹⁸

| | State level | FBiH | RS | BD |
|--|-------------|------|-----|----|
| Organisations required to establish IA | 17 | 73 | 68 | 0 |
| Units established | 8 | 31 | 29 | 0 |
| Units meeting staffing requirements | 8 | 14 | 8 | 0 |
| Internal auditors employed | 13 | 69 | 48 | 0 |
| Internal auditors trained⁴¹⁹ | 38 | 93 | 125 | 3 |

Source: Ministry of Finance and Treasury at the State level, the Ministry of Finance of the Federation of Bosnia and Herzegovina, the Ministry of Finance of the Republika Srpska and the Finance Directorate of the Brčko District.

During 2014, the CHUs dealt with draft legislation, regulations and rulebooks for specific aspects of the framework, and they have continued with training for internal auditors. A total of 259 internal auditors have been trained since 2010 through the Technical Assistance projects⁴²⁰, whereas only 130 internal auditors are currently employed. A series of training packages has been developed, with delivery by officials of the institutions of BiH, to aid sustainability when the project finishes this year. This allows heads of IA units to meet with the CHUs regularly. Where units have been established, audit charters have been concluded with the heads of the organisations. There are separate IA manuals for the State, the FBiH and the RS but they have been drafted with the support of the Technical Assistance projects so they are broadly consistent.

The most significant development in 2014 has been the drafting of a Training Programme and a Rulebook on Testing for the award of a national certificate for internal auditors in the public sector in BiH. To date, this has only been approved in the FBiH but it has been agreed with CHU staff at the State level and in the RS. No internal auditors have yet received their certification under this scheme. However, as shown by the indicator above, 78% of internal auditors have other certificates awarded within BiH⁴²¹, although this training is not public sector specific.

As mentioned in Principle 6 above, there is no active PIFC strategy at the State level or in the Entities. As for FMC, plans and strategies for IA do not reflect the current state of progress. The approved strategy for the BD includes the development of IA and, although there is no current IA activity there, three staff have already attended IA training.

The CHUs have been established for IA at the State level and in the Entities but not in the BD. Within the overall limited staffing referred to above, only four staff were engaged full-time on IA issues during 2014.

Some quality assurance work is undertaken by the CHUs, based on annual returns from individual IA units, but this does not meet the requirements of international standards that envisage more rigorous programmes, including independent reviews every five years⁴²².

⁴¹⁸ Information obtained from the CHUs in BiH, the FBiH and the RS.

⁴¹⁹ Through the two Technical Assistance projects covering the periods 2010-2012 and 2013-2015.

⁴²⁰ Technical Assistance projects under the EU IPA programme: "Strengthening Public Financial Management in BiH" (2013-2015); and "Support to the Introduction of Public Internal Financial Control in BiH" (2010-2012).

⁴²¹ From organisations such as the Institute of Internal Auditors or the Association of Accountants and Auditors.

⁴²² *International Standards for the Professional Practice of Internal Audit*, Attribute Standard 1312, published by the Institute of Internal Auditors.

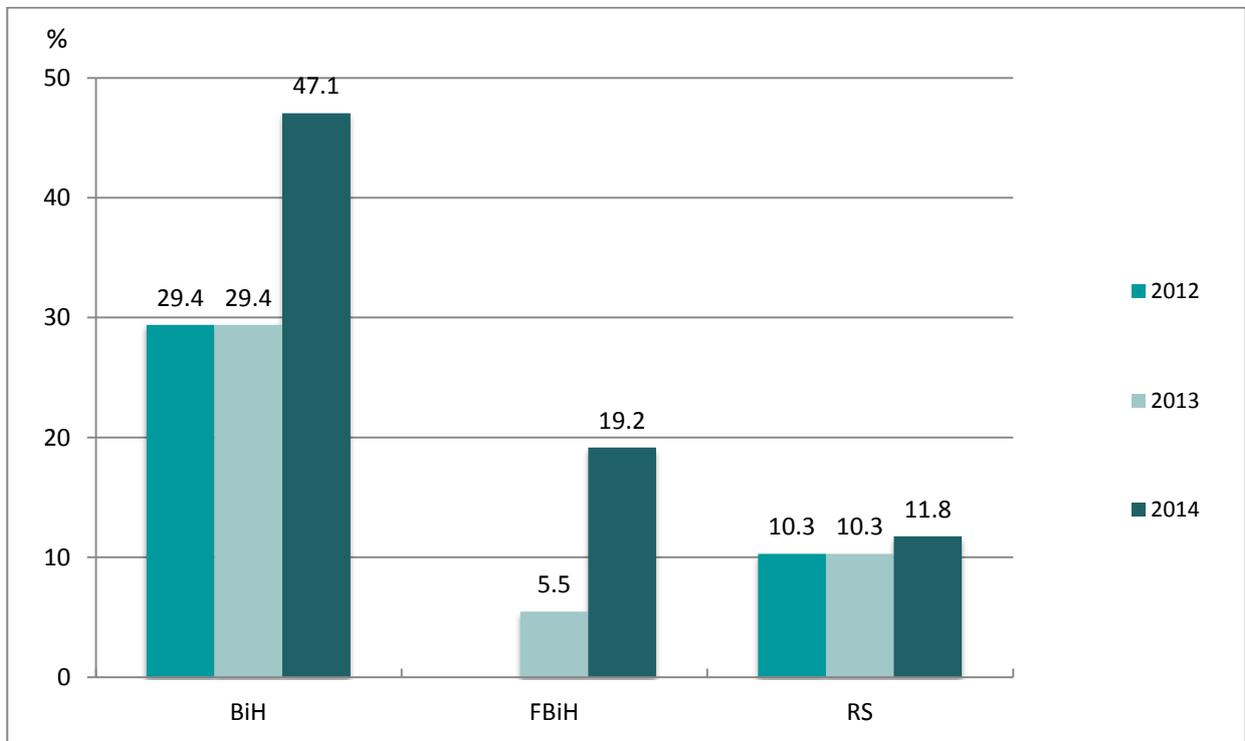
The information above shows that the operational framework for IA is established and is being developed. The value of the qualitative indicator regarding the operational framework is, therefore, 3.

The IA arrangements across BiH are better developed than those for FMC, and most elements of an effective framework for IA have been in place for some time. Nevertheless, effective quality assurance processes are not in place.

Principle 9: Each public organisation implements internal audit in line with the overall internal audit policy documents as appropriate to the organisation.

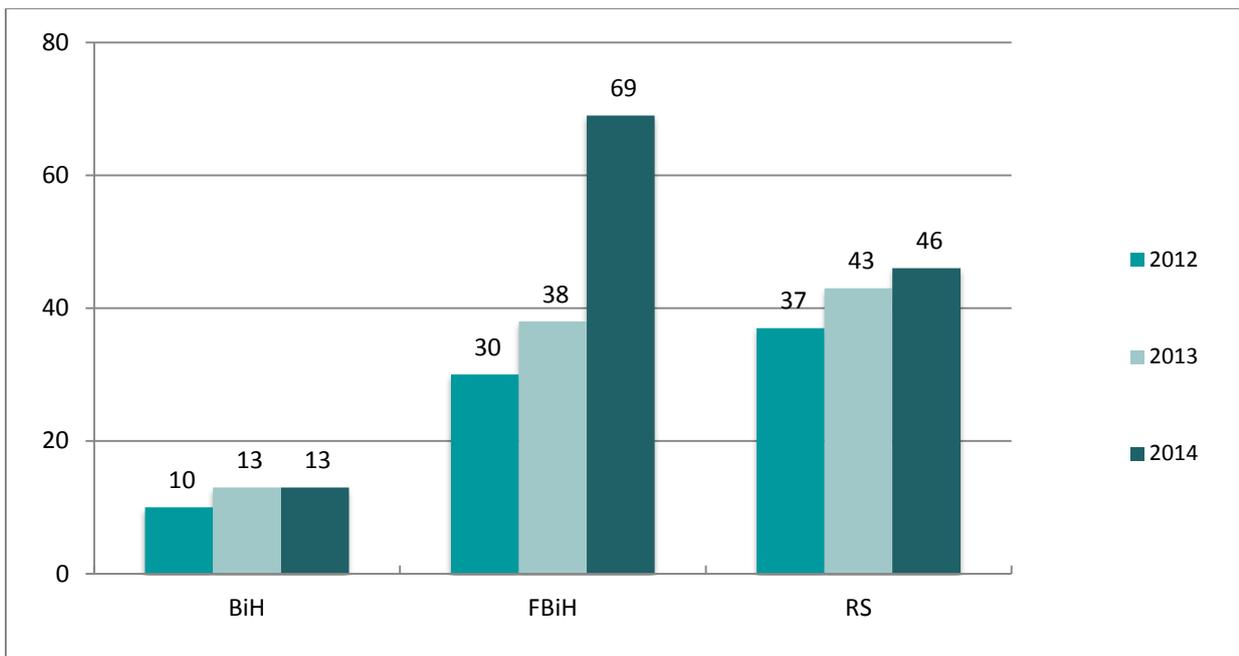
Across BiH, 43% of organisations required to set up IA have done so, but only 19% meet minimum staffing levels for the units that are established. This shows that, while the overall framework for IA is almost complete, it falls significantly short of full implementation. Nevertheless, there is a trend towards improvement in both the numbers of IA units and the numbers of internal auditors, as the following charts show.

