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Monitoring Report:

# The Principles of Public Administration

## BOSNIA and HERZEGOVINA

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## LIST OF ABBREVIATIONS AND ACRONYMS

|       |   |
|-------|---|
| ACA   | Agency for Prevention of Corruption and Co-ordination of the Fight Against Corruption |
| AI    | Administrative Inspectorate   |
| AIDRS | Agency for Information Society of the RS  |
| APIF  | Agency for Intermediate and Financial Services  |
| BD    | Brčko District  |
| BFD   | budget framework document   |
| BFP   | Budget Framework Paper  |
| BiH   | Bosnia and Herzegovina  |
| CAF   | Common Assessment Framework   |
| CB    | Co-ordination Board   |
| CEPEJ | European Commission for the Efficiency of Justice                                     |
| CHU   | Central Harmonisation Unit  |
| CMS   | case management system  |
| COFOG | Classification of the Functions of Government   |
| CoG   | centre of government  |
| CoM   | Council of Ministers  |
| COSO  | Committee of Sponsoring Organizations   |
| CPD   | continuous professional development   |
| CSA   | Civil Service Agency  |
| CSL   | Civil Service Law   |
| DEI   | Directorate for European Integration  |
| DEP   | Department of Economic Planning   |
| EA    | external audit  |
| EBF   | extra-budgetary fund  |
| EC    | European Commission   |
| EI    | European integration  |
| EIF   | European Interoperability Framework   |
| ERP   | Economic Reform Programme   |
| ESA   | European System of Accounts   |
| ESL   | Electronic Signature Law  |
| EU    | European Union  |
| FBiH  | Federation of Bosnia and Herzegovina  |

Bosnia and Herzegovina  
List of Abbreviations and Acronyms

|        |  |
|--------|--|
| FD     | Finance Directorate  |
| FIDP   | Federal Institute of Development Programming   |
| FMC    | financial management and control   |
| GAWP   | Government Annual Work Plan  |
| GFFBP  | Global Framework on Fiscal Balance and Policies  |
| GS     | General Secretariat  |
| HJPC   | High Judicial and Prosecutorial Council  |
| HRM    | human resource management  |
| HRMIS  | Human Resource Management Information System   |
| IA     | internal audit   |
| IDDEEA | Agency for Identification of Documents, Registers and Data Exchange                      |
| IIA    | Institute of Internal Auditors   |
| IMF    | International Monetary Fund  |
| IPA    | Instrument for Pre-accession Assistance  |
| IPSAS  | International Public Sector Accounting Standards   |
| ISSAI  | International Standards of Supreme Audit Institutions                                    |
| JMB    | Joint Management Board   |
| LCS    | Law on Civil Service   |
| LGAP   | Law on General Administrative Procedures   |
| LOBD   | Legislative Office of the Mayor's Office (BD)  |
| LOCoM  | Legislative Office of the Council of Ministers   |
| MCA    | Ministry of Civil Affairs  |
| MERRC  | Ministry of Economic Relations and Regional Co-operation                                 |
| MoF    | Ministry of Finance  |
| MoFT   | Ministry of Finance and Treasury   |
| MoFTER | Ministry of Foreign Trade and Economic Relations   |
| Mol    | Ministry of Interior   |
| MoJ    | Ministry of Justice  |
| MoU    | Memorandum of Understanding  |
| MTBF   | medium-term budgetary framework  |
| NIF    | National Interoperability Framework  |
| OCCoM  | Office of the Chairman of the Council of Ministers                                       |
| OLFBiH | Office of the Government of the FBiH for Legislation and Harmonisation of EU Regulations |

Bosnia and Herzegovina  
List of Abbreviations and Acronyms

|       |  |
|-------|--|
| PAR   | public administration reform                       |
| PARCO | Public Administration Reform Co-ordinator's Office |
| PDC   | policy development and co-ordination               |
| PFM   | public financial management                        |
| PIP   | Public Investment Programme                        |
| PP    | public procurement                                 |
| PPA   | Public Procurement Agency                          |
| PPL   | Public Procurement Law                             |
| PPP   | public-private partnership                         |
| PRB   | Procurement Review Body                            |
| RAP1  | Revised Action Plan 1                              |
| ReSPA | Regional School of Public Administration           |
| RIA   | Regulatory Impact Assessment                       |
| RoP   | Rules of Procedure                                 |
| RS    | Republika Sprska                                   |
| SAA   | Stabilisation and Association Agreement            |
| SAI   | Supreme Audit institution                          |
| SAO   | State Audit Office                                 |
| SDP   | Strategic Development Plan                         |
| SGBD  | Secretariat General of the BD                      |
| SGCoM | Secretariat General of the Council of Ministers    |
| SGG   | Secretary General of the Government                |
| SL    | Secretariat for Legislation                        |
| SNAO  | Swedish National Audit Office                      |
| SOE   | state-owned enterprise                             |
| TSA   | treasury single account                            |
| VAT   | value added tax                                    |

## INTRODUCTION

SIGMA developed the Principles of Public Administration in 2014 to support the European Commission's (EC) reinforced approach to public administration reform (PAR) in the European Union (EU) Enlargement process. In 2017, the Principles<sup>1</sup> were updated and a new methodological framework developed to improve clarity, without changing the substance of the conceptual framework. The Principles define what good public governance entails in practice and outline the main requirements to be followed by countries during European integration (EI). The monitoring framework enables regular analysis of progress made in applying the Principles and setting country benchmarks.

In 2015 SIGMA undertook comprehensive Baseline Measurement assessments for the seven EU Enlargement candidate countries and potential candidates against the Principles and has continued to monitor subsequently the progress of PAR. Monitoring reports were also published in 2016 for assessments in selected priority areas of PAR.

This 2017 Monitoring Report, for the period May 2015 to June 2017, covers the six key areas of reform: 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 and external audit.

The first part of the Report sets out major developments and progress made since 2015, based on the indicators and methodology used in the Baseline Measurement Reports. The analysis of individual Principles is further enhanced through the introduction of a new set of monitoring indicators and sub-indicators, described in the *Methodological Framework for the Principles of Public Administration*<sup>2</sup>. The indicator values, based on the points allocated to each sub-indicator, are indicative and should not be used or interpreted on their own without the context of the full qualitative analysis provided under each Principle.

SIGMA focused this Monitoring Report on the four main administrative levels in Bosnia and Herzegovina (BiH): the State, the Federation of Bosnia and Herzegovina (FBiH), the Republika Srpska (RS) and the Brčko District (BD). However, the Report covers the country as a whole and does not provide separate indicator values for the different administrative levels.

To calculate countrywide values in those cases where competencies are shared between the different administrative levels, the indicator value is calculated based on the weakest performer unless it is the BD, in which case the second weakest part of the BiH governance structure is used to calculate the indicator value. In some cases, the State level cannot be assessed at all as it has no competencies. There are also areas where the FBiH has only cantonal competencies. In other cases, especially regarding strategy and planning documents, and where only state-level legislation exists, the state level alone has been taken into account.

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<sup>1</sup> OECD (2017), *The Principles of Public Administration*, OECD, Paris: <http://www.sigmaweb.org/publications/Principles-of-Public-Administration-Edition-2017-ENG.pdf>

<sup>2</sup> OECD (2017), *Methodological Framework for the Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

## Bosnia and Herzegovina Introduction

The Report attempts to present the situation in BiH as clearly as possible by providing short- and medium-term recommendations to help the administration take concrete action in tackling the most important challenges. These include recommendations from both the 2015 SIGMA Baseline Measurement Report<sup>3</sup> and the 2016 SIGMA Monitoring Report<sup>4</sup> which have not been implemented yet and are still relevant.

The analytical findings and recommendations in this Monitoring Report are also designed to inform the policy dialogue and discussions between the EC and the administration about priority areas for reform and potential support.

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<sup>3</sup> OECD (2015), *Baseline Measurement Report: Bosnia and Herzegovina*, OECD Publishing, Paris, <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-BiH.pdf>.

<sup>4</sup> OECD (2016), *Monitoring Report: Bosnia and Herzegovina*, OECD Publishing, Paris, <http://www.sigmaweb.org/publications/Monitoring-Report-2016-BiH.pdf>.

## OVERVIEW

The Stabilisation and Association Agreement (SAA) signed in 2008 came into force on 1 June 2015. BiH submitted its application to join the EU on 15 February 2016 and is now a potential candidate for EU membership. Following the EU Council's invitation in September 2016 to the EC to submit its opinion on BiH's application for EU membership, in December 2016 the EC submitted a substantive Questionnaire to the country where answers from BiH as a whole are to be received. The answers, together with other sources of information, will allow the EC to prepare an opinion on BiH's readiness to start EU accession negotiations.

The Reform Agenda, adopted in 2015 by each level of Government in BiH was the result of an extensive consultation process within the whole country and is based on their respective political programmes. Its implementation had some positive initial steps to structurally adjust BiH's economy. However, the pace of reforms has slowed down and in the area of PAR no progress has been visible. Indeed, there have been some backwards steps, such as attempts to further politicise the civil service.

Throughout BiH, a need for additional efforts to initiate and implement reforms across all areas of the public administration is needed if there is to be any further progress with EI.

The key PAR-related priorities for BiH are:

- Adoption and implementation of a new strategic framework for PAR and PFM across all levels of the administration, supported by well-prepared and costed action plans.
- Increased co-operation between the respective institutions of the State, the Entities and the BD regarding the process of EI and preparation of an overall BiH plan for adoption of the EU *acquis* which provides complete and consistent information about all legislative and non-legislative commitments across all levels of the administration, to ensure harmonised planning and transposition of the *acquis*.
- Implementing merit-based recruitment to all levels of the civil service in practice as application procedures are overly formalistic and the capacities of selection/competition committees are inadequate. Exceptions from merit-based recruitment, such as through the use of temporary personnel, and ensuring ethnic representation are additionally harming the merit principle and there is a critical need to prevent a constant intention at all levels to allow direct or indirect political influence on appointments to senior managerial posts.
- A monitoring system for budgetary arrears should be established, as well as greater emphasis placed on the transparency of budgetary information.
- Full alignment of the public procurement legislation with the 2014 Public Procurement Directives should be undertaken, together with harmonising the PPP/Concessions Laws with the EU Concessions Directive and ensuring an increased level of co-ordination across all the relevant authorities.

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# Strategic Framework of Public Administration Reform

## STRATEGIC FRAMEWORK OF PUBLIC ADMINISTRATION REFORM

### 1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015 – JUNE 2017

#### 1.1. State of play

Public administration reform (PAR) remains one of the few areas in which a countrywide Strategy has been approved and implemented by all levels of the Bosnia and Herzegovina (BiH) administration, i.e. the Council of Ministers (CoM) of BiH (the State level) and the Governments of the Federation of BiH (FBiH), the Republic of Srpska (RS) and the Brčko District (BD). However, although all levels have agreed a clear plan and timeline for PAR<sup>5</sup>, BiH has not fully developed and adopted a new strategic framework since the PAR Strategy<sup>6</sup> and Revised Action Plan 1 (RAP1)<sup>7</sup> expired in 2014. Significant disagreements have arisen concerning the scope and content of the new PAR Strategy.

In the absence of an agreement on a new strategic framework of PAR, BiH has continued the implementation of PAR on the basis of the outdated PAR Strategy and RAP1. All levels of the BiH administration have passed formal decisions<sup>8</sup> to continue the implementation of unrealised measures included in the RAP1. Biannual and annual reports on the countrywide implementation of the RAP1 have been published regularly on the website of the PAR Co-ordinator's Office (PARCO)<sup>9</sup>.

The PARCO, together with the PAR Co-ordinators at the Entity and BD levels, is responsible for the co-ordination of PAR implementation across the whole country. However, the current arrangements and organisational set-up do not enable effective and strong management of the PAR process across all levels of the BiH administration.

The quality of the existing PAR planning documents, namely the extended PAR Strategy and RAP1, has not been improved, and major weaknesses and shortcomings have been observed in implementation, monitoring and reporting. While a decision has been made to extend the RAP1, the deadlines for specific measures have not been updated, which impedes effective monitoring and reporting on PAR implementation. The PAR planning documents do not provide information concerning the potential costs of reforms and the sources of funding, which questions the overall financial sustainability of PAR. The PAR Fund<sup>10</sup>, which is financed primarily by international donor organisations, remains the main dedicated source of PAR funding across BiH.

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<sup>5</sup> The Operational Plan for PAR, together with a timetable, was developed and agreed in 2016. This process was supported by the Reform Agenda 2015-2018, which had been agreed and adopted by all levels of the administration in 2015. The CoM adopted the Reform Agenda on 10 June 2015, the Government of the FBiH on 27 July 2015, and the Government of the RS on 23 July 2015.

<sup>6</sup> The CoM, the Government of the RS and the Government of the FBiH (2006), *Bosnia and Herzegovina Public Administration Reform Strategy* (PAR Strategy).

<sup>7</sup> The CoM, the Government of the RS, the Government of the FBiH, and the Government of the BD (2011), *Revised Action Plan 1 of the PAR Strategy* (RAP1).

<sup>8</sup> Notice on the Conclusions of the CoM, Decision No. 05-07-1-1724-15/15 of 10 July 2015; Conclusion of the Government of the FBiH, Decision No. 865/2015 of 9 July 2015; Conclusion of the Government of the RS, No. 04/1-012-2-2523/15 of 5 November 2015; and Conclusion of the Government of the BD, Act No. 01-11-1031DS-02/15 of 5 June 2015.

<sup>9</sup> The Decision of the CoM on the Establishment of the Co-ordinator for PAR (PARCO), October 2004.

<sup>10</sup> 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, the CoM, the Government of the FBiH, the Government of the RS, the Government of the BD, and the MoFT of BiH, July 2007.

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A separate, parallel process under way to develop a new public financial management (PFM) reform strategy.

## 1.2. Main developments

The following section describes key changes in the public administration for each key requirement<sup>11</sup> and main developments, based on the indicators used in the SIGMA 2015 Baseline Measurement Report.

Following the expiry of the PAR Strategy and the RAP1 in 2014 and pending an agreement on a new strategic framework of PAR, all levels of the BiH administration adopted decisions in 2015<sup>12</sup> to extend the implementation of the projects and unrealised activities included in the RAP1. These decisions were supported by a wider agreement within the scope of the Reform Agenda 2015-2018, which established the necessary conditions and working arrangements for the development and agreement of a new, countrywide strategic framework for PAR.

In 2016, all levels of the administration approved the Operational Plan, which set out the process, timeline and working arrangements for the development of a new PAR strategic framework<sup>13</sup>. Unfortunately, most of the deadlines and milestones agreed under the Operational Plan have not been met. New working structures – the Umbrella Working Group and the Thematic Working Groups<sup>14</sup> – were established to draft a new PAR strategic framework for the whole country. However, despite the activities and meetings of these working structures, the new strategic framework has still not been finalised.

At the same time, the Ministry of Finance and Treasury (MoFT) of BiH, the Ministry of Finance (MoF) of the FBiH, the MoF of the RS, and the Directorate of Finance of the BD have been working on the elaboration of separate PFM strategies, which would then be combined into a single, countrywide PFM Strategy. The process of elaborating a consolidated PFM Strategy, based on a bottom-up approach of developing separate PFM strategies at all levels of the administration, is different from the approach taken for the elaboration of a strategic framework for PAR. While the State level, the FBiH and the BD have already adopted their PFM Strategies<sup>15</sup>, it is not yet known when the RS will approve its own strategy. Furthermore, it is unclear how all of these separate PFM strategic documents will be consolidated, and how it will be aligned with the new strategic framework for PAR.

As no significant progress has been made in the development and implementation of a new PAR strategic framework and as the implementation of PAR is still based on the same planning documents that were assessed in the SIGMA 2015 Baseline Measurement Report, some of the indicators used for monitoring

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<sup>11</sup> OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, [http://www.sigmaweb.org/publications/Principles-of-Public-Administration\\_Edition-2017\\_ENG.pdf](http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf).

<sup>12</sup> Information on activities in the process of public administration reform, adopted by the CoM of BiH by Decision No. 05-07-1-1724-15/15 of 10 July 2015, the Government of the FBiH by Decision No. 865/2015 of 9 July 2015, the Government of the RS by Conclusion No. 04/1-012-2-2523/15 of 5 November 2015, and the Government of the BD by Act No. 01-11-1031DS-02/15 of 5 June 2015.

<sup>13</sup> *Ibid.*

<sup>14</sup> Decision of the CoM on the Appointment of the Members of BiH Institutions to the Inter-Institutional Working Groups on the PAR Strategic Framework No. 05-07-1-1710-6/16 of 6 June 2016; Decision of the Government of the FBiH on the Appointment of the Members of the Government of the FBiH to the Inter-Institutional Working Groups on the PAR Strategic Framework No. 04-05-128/2016 PO of 7 June 2016; Decision of the RS Government on the Appointment of the Members of the Government of the RS to the Inter-Institutional Working Groups on the PAR Strategic Framework, Official Gazette No. 47 of 13 June 2016; and Decision of the BD Government on the Appointment of the Members of the BD Government to the Inter-Institutional Working Groups on the PAR Strategic Framework No. 01.11-0566LO-018/16 of 11 November 2016.

<sup>15</sup> The CoM adopted the PFM Strategy during its 87<sup>th</sup> session, held on 29 December 2016; the FBiH Government adopted the PFM Strategy on 15 June 2017 during the 106<sup>th</sup> session of the FBiH Government; and the BD Government adopted the PFM Strategy on 5 June 2017 during the 14<sup>th</sup> session of the BD Government.

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progress since 2015 have also remained the same. With regard to the implementation rate of PAR, since the deadlines for activities in the RAP1 have not been updated to include 2016, it is not possible to calculate the value of the indicator assessing the implementation backlog. Most of the recommendations included in the 2015 Baseline Measurement Report, particularly those related to the development of the new PAR strategic framework and to the quality of financial estimates of PAR measures, remain relevant.

**Table 1. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports<sup>16</sup>**

|              | 2015 Baseline Measurement indicator  | 2015 value                  | 2017 value                  |
|--------------|--|-----------------------------|-----------------------------|
| Qualitative  | Extent to which the scope of PAR central planning document(s) is complete.                                       | 0                           | 0                           |
|              | Extent to which a comprehensive PAR reporting and monitoring system is in place.                                 | 3                           | 3                           |
| Quantitative | Ratio of central planning documents featuring PAR objectives and priorities uniformly and coherently.            | Not available <sup>17</sup> | Not available <sup>18</sup> |
|              | Share of public administration development activities and reforms from all activities in PAR planning documents. | 61% <sup>19</sup>           | 0% <sup>20</sup>            |
|              | Annual implementation backlog <sup>21</sup> of public administration development activities and reforms.         | 7% <sup>22</sup>            | Not available <sup>23</sup> |

<sup>16</sup> OECD (2015), *Baseline Measurement Report: Bosnia and Herzegovina*, OECD Publishing, Paris, <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-BiH.pdf>.

<sup>17</sup> No countrywide, central planning documents and no single centre of government exist in BiH. The priorities for PAR have been identified in the PAR documents themselves. The medium-term planning documents at BiH State level and at the levels of the two Entities and the BD either feature PAR as a priority or refer to PAR-related objectives.

<sup>18</sup> Ditto.