Figure 4. Percentage of organisations required to have IA that have set up units and staffed them to the minimum required level



Source: Ministry of Finance and Treasury at the State level, the Ministry of Finance of the Federation of Bosnia and Herzegovina and the Ministry of Finance of the Republika Srpska.

Figure 5. Numbers of internal auditors employed



Source: Ministry of Finance and Treasury at the State level, the Ministry of Finance of the Federation of Bosnia and Herzegovina and the Ministry of Finance of the Republika Srpska.

There is a systematisation requirement of one auditor for about half of all IA units in the FBiH and the RS. The framework in the FBiH requires many small agencies and municipalities to set up their own IA arrangements on this basis. The legal framework in the RS requires a minimum of two internal auditors, but there are still units with systematisation for a single internal auditor⁴²³. It is difficult to recruit and retain staff of suitable ability and to provide appropriate experience and training within these small units. In particular, international standards envisage a level of review and supervision within the IA structure⁴²⁴ that is not possible within these units.

A total of 22 IA assignment reports issued by IA units in the State, in the Entities and in the BD was requested in order to assess the quality of IA reports. Only seven reports have been provided for assessment, which is insufficient to make an assessment of quality throughout BiH. Of the seven reports submitted, none meet all the requirements set out in the IA manuals but:

- All the reports include recommendations for improvement/change;
- Only two reports include an overall assessment or opinion on the assignment to give clear assurance to management; and
- The reports all cover issues of compliance with laws and regulations but there is less frequent reference to issues of internal control and very little reference to performance.

BiH has not established IA units in all of those organisations required to have them. In cases where units have been established, they are below the minimum staffing levels required by the rulebooks. Many IA units have just a single internal auditor, which is not conducive to an efficient and effective IA service.

⁴²³ Analysis of the 2013 CHU annual reports for the FBiH and the RS showed that 49% of the IA units specifically mentioned had a systematisation of just one member of staff (RS 21/39 and FBiH 8/20).

⁴²⁴ *International Standards for the Professional Practice of Internal Auditing*, Attribute Standard 2340: "Engagement Supervision".

Key recommendations

Short-term (1-2 years)

- 1) The Finance Directorate of the BD should establish a CHU to co-ordinate development of PIFC in the BD.
- 2) The CHUs at the State level and in the Entities should develop sustainable long-term arrangements for the training of internal auditors for the whole of the public sector.
- 3) The MoFT at the State level, the Federal MoF of the FBiH, the MoF of the RS and the Finance Directorate of the BD should each establish arrangements for IA on a shared-service basis to overcome the risks and inefficiencies of the current number of single-person IA units.

Medium-term (3-5 years)

- 4) The CHUs at the State level, in the Entities and in the BD should establish quality assurance arrangements in accordance with international standards, looking not just at reports but at the work of whole IA units, from risk assessment and planning arrangements through to the review of detailed working papers.

2.5. Key requirement: Public procurement is regulated by duly enforced policies and procedures that reflect the principles of the Treaty on the functioning of the European Union and the European Union *acquis*, and are supported by suitably competent and adequately resourced institutions

Baseline values

The key requirement for the harmonisation of public procurement regulations with the EU *acquis*, as well as the establishment of corresponding institutional structures and arrangements, is examined through six qualitative indicators. The first two describe the extent to which the legislation is complete and enforced, covering the eight main goals defined in Principle 10, and the openness of policy making and monitoring. The next two indicators concern the development and implementation of the policy framework, and the existence and performance of dedicated institutions for central procurement functions. The last two indicators cover the effective monitoring of the public procurement system and the extent to which information about its workings is readily available to all interested parties.

The indicator values obtained reflect the efforts of the PPA to involve all parties concerned in the development of public procurement, despite the administrative complexity of the country.

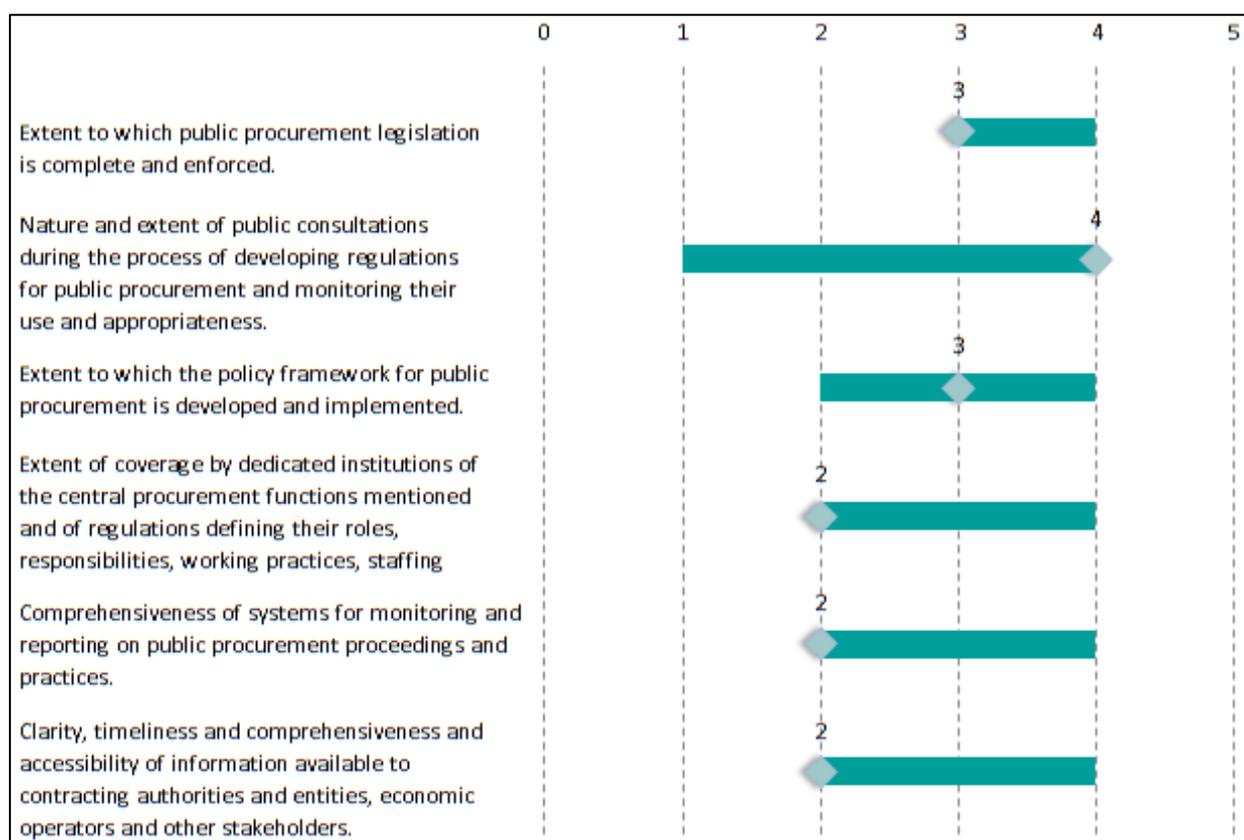
| | Principle no. | Indicator | Baseline year | Baseline value |
|--------------------|---------------|---|---------------|----------------|
| Qualitative | 10 | Extent to which public procurement legislation is complete and enforced. | 2014 | 3 |
| | 10 | Nature and extent of public consultations during the process of developing regulations for public procurement and monitoring their use and appropriateness. | 2014 | 4 |
| | 11 | Extent to which policy framework for public procurement is developed and implemented. | 2014 | 3 |
| | 11 | Extent of coverage by dedicated institutions of the central procurement functions mentioned and of regulations defining their | 2014 | 2 |

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| | | | | |
|--|----|---|------|---|
| | | roles, responsibilities, working practices, staffing and resources. | | |
| | 11 | Comprehensiveness of systems for monitoring and reporting on public procurement procedures and practices. | 2014 | 2 |
| | 11 | Clarity, timeliness, comprehensiveness and accessibility of information available to contracting authorities and entities, economic operators and other stakeholders. | 2014 | 2 |

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 6. Country baseline value in comparison with the regional range



Analysis of Principles

Principle 10: Public procurement regulations (including public-private partnerships and concessions) are aligned with the acquis, include additional areas not covered by the acquis, are harmonised with corresponding regulations in other fields, and are duly enforced.

The newly adopted PPL is largely in alignment with the EU *acquis*. However, discrepancies remain. Some exemptions are different from those allowed under the Directives, and the provisions on utilities

do not make use of all the available instruments envisaged in European law⁴²⁵. Whereas the PPL defines the main principles of transparency, equality of treatment, competition and proper use of funds⁴²⁶ in line with the requirements of the *acquis*, the principle of non-discrimination is not fully respected, since the application of domestic preference is mandatory⁴²⁷. Remaining deficiencies of the PPL and serious problems with the legal framework for awarding concessions/PPPs (see below) lead to an overall value of 3 for the indicator covering the extent to which public procurement legislation is complete and enforced.

During the process of developing the PPL, public consultations were conducted in line with the Rules on Consultations of Drafting of Legal Regulations⁴²⁸. Moreover, the draft of the PPL and drafts of the secondary legislation were published on the PPA's website, with an invitation to submit comments and opinions. However, the time given for comments on by-laws was very short⁴²⁹. For these reasons, the indicator covering the nature and extent of public consultations has a value of 4.

The PPL requires that defence procurement be regulated by special provisions to be adopted by the CoM. These were adopted at the end of February 2015. For non-priority services, a special procedure is also envisaged⁴³⁰.

Most of the secondary legislation⁴³¹, which enables the contracting authorities to conduct procurement procedures and conclude contracts under the new regime, is in place. However, as applied by many contracting authorities, some specific aspects in the secondary legislation (e.g. proof of eligibility) undermine the efficiency of the public procurement system.

Contracting authorities are obliged to prepare and publish annual public procurement plans⁴³², including the subject and value of the procurement. In practice, however, access to information about planned procurement remains complicated⁴³³. The PPL gives little or no guidance on other aspects of procurement planning and contract management.

The formalistic approach⁴³⁴ of contracting authorities leads to the frequent rejection of tenders because of minor clerical errors⁴³⁵ and to an almost exclusive use of the lowest price as the only award criterion, to the detriment of quality.

The PPL allows the conclusion of multi-year contracts, provided that the obligations that will accrue in the following years are contracted in the amounts foreseen by the regulations on budget execution or financial plan execution for each year separately⁴³⁶.

⁴²⁵ Article 85 provides for the qualification system; the special Instruction SG BiH No. 97/14 regulates the conditions and ways of awarding contracts by utilities' contracting authorities to associated companies.

⁴²⁶ PPL, Article 3.

⁴²⁷ PPL, Article 67, Decision for obligatory preferences implementation for local economic operators.

⁴²⁸ SG BiH No. 81/06.

⁴²⁹ As stated by the PPA, the drafts were published on the PPA website 23 September 2014, whereas the deadline for comments was 29 September.

⁴³⁰ Rulebook on the contract award procedure for contracts referred in to Part B of the Annex II of the PPL, Article 8.

⁴³¹ Full list of adopted secondary legislation: www.javnabavke.ba/index.php?id=10b&jezik=bs.

⁴³² PPL, Article 17.2.

⁴³³ There is no centralised database of procurement plans; each contracting authority publishes them only on their own websites.

⁴³⁴ Compounded by requirements added in secondary legislation. For example, the Instructions on Preparation of Models on Tender Documentation and Offer provides for additional requirements for statements to be attached by economic operators to each bid.

⁴³⁵ Interviews with contracting authorities and economic operators.

⁴³⁶ PPL, Article 17.3.

The existing legal framework in the area of concessions and PPPs is highly fragmented. The awarding of concessions is regulated by a number of Concession Laws and accompanying decrees that are not harmonised⁴³⁷.

In BiH, the legal framework for public procurement is in place, although with some gaps in conformity with the *acquis*, especially concerning concessions and PPPs. Core procurement procedures are regulated in detail, to such an extent that their application is fraught with practical problems for central institutions, contracting authorities and economic operators.

Principle 11: There is central institutional and administrative capacity to develop, implement and monitor procurement policy effectively and efficiently.

An outline for the development of the public procurement system in the country has been set out in the Public Procurement Development Strategy for the period 2010-2015⁴³⁸. However, the Strategy suffers from a lack of resources for implementation and a lack of mechanisms for monitoring and regulating relations between the institutions involved (the PPA and the PRB). Many activities in the accompanying Action Plan were postponed or have not been implemented, largely because of the long delay in adopting the PPL, which in turn reflects the complicated political set-up of the country. However, the Action Plan has not been updated, which leads to a value of 3 for the indicator covering the extent to which policy framework for PP is developed and implemented.

The PPA⁴³⁹ performs the usual functions of the central administrative body responsible for public procurement, including regulatory development, operation of the procurement portal, giving advice to contracting authorities, monitoring procurement proceedings and reporting to the CoM of BiH. The PPA has two branch offices in Banja Luka and Mostar.

The PPA Board is an advisory body for the PPA⁴⁴⁰. It is composed of five members, with the PPA Director and the PRB Chairperson as observers, together with representatives from non-governmental organisations (NGOs). These include the Foreign Trade Chamber of Bosnia and Herzegovina, Associations of Employers of Bosnia and Herzegovina and others⁴⁴¹.

Contracting authorities are obliged to report each procedure, regardless of value and type, to the PPA, in addition to publishing them on their own websites⁴⁴². Based on the reports received, the PPA prepares semi-annual and annual reports, and carries out monitoring. The publication of any contractual changes that might occur during contract execution is mandatory⁴⁴³.

The audit institutions at the State and Entity levels perform financial and, to a lesser extent, performance audits of their respective budget users. Their reports also cover public procurement, typically including both general and specific recommendations in this field.

Co-operation among the main procurement-related bodies has improved. A memorandum of understanding was signed between the PPA, the PRB and the Court of BiH in January 2015. The memorandum regulates the publication of the PRB's new decisions on the existing PPA website and on the PRB's new website⁴⁴⁴.

In the field of concessions, the distribution of functions and responsibilities among the institutions is complicated, as it reflects the fragmented legislative and institutional framework of the country. At the

⁴³⁷ SG BiH No. 32/02, Law on Concessions of BiH (amended); Law on Concessions of the FBiH, Official Gazette of FBiH, No. 40/02; Law on Concessions of RS, Official Gazette of RS, No. 59/13.

⁴³⁸ <http://javnenabavke.ba/index.php?id=03vij&vij=25&jezik=bs>.