<sup>19</sup> This percentage was calculated on the basis of measures included in the RAP1, except for activities that have been assessed as being administrative activities or activities that are parts of a process. Examples of administrative or process-type activities are the following: regular maintenance and updating of electronic databases of laws and by-laws, aimed at improving co-operation and exchanging data between the different levels of government; affirmation of the implementation of a code of ethics/conduct in practice; hiring and training of staff; and development of a new organisational structure.

<sup>20</sup> As the country does not yet have a new PAR planning document, the indicator value is set at "0". The PARCO continues implementation of the activities included in the RAP1, and they estimate that 69% of the activities planned in the RAP1 have been implemented.

<sup>21</sup> It should be noted that the indicator assesses the implementation rate of those PAR measures that are considered as public administration development activities and reforms within the same year.

<sup>22</sup> The indicator is calculated on the basis of the Annual Progress Report 2014, prepared by PARCO in co-operation with the other PAR Co-ordinators and submitted to the CoM in March 2015. A total of 41 one-off activities were foreseen in 2014, but only 3 were fully implemented at all levels of the administration. Only activities that have been implemented at all levels of the administration are considered as having been implemented. If the same activity has not been implemented by at least one level of the administration, it is considered to be unimplemented.

<sup>23</sup> It is not possible to calculate the indicator for 2017 as the new PAR planning document has not yet been developed. Furthermore, as the RAP1 does not establish new deadlines for measures, it is not possible to calculate the indicator based on that planning document.

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|  |   |                             |                             |
|--|---|-----------------------------|-----------------------------|
|  | Percentage of fulfilled PAR objectives.     | Not available <sup>24</sup> | Not available <sup>25</sup> |
|  | Share of resourced and costed PAR measures. | 0%                          | 0%                          |

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<sup>24</sup> The PAR Strategy and the RAP1 do not have performance targets aligned with the policy objectives set for PAR, and it is therefore not possible to set a value for the percentage of fulfilled PAR objectives.

<sup>25</sup> No new PAR planning documents have been prepared. In addition, the expired PAR Strategy and the RAP1 do not have performance targets aligned with the policy objectives set for PAR. It is therefore not possible to set a value for the percentage of fulfilled PAR objectives.

## 2. ANALYSIS

This analysis covers four Principles for the strategic framework of public administration reform area, grouped under one key requirement. It includes a summary analysis of the indicator used to assess against each Principle, including sub-indicators<sup>26</sup>, and an assessment of the state of play for each Principle. For each key requirement short- and medium-term recommendations are presented.

**Key requirement: The leadership of public administration reform and accountability for its implementation is established, and the strategic framework provides the basis for implementing prioritised and sequenced reform activities aligned with the government's financial circumstances<sup>27</sup>.**

The values of the indicators assessing Bosnia and Herzegovina's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



### ***Analysis of Principles***

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

BiH has failed to develop and adopt a new, countrywide strategic framework for PAR, despite the fact that the CoM and the relevant Governments of the FBiH, the RS and the BD had agreed a clear plan and timeline. The PAR Strategy<sup>28</sup> and the RAP1<sup>29</sup> expired in 2014. In the absence of a new PAR strategic framework, and in order to ensure the continuation of the reforms, the CoM<sup>30</sup> and the Governments of the FBiH<sup>31</sup>, the RS<sup>32</sup> and the BD<sup>33</sup> adopted decisions in 2015 authorising the relevant institutions to

<sup>26</sup> OECD (2017), *Methodological Framework for the Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

<sup>27</sup> The Principles under this key requirement are analysed on the basis of a countrywide approach. Where information for the whole country is not available, the relevant documents or information at BiH State level are analysed.

<sup>28</sup> The CoM, the Government of the RS and the Government of the FBiH (2006), PAR Strategy.

<sup>29</sup> The CoM, the Government of the RS, the Government of the FBiH and the Government of the BD (2011), RAP1.

<sup>30</sup> Notice on the Conclusions of the CoM, Decision No. 05-07-1-1724-15/15 of 10 July 2015.

<sup>31</sup> Conclusion of the Government of the FBiH, Decision No. 865/2015 of 9 July 2015.

<sup>32</sup> Conclusion of the Government of the RS, No. 04/1-012-2-2523/15 of 5 November 2015.

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implement the projects and activities of the RAP1 until a new strategic framework for PAR is adopted. Through these decisions, the implementation of the RAP1 was officially extended. The planned activities and timeline of implementation of the RAP1 activities and objectives, however, have not been changed.

Since the beginning of 2016, the PARCO and the PAR Co-ordinators of the Entities and the BD have been engaged in the development of a new strategic framework of PAR. The overall approach, working arrangements and timeline of the actual work were included in the Operational Plan, to which all levels of the BiH administration have agreed to adhere. This process has been supported by technical assistance from international partner organisations and countries.

However, the actual work of developing the new strategic framework of PAR, which has followed a countrywide top-down approach, has been progressing very slowly, and most of the agreed deadlines have not been met. The first preliminary draft of the new strategic framework of PAR document was prepared only in February 2017, and none of the BiH administrations has agreed on the draft document. Major disagreements remain between the Entities concerning the scope and content of the new strategic framework.

In addition, a parallel process is under way for the development of the new PFM Strategy, at first by developing PFM strategies at each of the four administrative levels. These PFM strategies are later expected to be consolidated to form a single, countrywide PFM Strategy. As of June 2017, the BiH CoM, the Government of the FBiH and the Government of the BD have adopted their respective PFM strategies<sup>34</sup>. It is unclear when the RS will adopt its strategy and also how the four different strategies will be consolidated in order to create a single, countrywide PFM Strategy. That single strategy will also need to be aligned with the new PAR strategic document, which has yet to be finalised and agreed.

In the absence of a new strategic framework of PAR, the assessment below focuses on the quality and scope of the outdated PAR planning documents. Although the expired PAR Strategy and the RAP1 cover adequately several subject areas of PAR – including policy development and co-ordination, public service and human resource management, accountability and PFM – the measures and recommendations included in the strategic documents are based on analysis and data from 2006<sup>35</sup>.

The prioritisation of PAR in key government planning documents and the coherence and alignment of these documents with the expired PAR Strategy and the RAP1 are weak. As no single, countrywide government work programme for BiH exists, it is not possible to identify and confirm the priorities for the whole country based on planning documents that have been developed at all levels of the BiH administration and to assess the alignment of those documents with the objectives set out in the countrywide strategic framework of PAR. The 2017 Government Annual Work Plan (GAWP) of the CoM of BiH covers four of the five subject areas of PAR<sup>36</sup>, but it is not aligned with the PAR strategic documents<sup>37</sup>. An analysis of the Economic Reform Programme (ERP) for BiH<sup>38</sup> indicates that only one subject area of PAR is covered, whereas the Action Plans for the Implementation of the Priorities of the 2015 Baseline

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<sup>33</sup> Conclusion of the Government of the BD, Act No. 01-11-1031DS-02/15 of 5 June 2015.

<sup>34</sup> The CoM adopted the PFM Strategy during its 87<sup>th</sup> session, held on 29 December 2016; the FBiH Government adopted the PFM Strategy on 15 June 2015, during the 106<sup>th</sup> session of the FBiH Government; the BD Government adopted the PFM Strategy on 5 June 2017, during the 14<sup>th</sup> session of the BD Government.

<sup>35</sup> The PAR Strategy was approved in 2006.

<sup>36</sup> The GAWP of the CoM for 2017 covers the following four areas: policy development and co-ordination, public service and human resource management, public financial management, and service delivery.

<sup>37</sup> As the deadlines of measures included in the RAP1 have not been extended to cover 2017, it is not possible to assess the alignment of the PAR strategic documents with the BiH State-level plan for 2017.

<sup>38</sup> The CoM adopted the Economic Reform Programme (ERP) 2017-2019 on 25 January 2017, during its 89<sup>th</sup> session.

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Measurement Report cover two of the five subject areas of PAR<sup>39</sup>. In the absence of a countrywide European integration (EI) plan, the Action Plans constitute the main countrywide planning document for EI-related activities, and they are used in the analysis of the EI process in BiH.

As BiH has no new action plan for PAR, it is impossible to assess the quality and effectiveness of such a plan. Consequently, the relevant indicators in this section have been given a value of 0. An analysis of the expired planning document for PAR shows serious weaknesses in terms of its content. While the outdated RAP1 contains a large number of activities, only 61% of those activities are assessed to be reform-oriented and/or development activities<sup>40</sup>; the remaining activities are evaluated as being process-oriented in nature. Nevertheless, the outdated PAR Strategy and the RAP1 contain well-defined objectives and enable an adequate situation analysis. The planned reform activities contained in those documents have responsible institutions and deadlines clearly assigned, and a monitoring and reporting mechanism is in place. At the same time, the existing monitoring framework does not include outcome-level indicators, and baseline and target values have not been established.

Although the expired PAR strategic documents were made available for public consultation in 2006, representatives of civil society organisations did not participate in the working groups that were tasked to prepare these documents<sup>41</sup>. Moreover, no consultation has been carried out with civil society organisations regarding changes to the scope and/or timeline of implementation of PAR since 2006, including for the preparation of the RAP1. Similarly, representatives of civil society organisations have not yet been involved in the development of the new strategic framework of PAR. For these reasons, the relevant sub-indicator has been assessed as 0.

Due to the absence of a new PAR strategic document for the whole country, it is not possible to fully assess the set of sub-indicators under this principle. The overall value for the indicator 'Quality of the strategic framework of public administration reform' is 0.

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<sup>39</sup> The ERP 2017-2019 for BiH covers PFM, and the Action Plans for the Implementation of the Priorities of the 2015 Baseline Measurement Report cover public service and human resource management as well as PFM.

<sup>40</sup> "Reform-oriented activities" are defined here as activities that explicitly aim to implement particular public-sector reforms, as opposed to regular, ongoing government activities related to general service delivery, financial management, human resource management, reporting, etc.