⁴³⁹ PPL, Article 92.

⁴⁴⁰ PPL, Article 92.7-11.

⁴⁴¹ The observers from the NGOs have not participated in the meetings of the Board.

⁴⁴² PPL, Article 75.

⁴⁴³ PPL, Article 75.2.

⁴⁴⁴ Fourth Quarterly Report of the EU Technical Assistance project, "Strengthening the Public Procurement System in BiH".

State level, the State Commission acts as an independent regulatory legal entity that issues approvals that are required for the implementation of a project as a concession⁴⁴⁵. However, no concessions, as defined in the EU Directives, have been issued at the State level. With only one or two exceptions, other concessions issued in BiH are for licences for the exploitation of land, natural resources or sites.

Whereas functions for the awarding of public contracts are allocated in line with the *acquis*, the set-up for concessions leads to an overall value of 2 for the indicator covering the extent of coverage by dedicated institutions of the central procurement functions mentioned and of regulations defining their roles, responsibilities, working practices, staffing and resources.

The e-procurement system allows notices to be published and reports on procurement procedures to be gathered by the PPA. Legislation (new and previous), opinions interpreting the provisions of law, periodic reports on monitoring and annual reports are all published. However, publications and guidelines are often not updated⁴⁴⁶, and the system does not make full use of the opportunity to collect, process and present data: for example, it is not possible to find details about the award criteria used in procurement procedures, the tenderers excluded, or the number of bids submitted. As a consequence, the value for the indicator covering the comprehensiveness of the monitoring and reporting system is 2, and the value for the indicator covering clarity and accessibility of information is also 2.

There is administrative capacity available for developing, implementing and monitoring public procurement policy. However, much of the emphasis is on the formal aspects of tendering and awarding procedures. The legislative and institutional framework of the country adds complexity to the preparation and adoption of regulations, and impedes their uniform application (especially in the area of concessions/PPPs).

Key recommendations

Short-term (1-2 years)

- 1) The PPA should prepare and submit for adoption the remaining secondary legislation.
- 2) The PPA should review the adopted secondary legislation to identify unnecessary bureaucratic requirements and propose for adoption amendments to the by-laws.
- 3) The PPA should prepare the Strategy on Public Procurement Development for the upcoming years with a detailed Action Plan with allocation of responsibilities and funds for implementation.
- 4) The CoM of BiH should strengthen the capacities of the PPA, especially by increasing the number of officials involved in monitoring functions and *ex post* evaluation.

Medium-term (3-5 years)

- 5) The competent decision making bodies should harmonise the PPP/concessions Law with the EU requirements, and increase the level of co-ordination among the authorities concerned.
- 6) The CoM of BiH should establish an efficient control system (*ex post* evaluation), supplementing the audit institutions' activities.

⁴⁴⁵ Law on Concessions of BiH, Article 21.

⁴⁴⁶ <http://javnenabavke.ba/index.php?id=12&jezik=bs>; most of the documents are from 2007 or 2009.

2.6. Key requirement: In case of alleged breaches of procurement rules, aggrieved parties have access to justice through an independent, transparent, effective and efficient remedies system.

Baseline values

The key requirement for the establishment of an independent, transparent, effective and efficient remedies system is examined through six indicators. They describe the timeliness of the review procedure, the accessibility of the review system for economic operators and the performance of the review body.

The values illustrate that the remedies system is still incomplete and that decisions have not been made publicly available.

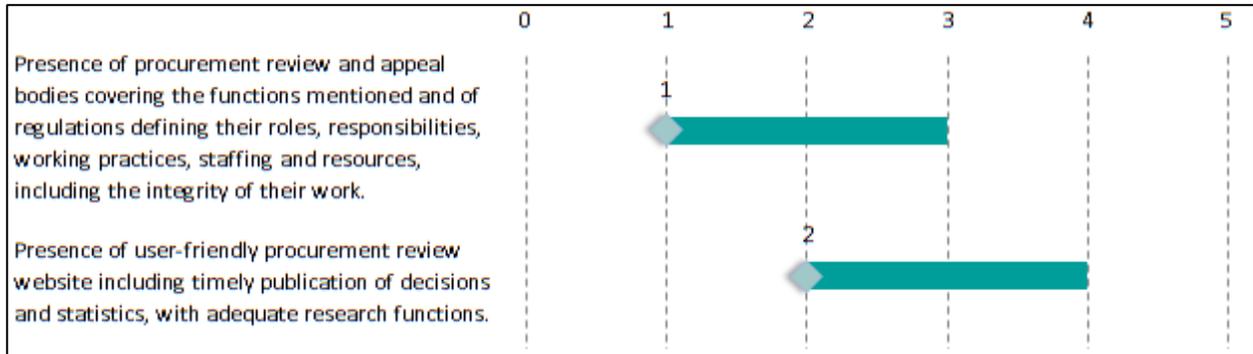
| | Principle no. | Indicator | Baseline year | Baseline value |
|---------------------|---------------|--|---------------|---------------------|
| Qualitative | 12 | Presence of procurement review and appeal bodies covering the functions mentioned and of regulations defining their roles, responsibilities, working practices, staffing and resources, including the integrity of their work. | 2014 | 1 |
| | 12 | Presence of user-friendly procurement review website including timely publication of decisions and statistics, with adequate research functions. | 2014 | 2 |
| Quantitative | 12 | Actual processing time of complaints related to procurement compared with maximum legal requirements. | 2014 | 50 % ⁴⁴⁷ |
| | 12 | Number of cases in which the procurement review body exceeded the legal maximum processing time in relation to the total number of complaints. | 2014 | 0% ⁴⁴⁸ |
| | 12 | Number of complaints in relation to the number of tender notices published. | 2013 | 10.8% |
| | 12 | Share of complaints in procurement that are challenged to the next judicial level. | 2013 | 0.4% |

⁴⁴⁷ The actual, average processing time was 15 days, whereas the legal requirement is for a maximum of 30 days. The 50% value does not include the 400 complaints that were not taken up in early 2014, as discussed in the text.

⁴⁴⁸ Ibid.

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 7. Country baseline value in comparison with the regional range



Analysis of Principles

Principle 12: The remedies system is aligned with the acquis standards of independence, probity and transparency and provides for rapid and competent handling of complaints and sanctions

The independent and autonomous institution responsible for the review of complaints is the PRB of BiH, with headquarters in Sarajevo and, nominally, two branch offices in Mostar and Banja Luka. The Parliamentary Assembly of BiH appoints the members of the PRB for a period of five years. In 2014, new members of the PRB in Sarajevo were appointed. However, the branches in Banja Luka and Mostar have not yet been established.

Before a complaint can be heard by the PRB, it has to be reviewed by the contracting authority. The PRB is normally obliged to adopt a decision within 15 days from the day of completion of the complaint review by the contracting authority.

Table 1. Key characteristics of the remedies system

| | 2012 | 2013 | 2014 |
|--|------------------------------|---------------|---------------|
| Number of appeals submitted | Not available ⁴⁴⁹ | Not available | Not available |
| Number of decisions taken | Not available | Not available | Not available |
| Number of decisions published | 0 | 0 | 0 |
| Number of appeals accepted (decision of contracting authority changed) | Not available | Not available | Not available |
| Number of appeals rejected | Not available | Not available | Not available |
| Average time of processing the case before the review board (days) | 15 | 15 | 15 |
| Number of complaints challenged to the next judicial level | 54 | 8 | Not available |

Source: Procurement Review Body

In 2013, the PRB received 2 052 complaints, a slight decrease from the 2 165 in 2012. At 10.8%, the share of complaints in relation to the number of notices published was lower than in previous years (11.3% in 2012, 12.7% in 2011)⁴⁵⁰.

Amendments to the PPL⁴⁵¹ in November 2013 made the PRB in Sarajevo responsible for disputes in high-value contracts (above BAM 800 000) and for all procurement by the State institutions of BiH and the BD), whereas the branch offices in Banja Luka and Mostar became responsible for lower-value cases and for other contracting authorities. However, since the branch offices were not established and the PRB lost the authority to handle the cases that were to be assigned to the branch offices, some 500 complaints submitted in late 2013 and early 2014 were not taken up and remain unresolved⁴⁵², even after the jurisdiction of the PRB was temporarily re-established in April 2014, pending the creation of the branch offices. Due to these serious problems in the functioning of the review system in 2014, and the lack of a coherent review system for reviewing appeals in the area of concessions/PPPs (see below), the baseline value for the corresponding indicator is 1.

In 2014, only eight decisions of the PRB were challenged in the administrative court. In six of these cases, the court upheld the decision⁴⁵³. The small number of appeals could be partially due to the fact that the administrative court rejects appeals from contracting authorities, maintaining that they have no legal capacity to submit them⁴⁵⁴.

A complainant must pay a fee⁴⁵⁵ ranging from BAM 500 (EUR 256) to BAM 10 000 (about EUR 5 120), depending on the value of the procurement. Under the old provisions, the fee amounted to only

⁴⁴⁹ In this table, "Not available" means no data has been provided.

⁴⁵⁰ Report on Concluded Contracts and Public Procedures for the Year 2013, PPA.

⁴⁵¹ BiH State Gazette, No. 87/13.

⁴⁵² Report on Concluded Contracts and Public Procurement Procedures for the Year 2014, PPA.

⁴⁵³ The PRB.

⁴⁵⁴ Reported by the PRB during the information-gathering mission.

⁴⁵⁵ PPL, Article 108.

approximately EUR 10, 25 or 50. There is also an additional administrative fee according to general administrative rules⁴⁵⁶.

According to the new PPL, all decisions of the PRB must be published on the public procurement portal⁴⁵⁷. In previous years, the decisions of the review body were not published. Access to them was only possible using the mechanism prescribed in the Law on Access to Public Information⁴⁵⁸. Since the beginning of 2015, the PPA (which runs the public procurement portal⁴⁵⁹) publishes PRB decisions made in accordance with the new PPL, but it does not plan to publish decisions taken in previous years. Overall, the deficiencies mentioned lead to a value of 2 for the indicator covering the presence of a user-friendly website, including timely publication of decisions and statistics, with adequate search functions.

The PRB does not deal with complaints regarding the award of concessions and PPP contracts.

The remedies system in BiH is nominally structured in line with the requirements of the *acquis*, except that concessions/PPPs are not covered and the two regional offices have not yet been set up. Access to justice is limited by high fees for complainants and by contracting authorities not being allowed to appeal. There is a large backlog of unresolved cases and unpublished decisions.

Key recommendations

Short-term (1-2 years)

- 1) The CoM of BiH should reconsider the regulations on fees for complainants in order to reduce the higher-level fees and eliminate the double payment of fees.
- 2) The CoM of BiH should ensure access to judicial review in the second instance for contracting authorities.

Medium-term (3-5 years)

- 3) The PRB, in co-operation with the PPA, should ensure public access to the decisions issued by the PRB in previous years; develop the search function of the portal to allow searching by subject, article of law, etc.; and create a user-friendly sub-portal for complaints.
- 4) The PRB should improve the quality of decisions by establishing a mechanism to ensure uniformity of interpretations.
- 5) The competent decision making bodies should establish a review system in the field of PPPs and concessions.

2.7. Key requirement: Contracting authorities are adequately staffed and resourced and carry out their work in accordance with applicable regulations and recognised good practice, interacting with an open and competitive supply market

Baseline values

Three qualitative indicators describe the presence and performance of modern procurement tools, the existence and availability of guidelines and the professionalisation of procurement officials. The key requirement for an efficient public procurement system based on the availability of a professional, value-driven and integrity-conscious management function in contracting authorities is examined through eight quantitative indicators that describe the performance of the PP market.

⁴⁵⁶ Reported by the PRB during a meeting with SIGMA.

⁴⁵⁷ PPL, Article 113.8.

⁴⁵⁸ Information for applicants for free access to information, October 2013, PRB.

⁴⁵⁹ <https://www.ejn.gov.ba/>

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The values reflect the limited use of modern approaches and tools, and a low level of professionalisation, despite the presence of a large group of professional trainers.

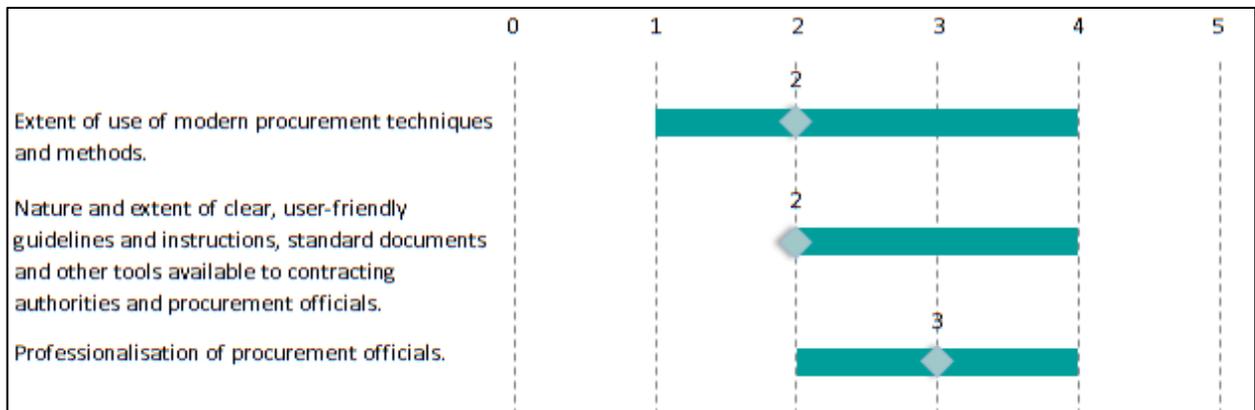
| | Principle no. | Indicator | Baseline year | Baseline value |
|---------------------|---------------|---|---------------|------------------------------|
| Qualitative | 13 | Extent of use of modern procurement techniques and methods. | 2014 | 2 |
| | 14 | Nature and extent of clear, user-friendly guidelines and instructions, standard documents and other tools available to contracting authorities and procurement officials. | 2014 | 2 |
| | 14 | Professionalisation of procurement officials. | 2014 | 3 |
| Quantitative | 13 | Share of contracts announced already in published procurement plans or indicative notices. | 2014 | Not available ⁴⁶⁰ |
| | 13 | Share of contracts awarded by competitive procedures. | 2014 | 50.4% |
| | 13 | Share of contracts awarded based on acquisition price only. | 2013 | 72.2% |
| | 13 | Share of contracts amended after award. | 2014 | Not available ⁴⁶¹ |
| | 13 | Share of contracts subject to formal post-evaluation. | 2014 | Not available |
| | 13 | Average number of tenders submitted per goods contract to be procured. | 2014 | Not available |
| | 13 | Average number of tenders submitted per works contract to be procured. | 2014 | Not available |
| | 13 | Average number of tenders submitted per services contract to be procured. | 2014 | Not available |

⁴⁶⁰ No data was provided by the administration.

⁴⁶¹ No official 2014 data was available for this and the following indicators.