<sup>41</sup> During 2016, the PARCO organised two public consultations on the draft medium-term plan and the draft annual work programme for 2016. However, no public consultation was organised during the preparation of the RAP1. This information was provided during the assessment interviews with the PARCO, [www.parco.gov.ba](http://www.parco.gov.ba).

| Quality of the strategic framework of public administration reform  |          |   |   |   |   |   |
|---|----------|---|---|---|---|---|
| This indicator measures the quality of the strategy for public administration reform (PAR) and related planning documents (i.e. to what extent the information provided is comprehensive, consistent and complete), including the relevance of planned reforms. |          |   |   |   |   |   |
| A separate indicator measures financial sustainability and cost estimates in detail.  |          |   |   |   |   |   |
| Overall indicator value   | <b>0</b> | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators  | Points      |
|---|-------------|
| 1. Coverage and scope of PAR planning documents               | 0/5         |
| 2. Prioritisation of PAR in key horizontal planning documents | 0/2         |
| 3. Coherence of PAR planning documents                        | 0/4         |
| 4. Presence of minimum content of PAR planning documents      | 0/7         |
| 5. Reform orientation of PAR planning documents               | 0/3         |
| 6. Quality of consultations related to PAR planning documents | 0/2         |
| <b>Total<sup>42</sup></b>                                     | <b>0/23</b> |

**The PAR Strategy and the RAP1 expired in 2014, and the new strategic framework of PAR has not yet been established. A new PFM Strategy for the whole country is under development, based on a new, bottom-up approach aimed at consolidating the respective PFM strategies of all four levels of the administration. This process has also been delayed, however. While the implementation of PAR in BiH has continued on the basis of the outdated PAR planning documents, the quality of those documents has remained low and their content is weak. The outdated documents also lack coherence with other governmental planning documents (at the State level). Most of the activities included in the RAP1 have not been assessed as being reform-oriented. To date, no participation of civil society organisations has occurred in the development of the new strategic framework of PAR.**

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

In the absence of a new strategic framework of PAR, the PARCO and other relevant institutions of the State level, the Entities and the BD have continued to monitor and report on the implementation of the RAP1, based on the principles and arrangements agreed under the outdated PAR Strategy. According to the Strategy, the PARCO is responsible for preparing quarterly output monitoring reports as well as annual reports covering both outputs and outcomes achieved. However, in accordance with the decision of the CoM<sup>43</sup>, since 2010 the PARCO has been preparing only biannual and annual reports. These reports are publicly available on the PARCO's website<sup>44</sup> and are submitted to all decision-making bodies at the State, the two Entities and the BD levels<sup>45</sup>.

<sup>42</sup> Point conversion ranges: 0-3=0, 4-7=1, 8-11=2, 12-15=3, 16-19=4, 20-23=5.

<sup>43</sup> Decision of the CoM No. 05-07-1-1279-24/10 of 29 April 2010.

<sup>44</sup> The reports are available on the PARCO website and in the BiH Official Gazette Nos. 4/05, 33/07 and 85/10, <http://parco.gov.ba/en/dokumenti/izvjestaji/izvjestaji-o-napretku-rju/>.

<sup>45</sup> The PAR Strategy (p. 56) envisages that an annual report on overall progress and future challenges will be presented to the Chairperson of the BiH CoM and will also be available publicly. The Governments of the FBiH, the RS and the BD review and approve their respective parts of the report before it is finalised by the PARCO and submitted to the BiH CoM for approval.

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The RAP1 includes indicators for each objective. A review of these indicators shows that most of them are aimed at measuring the immediate results of the activities, focusing on processes and outputs rather than on their long-term impact. Moreover, the indicators have not been used consistently in progress reports, and no quantified information against each indicator has been provided.

BiH applies a standard methodology to assess progress against PAR objectives<sup>46</sup>. This methodology enables the provision of aggregated and detailed information on the achievement of objectives and activities. Challenges and obstacles to progress are reported, and recommendations are based on the reporting information received from all levels of the BiH administration. Although the methodology provides reporting information on performance at each level of the administration against PAR objectives, it does not aggregate performance at each level of the administration against each and every objective<sup>47</sup>. It is therefore not possible to determine whether the same objective has been achieved as planned at all levels of the administration. Consequently, it is not possible to assess the achievement of objectives for the whole country.

While the implementation of the RAP1 has been extended through the respective decisions at all levels of the administration, the deadlines for individual objectives and activities included in the plan have not been updated to indicate the new anticipated timeline of implementation. As a result, it is not possible to estimate the implementation rate of PAR activities and the fulfilment of PAR objectives in 2016.

In general, the overall implementation rate of the RAP1 objectives, which is calculated on the basis of the number of measures that have been implemented at all levels of the BiH administration, is estimated to be 16.9%<sup>48</sup>. In the 2016 Annual Progress Report<sup>49</sup>, where a different methodology calculates the overall implementation rate on the basis of the average implementation rates at each level of the BiH administration, the implementation rate is estimated at 68%. This method of calculation, however, does not provide an accurate and complete picture of PAR implementation on a countrywide basis. Furthermore, with regard to individual activities, it is estimated that as at the end of 2016, only 63 of the 280 activities (22.5% of the total) had been implemented at all levels of the BiH administration.

The institutional roles and responsibilities for monitoring and reporting on PAR are well defined in two documents: the “Common Platform on the Principles and Implementation of the Strategy on PAR in BiH Action Plan 1” (Common Platform)<sup>50</sup> and the RAP1<sup>51</sup>. The Common Platform confirms that the PARCO is responsible for the overall co-ordination of PAR. It is also responsible for providing information and reports on implementation to all levels of the administration on a regular basis<sup>52</sup>. In addition, the

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<sup>46</sup> PARCO (2017), *Annual Progress Report – January-December 2016*, Section 1, “Introduction and Methodology”.

<sup>47</sup> The status of the implementation of objectives is determined by analysing performance at each level of the administration in relation to all of the objectives. First, the percentage of implemented objectives at each level of the administration is calculated. Second, an objective implementation percentage for each level of administration is calculated. Then the average is calculated by adding the percentages of all levels of administration and then dividing by the total number of administrations. This methodology provides information on how well each level is performing against the objectives, but it does not provide information on whether one and the same objective is implemented at all levels of the administration.

<sup>48</sup> SIGMA calculated this implementation rate on the basis of the objectives that had been implemented at all levels by the end of 2016.

<sup>49</sup> PARCO (2017), *Annual Progress Report – January-December 2016*, <http://parco.gov.ba/en/dokumenti/izvjestaji/izvjestaji-o-napretku-rju/>.

<sup>50</sup> The CoM and the Governments of the FBiH, the RS and the BD (April 2007), “Common Platform on the Principles and Implementation of the Strategy on PAR in BiH Action Plan 1” (Common Platform).

<sup>51</sup> The CoM and the Governments of the FBiH, the RS and the BD (2011), RAP1, Introduction, p. 16.

<sup>52</sup> The CoM and the Governments of the FBiH, the RS and the BD (April 2007), Common Platform, Section VI, paragraph (1)/(g).

Common Platform clarifies that the PAR Co-ordinators<sup>53</sup>, together with the PARCO, are responsible for the co-ordination of PAR at their respective levels of the administration. The PAR Co-ordinators are also responsible for monitoring and reporting on the implementation of PAR measures at each individual level and for providing relevant information to the PARCO and to the Supervisory Teams<sup>54</sup>.

The RAP1 retained the responsibility of the PARCO by confirming its role as the institution that provides professional and technical support for the co-ordination of PAR and for monitoring and reporting on the achievement of objectives<sup>55</sup>.

Overall, due to weaknesses in the monitoring and reporting framework of PAR, in particular the lack of outcome and impact indicators, and the limited and unreliable information concerning the implementation rate and the achievement of PAR objectives, the value for the indicator 'Effectiveness of PAR implementation and the comprehensiveness of monitoring and reporting' is 1.

| Effectiveness of PAR implementation and comprehensiveness of monitoring and reporting   |   |          |   |   |   |   |
|---|---|----------|---|---|---|---|
| This indicator measures the track record of implementation of PAR and the degree to which the goals were reached. It also assesses the systems for monitoring and reporting of PAR. |   |          |   |   |   |   |
| Overall indicator value   | 0 | <b>1</b> | 2 | 3 | 4 | 5 |

| Sub-indicators   | Points      |
|--|-------------|
| 1. Comprehensiveness of PAR reporting and monitoring systems | 3/8         |
| 2. Implementation rate of PAR activities (%)                 | 0/4         |
| 3. Fulfilment of PAR objectives (%)                          | 0/4         |
| <b>Total<sup>56</sup></b>                                    | <b>3/16</b> |

**The PAR reporting and monitoring system produces regular biannual and annual reports, which are published on the PARCO website. However, this system lacks outcome-based performance indicators. As the timeline for the implementation of measures included in the RAP1 has not been updated, it is not possible to estimate the overall implementation rate for 2016. Furthermore, the methodology used for reporting annually on the implementation of PAR does not give an accurate picture of the achievement of PAR objectives for the whole country. It is also impossible to estimate the implementation rate of PAR activities and the fulfilment of PAR objectives as at the end of 2016, since the relevant information concerning the implementation timeline is not available.**

***Principle 3: The financial sustainability of public administration reform is ensured.***

Overall, the expired PAR strategic documents – the PAR Strategy and the RAP1 – do not provide sufficient information concerning the financial cost of anticipated measures, which calls into question the financial

<sup>53</sup> The PAR Co-ordinators are public officials who are appointed at each level of the BiH Government to be in charge of the co-ordination of PAR at that level. The Decision of the CoM on the Establishment of the Co-ordinator for PAR of October 2004; Decision of the Government of the FBiH on the Appointment of the Co-ordinator for PAR No. 79/2008 of 6 February 2008; and Decision of the Government of the RS No. 04-1-012-2493/06 of 13 December 2006.