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 8. Country baseline value in comparison with the regional range



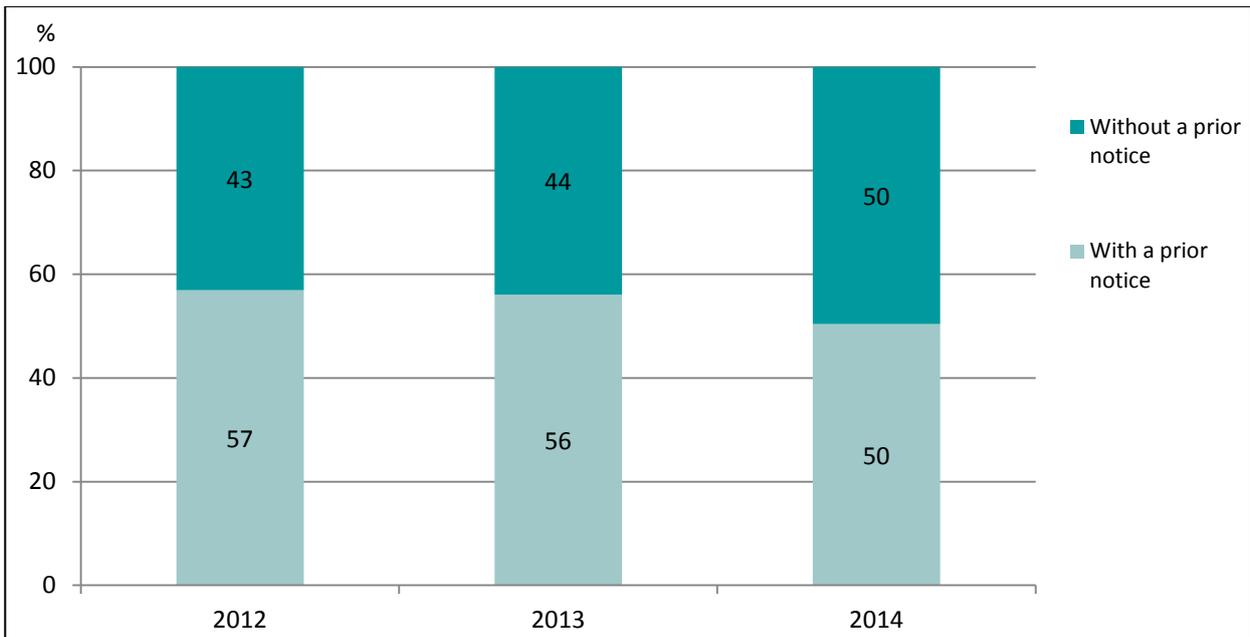
Analysis of Principles

Principle 13: Public procurement operations comply with basic principles of equal treatment, non-discrimination, proportionality and transparency, while ensuring the most efficient use of public funds and making best use of modern procurement techniques and methods.

The newly adopted PPL aims to ensure the transparency and integrity of public procurement, providing for the use of the non-competitive procedures only in exceptional cases. However, the provisions of the old legislation applied in 2014, when only 50.4 % (by value) of the contracts awarded had prior publication of a notice⁴⁶² (Figure 9).

⁴⁶² The PPA.

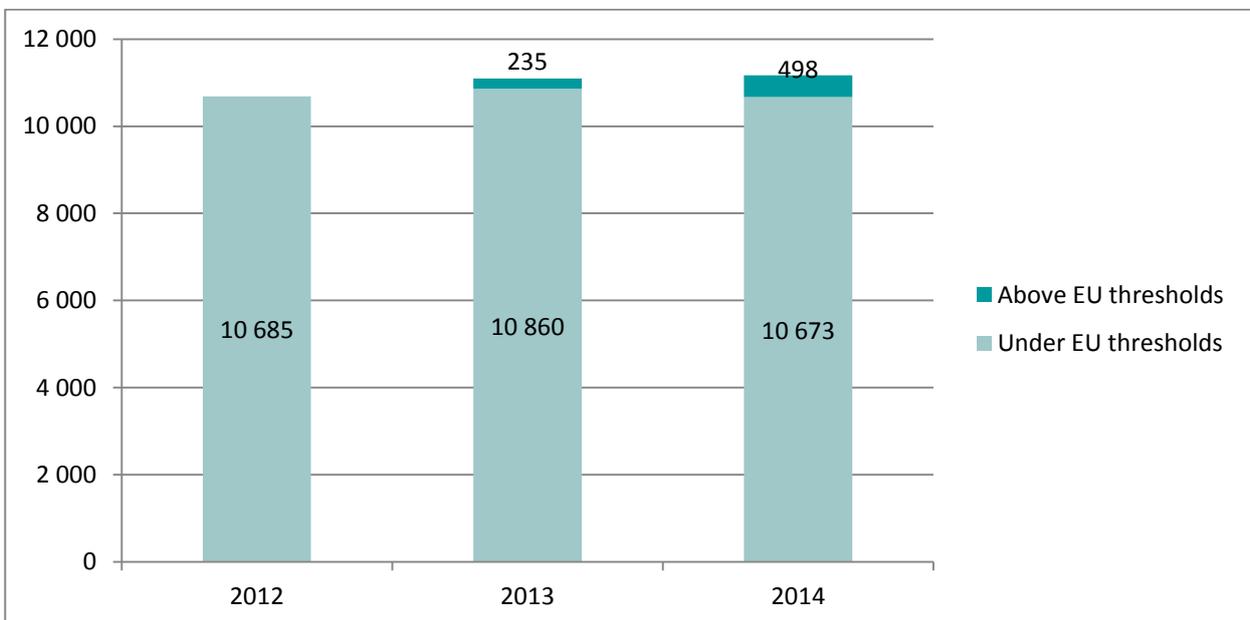
Figure 9. Total value of contracts awarded with and without prior publication



Source: Public Procurement Agency.

The significant share of procurements awarded in procedures without a notice signifies low market competitiveness. A significant increase in funds spent in non-competitive procedures can be observed in recent years: 43% in 2012 and 44% in 2013⁴⁶³. Foreign suppliers are discriminated against on the basis of the rules for domestic preference⁴⁶⁴.

Figure 10. Number of procurement procedures with prior publication of a notice



Source: Public Procurement Agency.

In procedures with prior publication of a notice, tenders are chosen on one of two main criteria: 1) the lowest-priced technically compliant tender, or 2) the most economically advantageous tender. In 2013,

⁴⁶³ The PPA.

⁴⁶⁴ PPL 2014, Article 67; PPL 2004, Article 36.

the share of procedures in which the contracting authority decided to use the lowest-price criterion amounted to 72.2%⁴⁶⁵.

Ex post evaluation of procedures is carried out by the PPA and by audit institutions at the State level, the two Entities and the BD. In 2013, the PPA presented 293 notices to contracting entities, mainly concerning procedural violations. The audit offices issued 203 reports, of which 195 were on financial operations and 8 were on performance⁴⁶⁶. The main findings are:

- 1) inefficiency of the public procurement process;
- 2) tender documentation prepared in favour of specified products or firms;
- 3) evaluation of tenders not done according to the rules;
- 4) lack of procedures or use of negotiated procedures without fulfilment of the conditions specified in the PPL;
- 5) poor management of contracts, i.e. lack of proper monitoring and unfounded changes to contracts, including for additional deliveries.

The use of modern procurement techniques and methods is not advanced, and a central procurement body has not been set up⁴⁶⁷. E-procurement is limited to the publication of notices⁴⁶⁸ and tender documents on the public procurement portal operated by the PPA. As a consequence, the indicator covering the extent of usage of modern procurement techniques and methods receives an overall value of 2.

Awaiting the uniform application of the new PPL, a large share of public procurement continues to be carried out using non-competitive procedures. Discrimination against foreign suppliers continues. Modern tools like e-procurement, framework agreements and centralised purchasing are used very little or not at all.

Principle 14: Contracting authorities and entities have the appropriate capacities and practical guidelines and tools to ensure professional management of the full procurement cycle.

Contracting authorities are obliged to follow the instructions for preparing tender documentation issued by the PPA⁴⁶⁹, including model forms of tenders, performance guarantees and other documents. Additionally, the PPA publishes its formal opinions on the interpretation of the PPL as a means of guiding the contracting authorities. At the end of March 2015, 35 such opinions concerning the new PPL, mostly prepared in consultation with the PRB and the procurement trainers, were available on the website. The PPA has also published a manual for the use of the newly established public procurement portal. Other guidance materials available on the PPA's website were mostly elaborated under the old PPL and have not been updated⁴⁷⁰.

Nevertheless, the models and guidelines focus mainly on the formal aspect of procedures, paying little attention to promoting performance-oriented attitudes and practices. Materials reflecting modern approaches to procurement, such as "green" or "social" procurement, promoting the value for money principle, or the use of life-cycle costing, are not available. The overall value is therefore 2 for the

⁴⁶⁵ Elaborated on data in the Report on Concluded Contracts and Public Procurement Procedures for the Year 2013, PPA. The share is calculated for procurement with a value exceeding BAM 50 000 for supplies and services, and BAM 60 000 for works.