<sup>54</sup> The CoM and the Governments of the FBiH, the RS and the BD (April 2007), Common Platform, Section VI, paragraph (2)/(c).

<sup>55</sup> The CoM and the Governments of the FBiH, the RS and the BD (2011), RAP1, Introduction, p. 16.

<sup>56</sup> Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

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sustainability of PAR in BiH. These documents do not provide any information on the financial resources needed for the implementation of the PAR agenda. No information is available concerning the estimated total costs or additional costs of planned activities. Furthermore, it is not possible to identify and compare the level of funding of the anticipated PAR measures in the medium-term budget documents prepared at each level of the administration.

The PAR Strategy describes the PAR Fund<sup>57</sup> as a source of funding for PAR activities and projects, but it does not specify the total amount of funding needed from the EU or other donors<sup>58</sup>. In addition, no information is available concerning the estimated funds required for implementing the reform measures set out in the RAP1. Therefore, the values of the relevant sub-indicators assessing the level of costing and the completeness of financial information in PAR planning documents are 0.

The PAR Fund is a joint financial initiative that includes funding from donors and contributions from the State, the two Entities and the BD. It is managed by a Joint Management Board (JMB), and the PARCO provides the necessary administrative and operational support. The PARCO regularly reports to the JMB on project implementation and seeks ideas for new joint projects to be financed by the PAR Fund. The PARCO budget is considered to be the contribution of BiH to PAR implementation.

Since its inception in 2007 and until 31 December 2016, the PAR Fund received more than BAM 31.5 million (approximately EUR 15 million) in contributions, of which BAM 22.7 million (approximately EUR 11 million) was either withdrawn or earmarked to implement more than 20 projects up until 31 December 2016<sup>59</sup>. The remaining funds available to finance new projects are estimated to be BAM 10 million (approximately EUR 5 million), which represents about 30% of the total PAR Fund. The relatively slow spending rate of available funds can be partially explained by the complex decision-making process, which requires the involvement of all four levels of the BiH administration, and by issues concerning compliance and tendering criteria during the public procurement process.

The Report on the PAR Fund<sup>60</sup> states that the committed or earmarked budget for priority projects in 2016 was BAM 4.4 million (approximately EUR 2.1 million). On average, about BAM 2.5 million (approximately EUR 1.2 million) have been allocated annually to priority reforms and projects through the PAR Fund. Due to the lack of any information on financial costs and funding of PAR measures, the value for the indicator 'Financial sustainability of PAR' is 0.

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<sup>57</sup> 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, the CoM, the Governments of the FBiH, the RS and the BD, and the MoFT of BiH, July 2007.

<sup>58</sup> The CoM and the Governments of the FBiH and the RS (2006), PAR Strategy, Section VI, "Management of the Reform Process".

<sup>59</sup> The PARCO (January 2017), "Report on the PAR Fund for the Period 1 January-31 December 2016".

<sup>60</sup> Ditto.

| Financial sustainability of PAR   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|
| This indicator measures to what extent financial sustainability has been ensured in PAR as a result of good financial planning. |   |   |   |   |   |   |
| Overall indicator value   | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators   | Points |
|--|--------|
| 1. Costed PAR activities (%)                                       | 0/3    |
| 2. Completeness of financial information in PAR planning documents | 0/4    |
| 3. Actual funding of the PAR agenda                                | 0/3    |
| Total <sup>61</sup>  | 0/10   |

No information is available concerning the potential cost of the PAR agenda in BiH. No practice has been established of estimating the costs of individual reform measures, which calls into question the financial sustainability and effectiveness of the reforms. The PAR Fund, which consists primarily of financial contributions from international donor organisations, is the only source of funding for PAR activities in BiH.

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

The PAR management and co-ordination structure in BiH is defined and established in the Common Platform<sup>62</sup>. Two political-level co-ordination bodies are set out in that document – on the one hand, the CoM and the Governments of the FBiH, the RS and the BD and, on the other, the Economic Development and EI Co-ordination Board<sup>63</sup>.

The CoM and the Governments of the FBiH, the RS and the BD monitor PAR implementation by reviewing biannual and annual progress reports on various PAR-related issues. In 2016, 12 PAR matters were discussed during 12 sessions of the CoM. These sessions focused mainly on issues of an informative or reporting nature<sup>64</sup>. The preparation of the new strategic framework of PAR was discussed during two of these sessions of the BiH CoM. In addition, the Governments of the RS and the BD met twice in both 2016 and 2017 to discuss PAR-related matters. No evidence is available, however, that any PAR-related discussion has been organised by the FBiH Government.

The Economic Development and EI Co-ordination Board, which was set up to serve as the political-level co-ordination and supervisory body for PAR<sup>65</sup>, consists of the heads of the CoM and of the Governments of the two Entities and the BD, as well as competent ministers in the area of public administration at each level. However, the Board has not met since its establishment in 2007, rendering it completely ineffective as a co-ordination mechanism. Limited discussions on PAR at the political level make it difficult to implement PAR measures across all levels of the BiH administration.

<sup>61</sup> Point conversion ranges: 0=0, 1-3=1, 4-5=2, 6-7=3, 8-9=4, 10=5.

<sup>62</sup> The CoM and the Governments of the FBiH, the RS and the BD (April 2007), Common Platform.

<sup>63</sup> Ditto.

<sup>64</sup> According to the information provided by the PARCO, the meetings of the CoM discussed the reports of the PARCO and the PAR Fund as well as the PAR Progress Reports. They also reviewed the implementation of individual projects, such as the interoperability plan and the programme of the *Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)*.

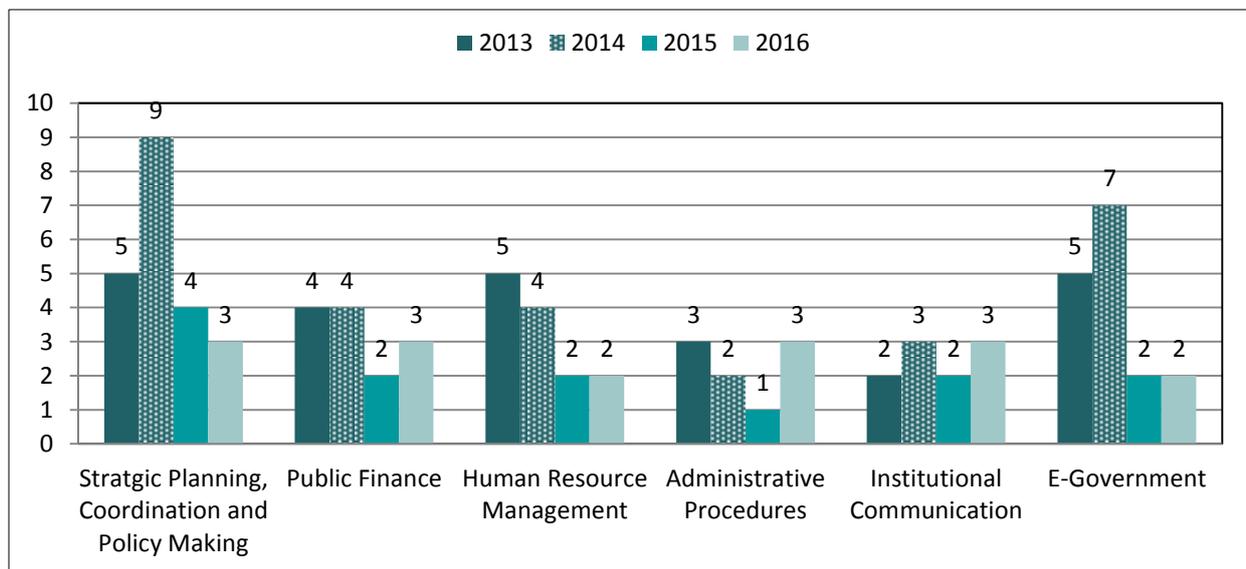
<sup>65</sup> The CoM and the Governments of the FBiH, the RS and the BD (April 2007), Common Platform.

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At the administrative level, the PAR Co-ordinators have been co-ordinating reform efforts at the State, the two Entities and the BD levels<sup>66</sup>. The PAR Co-ordinators of the Entities and the BD are responsible for co-ordinating reform efforts at their respective administrative levels, while the PARCO is responsible for overall co-ordination of PAR. According to the PAR Strategy, the PAR Co-ordinators are to hold regular meetings (preferably monthly), during which they are expected to discuss matters that are relevant to facilitating the co-ordination of administrative reform across BiH<sup>67</sup>. According to information provided by the PARCO, only three such meetings took place in 2016, during which the preparation of the new PAR strategic framework was discussed.

In addition, at the administrative level, Supervisory Teams have been established to monitor the implementation of the activities and objectives in the six policy areas defined in the expired PAR Strategy<sup>68</sup> and of the activities foreseen in the RAP1. The Supervisory Teams are comprised of representatives of relevant public administration bodies at the State, the two Entities and the BD levels. According to information provided by the PARCO, the Supervisory Teams met 16 times in 2016, which was less often than in previous years. During the meetings, decisions were taken regarding the implementation of reforms in specific policy areas.

**Figure 1. Number of supervisory team meetings in 2013, 2014, 2015 and 2016**



Source: The PARCO.

Despite regular meetings of the administrative co-ordination structures, in particular the Supervisory Teams, the implementation of activities and objectives of the RAP1 has been slow, which calls into question the overall effectiveness of the co-ordination mechanisms.

Organisational, individual and managerial responsibility for the overall co-ordination, monitoring and reporting of the PAR agenda has been defined through several decisions of the relevant levels of the

<sup>66</sup> Decision of the CoM on the Establishment of the PARCO, October 2004; Decision of the Government of the FBIH on the Appointment of the Co-ordinator for PAR No. 79/2008 of 6 February 2008; Decision of the Government of the RS No. 04-1-012-2493/06 of 13 December 2006.