⁴⁶⁶ Report on Monitoring on Public Procurement Procedures for the Year 2013, PPA.

⁴⁶⁷ Ordinance on the implementation of joint procurement and establishment of a central procurement body was not adopted.

⁴⁶⁸ According to Article 36.1., the notices must be published on the public procurement portal. Additionally, the summary of all notices shall be published in the Official Gazette of BiH. The cost of publication of one page is BAM 100.

⁴⁶⁹ SG BiH No. 90/14, Instructions on Preparation of Models on Tender Documentation and Offer.

⁴⁷⁰ <http://javnenabavke.ba/index.php?id=12&jezik=bs>.

indicator covering the nature and extent of clear, user-friendly guidelines and instructions, standard documents and other tools available to contracting authorities and procurement officials.

Contracting authorities, with the exception of small ones, must have at least one procurement officer with basic, formal training in public procurement. However, much of the emphasis in procurement-related training is on the procedural details prescribed in law, rather than on how the broader objectives of public procurement can be reached. There are no other educational requirements for procurement officers.

The system for the training of trainers, which was established in 2007-2008, has resulted in good training availability. Most such training is on commercial conditions, with contracting authorities paying for their staff to attend training events organised by private-sector consulting firms and training institutions. More than 95 certified trainers are now listed in the register maintained by the PPA⁴⁷¹. Starting in 2014, an EU-financed Technical Assistance project⁴⁷² has carried out several training activities for trainers, contracting authorities and economic operators. The modest level of formal requirements for engaging procurement officers but a relatively advanced system of training, lead to an overall value of 3 for the indicator covering the professionalisation of procurement officials.

Key materials for helping contracting authorities comply with procedural regulations for tendering and awarding contracts are available, supported by a network of certified public procurement trainers operating on a commercial basis. On the other hand, guidance and professional development tools covering other parts of the procurement cycle are in scarce supply, and procurement officials typically suffer from corresponding gaps in their knowledge, skills and experience.

Key recommendations

Short-term (1-2 years)

- 1) The PPA should establish a mechanism limiting the use of negotiated procedures without prior publication of a notice.
- 2) The PPA should promote modern approaches to public procurement, foster professionalism and performance-oriented attitudes and practice through the preparation of relevant guidelines and thematic publications.
- 3) The PPA should intensify the activities of the established system of procurement trainers.

Medium-term (3-5 years)

- 4) The CoM of BiH should consider the establishment of an efficient ex-post evaluation system that goes beyond compliance with procedures.

2.8. Key requirement: The constitutional and legal framework guarantees the independence, mandate and organisation of the Supreme Audit Institution to perform its mandate autonomously according to the standards applied for its audit work, allowing for high-quality audits that impact on public sector functioning.

Baseline values

The legal framework of the SAI is examined through two qualitative and four quantitative indicators that review the Constitution and the legislation governing the SAI, including internal rules and procedures and other relevant documents. The functioning of the SAI is examined through one

⁴⁷¹ <http://www.javnenabavke.ba/>.

⁴⁷² EU Technical Assistance Project No. 20013/336-009, "Strengthening the Public Procurement System in Bosnia and Herzegovina".

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qualitative and three quantitative indicators that analyse the relevant documentation. All the data collected is supplemented by interviews.

In BiH, the independence, mandate and organisation of the SAI BiH, the Office of Budget Audit of the Federation of Bosnia and Herzegovina (SAI FBiH), the Supreme Office of the Republika Srpska Public Sector Auditing (SAI RS) and the Audit Office of the Brčko District of Bosnia and Herzegovina (SAI BD) (hereafter “SAIs”) are not anchored in the Constitution of BiH, the Constitution of the Federation of BiH, the Constitution of the Republika Srpska or the Statute of the Brčko District (hereafter “Constitutions”)⁴⁷³, although the underlying legal framework⁴⁷⁴ establishes the key functions required by international auditing standards. The SAIs do not audit all the institutions included in their mandates every year and less than one third of the total number of recommendations accepted by the auditees of the SAIs of the State and the two Entities in 2013 had been implemented by the end of the following year⁴⁷⁵. The quantitative and qualitative indicators are consistent with the findings.

| | Principle no. | Indicator | Baseline year | Baseline value |
|--------------|---------------|--|---------------|------------------------------|
| Qualitative | 15 | Extent to which the fundamental requirement for SAI independence, mandate and organisation is established and protected by the constitutional legal framework. | 2014 | 4 |
| | 15 | Extent to which SAI management ensures the development of the institution. | 2014 | 4 |
| | 16 | Extent to which the SAI uses standards to ensure quality of audit work. | 2014 | 4 |
| Quantitative | 15 | Difference between approved budget and realised expenditure of the SAI. | 2014 | 4.9% ⁴⁷⁶ |
| | 15 | Share of SAI budget in the state Budget. | 2014 | 0.11% ⁴⁷⁷ |
| | 15 | Amount of resources used for mandatory audits compared with resources for audits selected independently by the SAI. | 2014 | Not available ⁴⁷⁸ |
| | 16 | Proportion of audit reports published on the SAI website compared to total audit reports adopted. | 2014 | 100% |

⁴⁷³ The Constitutions do not require public external audit to be established and protected, as required under INTOSAI Standards (Lima Declaration, ISSAI 1: Section II: Independence).

⁴⁷⁴ Law on Auditing the Institutions of BiH (2006); Law on Public Sector Auditing of the RS (2005 and 2014); Law on Auditing the Institutions of the FBiH (2006); Law on the Audit of Public Administration and Institutions in the BD of BiH (2008 and 2014).

⁴⁷⁵ Data provided by SAI BiH, SAI FBiH and SAI RS; data for SAI BD is not available. The 32% figure is an average for the State and the two Entities.

⁴⁷⁶ Data provided by SAI BiH, SAI FBiH and SAI RS; data for SAI BD is not available. The 32% figure is for the total of the State and the two Entities.

⁴⁷⁷ The 0.11% figure is for the total of the State, the two Entities and the BD.

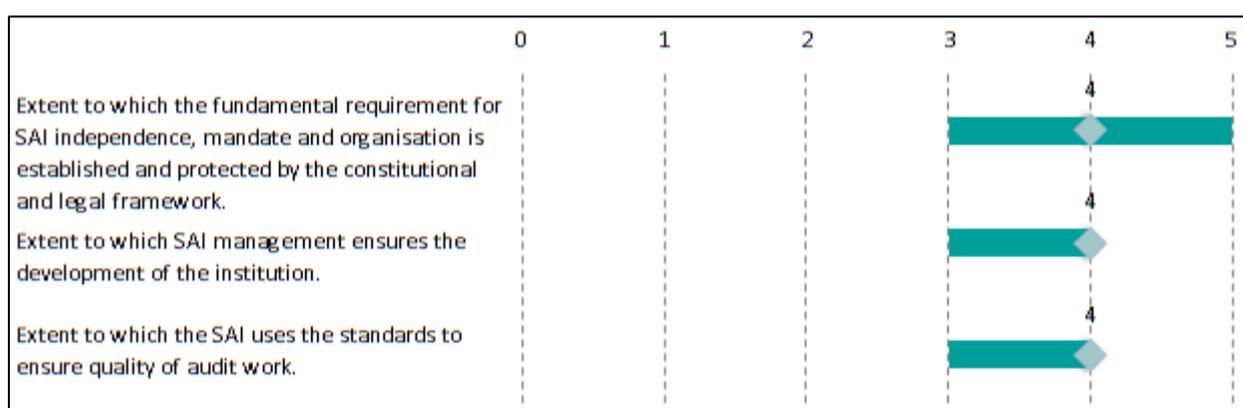
⁴⁷⁸ Consistent figures not available for each SAI.

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| | | | | |
|--|----|--|---------------------|--------------------|
| | 16 | Share of audit recommendations accepted and implemented by auditees. | 2013 ⁴⁷⁹ | 32% ⁴⁸⁰ |
| | 16 | Share of timely audit reports. | 2014 | 100% |

The values of the qualitative indicators of the country are displayed below in comparison with the range of values for the same indicators in the other Enlargement countries (in the Western Balkans and Turkey). The range is formed by the values given to the lowest and highest performer for a given indicator.

Figure 11. Country baseline value in comparison with the regional range



Analysis of Principles

Principle 15: The independence, mandate and organisation of the Supreme Audit Institution are established and protected by the constitutional and legal framework and are respected in practice.

The respective Constitutions do not provide anchorage for the financial and operational independence of the SAIs, nor for the appointment, dismissal and terms of mandate of auditors general and their deputies. The auditors general and the deputies of the four SAIs are appointed for a term of seven years, without the possibility of re-appointment. None of these officials have been forcibly removed from office since the establishment of the SAIs and any replacements have been in accordance with legal provisions. There have been no significant external restrictions on the budgets of the SAIs.

Three SAIs have adopted strategic development plans⁴⁸¹, and progress is monitored on a regular basis by each one. Staffing resources for all four SAIs have been limited since they were established, totalling 193 in December 2014, including auditors general, their deputies and 31 support staff. This is only a marginal increase over the 2013 total of 190. Although the levels of staff are below authorised levels, resulting in reduced coverage for mandatory audits, all the SAIs apply a risk-based approach as part of their annual audit plans, which provides assurance about the audit coverage undertaken each year. The SAIs provide certification training for their staff, but the continuing development training that is also provided is not based on formal training needs assessments. The annual audit planning exercise by each SAI assigns appropriate responsibility for managing staff and their audit activities. The activities of the SAIs, including training activities, are reported in their annual activity reports to the respective Parliaments each year. With regard to the budgets and staffing levels of the SAIs, the Parliamentary

⁴⁷⁹ 2014 data is not available.

⁴⁸⁰ Data provided by SAI BiH, SAI FBiH and SAI RS; data for SAI BD is not available. The 32% figure is for the total of the State and the two Entities.

⁴⁸¹ Strategic development plans for the period 2014-2020 have been adopted by SAI BiH, SAI FBiH and SAI RS. SAI BD has not adopted a plan.

Assembly at the State level, the Assembly of the RS, the Parliament of the FBiH and the Assembly of the BD (hereafter “Parliaments”) and the four SAIs have taken into account the austerity restrictions required for the whole of the public administration.

The audit mandates for the SAI BiH, the SAI FBiH and the SAI RS⁴⁸² are exhaustive and empower them to undertake financial and performance audits⁴⁸³, in accordance with international auditing standards. The SAIs submit their reports to their respective Parliaments under specific legislation⁴⁸⁴. In 2014, the SAIs submitted a total of 213 audit reports to the Parliaments and published these reports on their websites. There has been no denial or restriction necessary to the work of the SAIs during the past three years. The Finance and Budget Committee of the Parliamentary Assembly of BiH, the Joint Committee in charge of Audit for the Parliamentary Assembly of the Federation, the Audit Board of the National Assembly of RS and the Budget Committee of the Assembly of BD each provide a general report on the work of the SAIs to their respective Parliaments each year. The committees produce reports on the work of the SAIs each year, but there is no response from the respective Governments.

Based on the above, the value of the indicator about the extent to which the independence, mandate and organisation of the SAIs is established and protected by the constitutional and legal framework is 4. The value of the indicator for the extent to which the management of the SAIs ensures the development of their respective institutions is 4.

There is no constitutional anchorage for the SAIs and their senior management, although, so far, this has not been an impediment to their effective operation. The SAIs have an exhaustive audit mandate, and SIA managements have mitigated the impact of significant numbers of public institutions subject to audit by applying a risk-based approach for the audit planning decisions taken each year.

Principle 16: The Supreme Audit Institution applies standards in a neutral and objective manner to ensure high quality audits, which positively impact on the functioning of the public sector.

The SAI laws provide for the audit process, audit reporting and quality control to comply with international auditing standards⁴⁸⁵. On the basis of the respective SAI laws, the SAIs co-operate by means of a Co-ordination Board. The Law on Auditing the Institutions of BiH⁴⁸⁶ sets out the establishment and responsibilities of the Co-ordination Board. These are to establish audit guides and instructions, to exchange professional experiences, and to organise and co-ordinate developmental activities. The Co-ordination Board has been an important vehicle for the joint development of audit standards and guidelines.

The implementation of audit recommendations by auditees is formally monitored by the SAIs. For 2013, 32% of the total number of recommendations accepted by the auditees of SAI BiH, SAI FBiH and SAI RS⁴⁸⁷ had been implemented by the end of the following year. For 2012, the equivalent figure was 31%, which shows that the low level of implementation is a continuing problem⁴⁸⁸.

The four SAIs have adopted procedures⁴⁸⁹ that cover financial audit, performance audit and quality control, and they ensure that the audit work undertaken conforms to these standards and procedures. Each one has formally established quality management procedures, although reports relating to the outcome of these procedures are not yet available. The head of each of the SAIs monitors the

⁴⁸² SAI Laws, Article 11 (State); Article 11 (FBiH); Article 16 (RS).

⁴⁸³ SAI Laws, Article 8 (State); Article 8 (FBiH); Article 13 (RS).

⁴⁸⁴ SAI Laws, Article 16 (State); Article 16 (FBiH); Article 21 (RS).

⁴⁸⁵ SAI Laws, Articles 10 to 16 (State); Articles 10 to 16 (FBiH); Articles 15 to 21 (RS).

⁴⁸⁶ Law on Auditing the Institutions of BiH, Article 46.

⁴⁸⁷ Data for SAI BD is not available.

⁴⁸⁸ Data provided by SAI BiH, SAI FBiH and SAI RS; data for SAI BD is not available. The 32% figure is an average for the State and the two Entities.

⁴⁸⁹ The International Standards for SAIs were adopted by the Co-ordination Board in 2011 for implementation by each SAI, supplemented by a public sector audit manual.

realisation of the annual audit plan each year and submits annual activity reports⁴⁹⁰ to the Parliaments. An increased use of information technology (IT) and sampling methodologies by the SAIs has helped to improve the efficiency of the audit processes undertaken by SAI staff as part of their audit activities.

Based on the above, the value of the indicator on the extent to which the SAIs adhere to standards to ensure the quality of the audit work is 4.

The SAIs publish audit reports that comply with international auditing standards, although they do not audit all institutions within their mandates every year. The SAI managements have mitigated the impact of this by applying a risk-based approach for the audit planning decisions taken each year. The number of recommendations implemented by auditees by the end of the following year is very low.

Key recommendations

Short-term (1-2 years)

- 1) The SAIs and the Co-ordination Board should work closely with the Parliamentary Assembly at State level, the Assembly of the RS, the Parliament of the FBiH and the Assembly of BD and the auditees to organise awareness-raising events in order to improve the rate of implementation of audit recommendations by auditees.
- 2) The SAIs and the Co-ordination Board should seek to further improve the efficiency of the financial audit processes by increasing the use of IT and sampling methodologies.
- 3) The SAIs and the Co-ordination Board should develop a formal training needs analysis assessment to support the continuous development training of staff.
- 4) The SAIs and the Co-ordination Board should draft audit quality control reports with recommendations for improvements and put in place audit quality assurance procedures.

Medium-term (3-5 years)

- 5) The SAIs and Co-ordination Board should communicate more proactively with the media and the wider public in order to explain audit results and further explain its role on the basis of concrete audit examples.

⁴⁹⁰ SAI Laws, Article 6 (State); Article 6 (FBiH); Article 26 (RS).



For more information:

OECD/SIGMA

2 Rue André Pascal
75775 Paris Cedex 16
France

mailto: sigmaweb@oecd.org

Tel: +33 (0) 1 45 24 82 00

Fax: +33 (0) 1 45 24 13 05

www.sigmaweb.org