<sup>67</sup> The CoM, the Governments of the FBIH, the RS and the BD (2006), PAR Strategy, p. 55.

<sup>68</sup> The six key policy areas are as follows: strategic planning, co-ordination and policy making, public finance, human resource management, administrative procedures, institutional communication, and e-government.

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administration. The decision of the CoM<sup>69</sup> on the Establishment of the PARCO states that "the Co-ordinator is responsible for co-ordinating activities related to the preparation, adoption and implementation of the strategy for public administration reform in Bosnia and Herzegovina"<sup>70</sup>. This Decision also gives to the PAR Co-ordinator the power to establish any necessary structures (working groups) to co-ordinate the implementation of the PAR Strategy.

In the FBiH, the responsibility for the co-ordination of PAR (together with the PARCO) is assigned to the PAR Co-ordinator of the FBiH by the Decision of the FBiH Government on the Appointment of the Co-ordinator for PAR<sup>71</sup>; the PAR Co-ordinator of the RS has been appointed through the Decision of the RS Government<sup>72</sup>; and the PAR Co-ordinator of the BD has been appointed through the relevant Decision of the BD Government<sup>73</sup>.

Institutional responsibility for PAR implementation within the administrations of the BiH State<sup>74</sup> and the RS<sup>75</sup> has been established, whereas in the FBiH and the BD<sup>76</sup>, no such responsibility has been assigned within governmental institution. The involvement of non-governmental organisations in co-ordinating the implementation of PAR across all levels of the administration has been very limited.

In terms of individual reform measures, the extended RAP1 does not assign individual or managerial responsibility for each item included in the PAR agenda but does define institutional responsibility for each and every activity.

Overall, given the existence of functioning co-ordination mechanisms for PAR, the value for the indicator 'Accountability and co-ordination of PAR' is 3.

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<sup>69</sup> Decision of the CoM on the Establishment of the PAR Co-ordinator's Office in the Office of the Chairperson of the CoM of BiH, Official Gazette of BiH Nos. 4/05, 33/07 and 85/10.

<sup>70</sup> Decision of the CoM on the Appointment of the State PAR Co-ordinator on 12 December 2006 at its 135<sup>th</sup> Session.

<sup>71</sup> Decision of the Government of the FBiH on the Appointment of the Co-ordinator for PAR No. 79/2008 of 6 February 2008.

<sup>72</sup> Decision of the Government of the RS No. 04-1-012-2493/06 of 13 December 2006.

<sup>73</sup> Decision of the Government of the BD No. 33-001521/17 on the Temporary Appointment of the PAR Co-ordinator of the BD.

<sup>74</sup> The PARCO has been assigned as the designated institution for PAR implementation.

<sup>75</sup> The RS Ministry of Administration and Local Self-Governance has been assigned as the designated institution for PAR implementation at the RS level.

<sup>76</sup> In the BD, the position of the PAR Co-ordinator is defined within the organisational structure of the BD Mayor's Office.

| Accountability and co-ordination in PAR   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|
| This indicator measures the extent to which leadership and accountability in PAR are established, the regularity and quality of co-ordination mechanisms at both the political and administrative levels, and the performance of the leading institution. |   |   |   |   |   |   |
| Overall indicator value   | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators   | Points |
|--|--------|
| 1. Establishment of organisational and managerial accountability for PAR | 4/6    |
| 2. Co-ordination mechanisms for PAR                                      | 7/10   |
| Total <sup>77</sup>  | 11/16  |

**In the absence of a new strategic framework for PAR, the overall co-ordination and organisation of PAR implementation in BiH has continued on the basis of the old mechanisms. The organisation and managerial accountability for the overall co-ordination, monitoring and reporting of PAR has been assigned according to the old strategic framework of PAR. Formal and functioning PAR co-ordination structures are in place at both political and administrative levels. Individual and managerial responsibility for each PAR activity has not been assigned. Furthermore, the involvement of non-governmental stakeholders is lacking at all levels.**

**Key recommendations**

**Short-term (1-2 years)**

- 1) The CoM and the Governments of the FBiH, the RS and the BD should urgently agree and approve a new strategic framework of PAR, and they should also clarify and confirm the relationship of that framework with the new PFM Strategy, once it has been developed and adopted. The full costing of activities included in the new PAR planning documents must be ensured before the documents are finalised.
- 2) The PARCO, the PAR Co-ordinators, and all relevant bodies should work together to establish a strong performance monitoring and reporting framework to support the implementation of PAR. Reporting on PAR should be improved so as to ensure that clear and comprehensive information is provided on PAR implementation throughout the country.
- 3) The CoM and the Governments of the FBiH, the RS and the BD should establish a new, stronger management and co-ordination structure for PAR, including (a) an effective political structure to enable debate on the implementation of the PAR agenda in a regular and systematic manner; (b) an effective administrative structure with a sufficient mandate and resources to make decisions supporting PAR implementation; and (c) a stable balance between inputs (frequency of meetings) and outcomes/results (effectiveness of the implementation of the PAR agenda).

**Medium-term (3-5 years)**

- 4) The BiH MoFT, the FBiH MoF, the RS MoF and the BD Finance Directorate should reconsider their approaches to medium-term and annual financial planning documents, with a view to clearly identifying appropriations, including international donor funding, devoted to the implementation of the PAR agenda.

<sup>77</sup> Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

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## Policy Development and Co-ordination

## POLICY DEVELOPMENT AND CO-ORDINATION

### 1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015 – JUNE 2017

#### 1. State of play

Due to the complex constitutional arrangements, Bosnia and Herzegovina (BiH) does not have a unified, whole-of-country approach to policy planning, development and co-ordination, and no single centre of government (CoG) for the whole. The Council of Ministers (CoM) of BiH (at the State level) and the Governments of the Federation of BiH (FBiH), the Republic of Srpska (RS) and the Brčko District (BD) all have their separate, constitutionally-mandated roles and responsibilities for policy development and co-ordination. Consequently, the development and implementation of uniform and coherent policies, and the assurance of effective co-ordination within and between the different levels of the administration, remain a major challenge.

The legal frameworks required for the performance of key CoG functions and the critical functions required for European integration (EI) have been established at each level of the administration. Major challenges remain with regard to the co-ordination and scrutiny of the policy content of proposals at all levels of the administration and to the vertical communication needed for effective policy co-ordination. Annual planning of the work of the CoM and the Governments of the FBiH, the RS and the BD is regulated well, although prioritisation and realistic planning are absent. The planning and monitoring of EI-related activities lack a proper regulatory framework, and the co-ordination of EI activities between the different levels of the administration is limited. A new EI co-ordination system<sup>78</sup> was established in BiH in 2016, but it is not yet fully functional. Each level of the administration has its own internal co-ordination structure, rules and processes for the transposition of EU legislation. There is no harmonised and co-ordinated approach for planning and implementation of transposition activities across all levels of the administration.

A medium-term policy-planning framework has been established at all levels of BiH, except for the BD. The development of sector strategies remains problematic, as the requirements and standards for such strategies have not been established at any level of the administration. Monitoring and reporting with regard to the Government Annual Work Programmes (GAWPs) are carried out regularly. However, information on policy implementation and on the work of the Government is not provided equally at all levels of the administration.

The nature of decision making at each level of the BiH administration, as stipulated by the constitutional framework, is complex. Policy-development practices at all levels of the administration have not been established uniformly, and final decision making on policy proposals across all levels in most of cases is not supported by analysis and evidence. Policy proposals are not always checked from the perspective of their financial impact and affordability.

Public involvement in policy development, through consultation on draft policy proposals and draft legislation, does not fully adhere to the relevant regulations established at all levels of the BiH administration. In addition, access to legislation is hampered by the fact that it is not free of charge, and official sources do not make consolidated texts available.

#### 1.2. Main developments

The following section describes key changes in the public administration for each key requirement<sup>79</sup> and main developments, based on the indicators used in SIGMA's 2015 Baseline Measurement Reports.

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<sup>78</sup> CoM of BiH Decision on the Co-ordination System of the EI Process in BiH, Official Gazette of BiH No. 72/16.

<sup>79</sup> OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, [http://www.sigmaweb.org/publications/Principles-of-Public-Administration\\_Edition-2017\\_ENG.pdf](http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf).

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While the subsequent analysis aims to capture the main developments across all levels of the BiH administration, the indicator values presented in the following tables are based on assessment of the State level only<sup>80</sup>.

As at 2016, the medium-term policy-planning frameworks have been established through regulations at three levels of the BiH administration – the BiH State (2014), the FBiH (2014) and the RS (2016) – but not at the BD level.

The Stabilisation and Association Agreement (SAA) between the EU and BiH entered into force in 2015. BiH formally applied for EU membership in February 2016 and has the status of a potential candidate country.

In addition, in 2015 and 2016, the Directorate for European Integration (DEI) led the process of preparing the European Union (EU) Action Plan for the implementation of the priorities set out in the 2015 and 2016 EU reports on BiH. The EU Action Plan<sup>81</sup> is a comprehensive document prepared by the DEI in cooperation with the Entities, the BD, and the Cantons. The EU Action Plan is the only EI-related planning document for BiH that has been formally adopted. A strategic programme for the country's legal approximation with the EU *acquis* has yet to be adopted<sup>82</sup>.

In 2016, the State introduced a new co-ordination mechanism for EI, the EI Co-ordination System, according to which the representatives of the CoM of BiH, the Governments of the RS, the FBiH and the BD, as well as the ten cantonal Governments are to co-operate in the co-ordination and implementation of activities related to the EI process. The new co-ordination system, however, is not yet fully functional.

In 2017, the State amended the Unified Rules for Legal Drafting, with the aim of introducing Regulatory Impact Assessment (RIA) into the policy-development process at the State level. In 2017, the BiH State and the BD amended and adopted their respective rules regulating public consultation during the policy-development process.

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

Overall, the regulatory framework establishing key CoG functions and the quality and level of fulfilment by relevant institutions at the State level have not changed since 2015. Consequently, the indicator value assessing the proportion of CoG functions being fulfilled by state-level institutions has remained as 2. One of the important CoG functions – the co-ordination of policy content – has not yet been established and is not being fulfilled in practice. The situation is similar at all other levels of the BiH administration. At the State level, the implementation of CoG functions to ensure the financial affordability of policy proposals and to maintain effective relationships with other parts of the State apparatus are limited.

The indicator value assessing the fulfilment of EI functions by State-level institutions has slightly improved compared to 2015, and has now been set at 3. This assessment is based on the fact that a new EI co-ordination system was established in 2016<sup>83</sup> and was further strengthened in 2017<sup>84</sup>, and all levels of the BiH administration have agreed to co-ordinate their activities within the scope of the new mechanism. The implementation of this EI co-ordination mechanism has started, however, it is not yet fully functional.

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<sup>80</sup> This approach allows a comparison of the values of indicators in the 2015 and 2017 assessment reports and assesses progress since 2015 at the State level. In SIGMA's 2015 Baseline Measurement Report, the analysis and assessment in the area of policy development and co-ordination covered the State level only.

<sup>81</sup> The CoM adopted the EU Action Plan for 2017 during its 93rd session on 8 March 2017.

<sup>82</sup> Stabilisation and Association Agreement between BiH and EU (SAA), Article 71/3: "Approximation shall be carried out on the basis of a programme to be agreed between the EU and BiH", Official Gazette of BiH No. 23/11

<sup>83</sup> The CoM Decision on the Co-ordination System of the EI Process in BiH, August 2016, Official Gazette of BiH No. 72/16.

<sup>84</sup> The CoM Decision on Establishing Working Groups for European Integration, May 2017, Official Gazette of BiH No. 34/17.

**Table 1. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports<sup>85</sup>**

|             | 2015 Baseline Measurement indicator  | 2015 value | 2017 value |
|-------------|--|------------|------------|
| Qualitative | Proportion of critical CoG functions that are fulfilled by the institutions. | 2          | 2          |
|             | EI functions are fulfilled by the institutions.                              | 2          | 3          |

**Key requirement: Policy planning is harmonised, aligned with the government’s financial circumstances and ensures that the government is able to achieve its objectives.**

Due to the complex constitutional arrangements in BiH, no countrywide approach to policy planning exists. With the adoption in 2016 of the relevant regulation of the RS<sup>86</sup>, the medium-term policy-planning framework can now be considered as having been completed at three levels of the BiH administration – the State, the FBiH and the RS. The BD is the only level of the administration where a regulatory framework for medium-term and annual planning does not exist.

The regulatory framework for medium-term EI planning and monitoring for the entire country has not yet been established. In 2015 and 2016, the DEI, together with relevant institutions at all levels, co-ordinated and prepared the EU Action Plan. The plan is the only EI-related planning document in BiH that has been formally adopted and covers all levels of the BiH administration.

Many of the shortcomings and weaknesses of the regulatory framework and the functioning of the policy-planning system at the State level identified in the 2015 Baseline Measurement Report persist in 2017.

The value of the indicator measuring the completeness of financial estimates in sector strategies at the State level has been set at 1, compared to the 2015 value of 0. This improvement is due to the fact that for this year’s assessment, sector strategies have been provided for analysis. In terms of quality, the estimates of financial costs were not systematically provided in the strategies reviewed during the 2017 assessment. In terms of monitoring and reporting on sector strategies, the situation has not improved since 2015. Reports are not prepared regularly and consistently for all strategies, and the reports that have been prepared are not available publicly.

The value of the relevant indicator assessing the quality of reporting on government planning documents has increased from 1 to 2, due to the fact that the BiH State has adopted and published an implementation report on the EU Action Plan. However, as no standards have been set for implementation reports, it is impossible to assess whether that report has been prepared in accordance with the expectations and standards set by regulations. As in 2015, reports on the Government’s planning documents at the State level lack any information on the outcomes achieved.

The annual backlog in the implementation of planned commitments, as set out in central planning documents, has been estimated to be 48%<sup>87</sup>. This rate is significantly higher than the rate calculated in 2015. Similarly, compared to the 2015 results, the annual backlog in the development of sectoral strategies has increased from 25% in 2015 to 38% in 2017.

<sup>85</sup> OECD (2015), *Baseline Measurement Report: Bosnia and Herzegovina*, OECD Publishing, Paris, <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-BiH.pdf>.

<sup>86</sup> The RS Government Decision on the Procedure of Planning, Monitoring, and Reporting on the Realisation of Strategies and Plans of the Government and Administrative Bodies of the RS Government, 9 June 2016, Official Gazette of the RS No. 50/16.

<sup>87</sup> It is estimated that 27 of the 56 legislative commitments included in the 2016 annual legislative plan of the CoM were carried forward to the 2017 plan.

**Table 2. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

|                     | 2015 Baseline Measurement indicator   | 2015 value        | 2017 value                  |
|---------------------|---|-------------------|-----------------------------|
| <b>Qualitative</b>  | Completeness of financial estimates in sector strategies <sup>88</sup> .  | 0                 | 1                           |
|                     | Extent to which reporting provides information on the outcomes achieved.  | 1                 | 2                           |
| <b>Quantitative</b> | Annual implementation backlog of planned commitments in the central planning document(s).   | 14%               | 48%                         |
|                     | Annual backlog in developing sectoral strategies.   | 25%               | 38%                         |
|                     | Ratio between total funds estimated in the sectoral strategies and total funding identified for corresponding sectors within the MTBF <sup>89</sup> . | 0%                | 0%                          |
|                     | Annual implementation backlog of EI-related commitments.  | 11% <sup>90</sup> | Not Available <sup>91</sup> |

**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.**

The regulatory framework for, and practice of, decision making at the BiH State level and the process and quality of scrutiny by the BiH Parliamentary Assembly have remained largely unchanged since 2015. The relevant information and data for calculating several of the indicators under this key requirement were not provided to SIGMA by the authorities.

A 2015 recommendation, concerning the assurance that all formal and substantial requirements were adhered to by the CoM in its process of preparing decisions, has not been implemented. Draft proposals are not reviewed and checked systematically to ensure that they are coherent and consistent with other priorities and with previously announced policies of the State. No CoG institution is authorised to send back draft proposals if the content is found to be inadequate.

The level of transparency and openness of the CoM decision making and the BiH Parliamentary Assembly's oversight function has not improved since 2015. While the adoption of laws in the BiH Parliamentary Assembly has proceeded in a rather timely manner (83% of the draft laws were adopted within a year), the extraordinary procedure for adopting legislation has been over-utilised, with more than half of the CoM's legislative proposals having been approved by means of urgent procedures. The

<sup>88</sup> A sample was used of five recently adopted sector strategies at the State level.

<sup>89</sup> The ratio is calculated as a percentage (0% being the minimum and 100% the maximum), illustrating the differences between planned funding for the last five adopted strategies and the funding indicated in the Medium-Term Expenditure Framework (MTEF). The outcome value of the indicator is the average percentage of the five strategies. In the event that it is not possible to calculate the average percentage because of a lack of financial data in the MTEF and/or in all or some sector strategies, the ratio is determined to be 0%.

<sup>90</sup> In the absence of a national EI plan in 2015, the indicator has been calculated by reviewing the EI-related commitments in the annual work programmes of the CoM for 2013 and 2014.

<sup>91</sup> It was not possible to calculate the indicator value for 2017 based on the methodology used in 2015 because the structure and format of the Government programme has changed. It is not possible to identify all EI-related commitments in the Government work programmes for 2016 and 2017. However, based on the review of EI-related legislative commitments (draft laws) only, the estimated backlog was 58%; 18 of the 31 draft EI-related laws planned for approval according to the 2016 work programme were carried forward to the following year.

BiH Parliamentary Assembly has not discussed any reports on the implementation of laws, and no such practice exists.

**Table 3. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

|                     | 2015 Baseline Measurement indicator   | 2015 value                  | 2017 value                  |
|---------------------|---|-----------------------------|-----------------------------|
| <b>Quantitative</b> | Ratio of regular agenda items submitted on time <sup>92</sup> by ministries to the government session.            | Not available <sup>93</sup> | Not available <sup>94</sup> |
|                     | Ratio of laws initiated by the government and approved by the parliament no later than one year after submission. | Not available <sup>95</sup> | 83% <sup>96</sup>           |
|                     | Number of law implementation reports discussed in the parliament.   | 0                           | 0                           |

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

Despite several positive steps and changes initiated at the State level, overall, no major improvements were made in the policy-development area during the 2015-2017 monitoring period. The indicators assessed under this key requirement have therefore received the same values as in 2015.

The orientation of line ministries towards policy development has remained unchanged. As in 2015, no information was provided on staffing levels in ministries at the State level. Ministries do not have internal rules for policy development.

The quality of the policy-development process remains low. A recommendation in SIGMA’s 2015 Baseline Measurement Report with regard to RIA has not been implemented. Although the State level has adopted the relevant regulations for introducing RIA, those regulations have not yet been implemented<sup>97</sup>. Policy development mainly includes interministerial consultation and public consultation, but such consultations do not always take place. The requirements for policy analysis, as defined in the “Unified Rules on Legislative Drafting”<sup>98</sup>, have not been implemented in practice.

Based on information provided to SIGMA during the assessment, it is clear that public consultation is not conducted systematically for all policy proposals. SIGMA’s 2015 Baseline Measurement Report recommended that the CoM take more responsibility for the quality of the consultation process, but this recommendation has not been implemented. Interministerial consultation, including with CoG bodies, is not taking place consistently, which also affects the quality of policy development.

The practice of publishing legislation has also not improved during the reporting period. While all legislation is available through the Official Gazette, any legislation adopted before 2009 remains available only for a fee and is thus not easily accessible to the public. No progress has been made

<sup>92</sup> Submission “on time” is understood to mean submission within the procedural criteria set by the regulation(s).

<sup>93</sup> No information was provided by the administration for analysis.

<sup>94</sup> Ditto.

<sup>95</sup> Ditto.

<sup>96</sup> It is estimated that 4 of the 23 laws adopted by the Parliament of BiH in 2015 were amended within a year of their adoption.

<sup>97</sup> Amendments to the “Unified Rules for Legislative Drafting in the Institutions of BiH” to introduce RIA at the State level were adopted by both Houses of the Parliament in May and June 2017. However, the regulations were not published, and implementation had not yet started during the monitoring period.

<sup>98</sup> “Unified Rules for Legislative Drafting in the Institutions of BiH”, Official Gazette of BiH Nos. 11/05, 58/14 and 60/14.

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concerning the recommendation to create a single portal through which all regulations adopted by bodies at the level of the State, the two Entities and the BD are to be published. The administration has also not explored the possibility of simplifying the process for the consolidation of laws.

**Table 4. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

|                    | 2015 Baseline Measurement indicator   | 2015 value | 2017 value |
|--------------------|---|------------|------------|
| <b>Qualitative</b> | Extent to which ministries are oriented towards policy development.                                   | 3          | 3          |
|                    | Extent to which the policy development process makes the best use of analytical tools.                | 1          | 1          |
|                    | Extent to which public consultation is used in developing policies and legislation.                   | 3          | 3          |
|                    | Extent to which the inter-ministerial consultation process occurs.                                    | 2          | 2          |
|                    | Extent to which primary and secondary legislation is made publicly available in a centralised manner. | 2          | 2          |

## 2. ANALYSIS

This analysis covers 12 Principles for the policy development and co-ordination area grouped under 4 key requirements. It includes a summary analysis of the indicator(s) used to assess against each Principle, including sub-indicators<sup>99</sup>, and an assessment of the state of play for each Principle. For each key requirement short- and medium-term recommendations are presented.

### Policy planning and co-ordination

**Key requirement: Centre-of-government institutions fulfil all functions critical to a well-organised, consistent and competent policy-making system<sup>100</sup>.**

The values of the indicators assessing Bosnia and Herzegovina's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



#### ***Analysis of Principles***

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

The Dayton Peace Agreement and the present Constitution<sup>101</sup> of BiH have created a complex governance structure and, as the core executive, the CoM and the Governments of the FBiH, the RS and the BD are established and functioning. Therefore, there is no single CoG<sup>102</sup> in BiH.

The majority of critical CoG functions<sup>103</sup> are assigned to relevant institutions at all levels of the administration. Separate regulatory frameworks govern the functioning of the CoGs at the different levels.

<sup>99</sup> OECD (2017), *Methodological Framework for the Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

<sup>100</sup> This analysis covers all levels of the administration, but the values of the indicators presented under this key requirement have been calculated on the basis of the assessment at the State level.

<sup>101</sup> The Constitution of Bosnia and Herzegovina, [http://www.ohr.int/?page\\_id=68220](http://www.ohr.int/?page_id=68220)

<sup>102</sup> The Presidency, a collective body comprising three representatives of the constitutive people of BiH, is the highest executive power. As a collective body of the heads of state, the Presidency has been assigned roles with regard to foreign policy and defence, and it is the body that submits a budget proposal to the BiH Parliamentary Assembly once the CoM of BiH has developed the draft.

<sup>103</sup> The critical functions of the CoG were defined in OECD (2017), *The Principles of Public Administration*, OECD, Paris, p. 19, OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, <http://www.sigamaweb.org/publications/Principles-of-Public-Administration-Edition-2017-ENG.pdf>.

These functions are as follows: co-ordination of the preparation of government sessions; ensuring legal conformity; co-ordination of the preparation and approval of the government's strategic priorities and work programme; co-ordination of the policy content of proposals for government decisions, including defining the policy preparation process and ensuring coherence with government priorities; ensuring that policies are affordable and co-ordination of public-sector resource planning; co-ordination of government communication activities to ensure a coherent government message; monitoring of government performance to ensure that the government collectively performs effectively and keeps its

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At the State level, the co-ordination of preparations for CoM sessions is assigned to the Administrative Service of the Secretariat-General of the CoM (SGCoM), and the Legislative Office of the CoM (LOCoM) is responsible for ensuring legal conformity. The co-ordination of the preparation and approval of the Government's strategic priorities and work programme is shared between the Office of the Chairman of the CoM (OCCoM) and the Sector for co-ordination of the preparation, implementation, monitoring and evaluation of development documents and social inclusion analysis of the Department of Economic Planning (DEP). The functions of ensuring that policies are affordable and co-ordinating public-sector resource planning are assigned to the Sector for Budget of the Ministry of Finance and Treasury (MoFT). The Information Service of the SGCoM co-ordinates the CoM's communication activities. The OCCoM monitors the performance of the State level to ensure that it collectively performs effectively and keeps its promises to the public. The Administrative Service of the SGCoM manages relations with the Parliament and the President's Office. The DEI is responsible for the co-ordination of EI matters.

At the FBiH level, the co-ordination of preparations for Government sessions and the management of relations with other institutions are performed by the Sector for Preparation of the Sessions of the Government and the Government's Working Bodies, the Government's Conclusions and Institutional Co-operation of the General Secretariat of the Government (GS) of the FBiH. The Office of the Government of the FBiH for Legislation and Harmonisation with EU Regulations (OLFBiH) is responsible for ensuring legal conformity. The co-ordination of the preparation and approval of the Government's strategic priorities and work programme, and the monitoring of the Government's performance are carried out primarily by the Department for Development Planning of the Federal Institute of Development Programming (FIDP). The Sector for Budget and Public Expenditure of the FBiH Ministry of Finance (MoF) is responsible for ensuring that policies are affordable and for co-ordinating public-sector resource planning. The Public Relations Office of the Office of the Government of the FBiH co-ordinates the Government's communication activities. The Office of the Government of the FBiH for EI is responsible for the co-ordination of EI matters.

In the RS, the co-ordination of preparations for Government sessions and the management of relations with other institutions are carried out by the Sector for Government Sessions of the Secretariat General of the Government (SGG). The Public Administration Sector, the Economy and Financial Sector and the Social Affairs Sector of the Secretariat for Legislation (SL) are responsible for ensuring legal conformity. Responsibility for co-ordinating the preparation and approval of the Government's strategic priorities and work programme and for monitoring the Government's performance is shared by the Unit for Strategic Planning and Monitoring and the Sector for Government Sessions of the SGG. The Sector for Budget of the MoF is responsible for ensuring that policies are affordable and for co-ordinating public-sector resource planning. The co-ordination of the Government's communication activities is led by the Sector for Public Relations of the SGG.

In the BD, the co-ordination of preparations for Government sessions, the co-ordination of the preparation and approval of the Government's strategic priorities and work programme, and the management of relations with other institutions is assigned to the General Affairs Unit of the Secretariat General of the BD Government (SGBD). The Legislative Office of the Mayor's Office (LOBD) is responsible for ensuring legal conformity. The Information Sector of the SGBD co-ordinates the Government's communication activities. The Head Co-ordinator of the BD Government is responsible for monitoring the Government's performance. The Finance Directorate (FD) is responsible for ensuring that policies are affordable and for co-ordinating public-sector resource planning.

The key documents establishing and assigning functions to CoG institutions are the respective rules of procedure (RoP) at each level of the administration<sup>104</sup>. The review of regulatory frameworks has revealed that, while the RoP at each level have defined the scrutiny of policies from financial and legal

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promises to the public; handling relations between the government and other parts of the state (the president, the parliament); and co-ordination of EI affairs.

<sup>104</sup> The RoP of the CoM, July 2003, Official Gazette of BiH No. 107/03; the RoP of the Government of the FBiH, Official Gazette of BiH No. 79/09; the RoP of the Government of the Republic of Srpska (the RoP of the RS), Official Gazette of the RS No. 10/09; and the RoP of the BD Government, April 2013, Official Gazette of the BD No. 9/13.

perspectives, the co-ordination of the policy content of proposals for the Government's approval is still missing in all cases. No institution or unit is responsible for ensuring that policies are well prepared and in line with the Government's priorities and previously announced policies.

In exercising CoG functions, the administrations at all levels have formally adopted procedures or dedicated guidelines. Such guidelines are available in the areas of planning and monitoring of the annual work of the Government, legal drafting and public consultations. The State, the FBiH and the RS have all adopted detailed guidelines for planning and monitoring the annual work of the Government, which clarify and establish the steps, procedures, and templates required for the process<sup>105</sup>. Similar provisions are included in the RoP of the BD Government<sup>106</sup>.

Although detailed guidelines on planning and monitoring are available at all levels of the administration, no formal guidance has been prepared for the development of policy proposals and sectoral strategies in BiH. In 2016, however, the RS adopted new regulations on sectoral strategy elaboration<sup>107</sup>. These provisions clarify the development and approval process for strategies, introduce a requirement to obtain prior approval from the Government for the development of a strategy, and provide an outline for a strategy's structure<sup>108</sup>.

In the absence of any guidelines for sectoral-strategy development, the ministries at each level – the State, the FBiH, the RS and the BD – all apply different approaches, templates and methodologies for developing sector strategies. In addition, no level of administration, with the exception of the RS Government, has set requirements for the development of strategies or for the monitoring and reporting on the implementation of strategies.

Co-ordination between CoG institutions in policy planning and policy development is very limited at all levels of the administration. Interviews with representatives of the main CoG institutions at all levels have confirmed that co-ordination and discussions among these institutions is limited. In the case of the GAWP, only the Commission on Programmes and Reports on the Work of the FBiH Government<sup>109</sup> reviews the draft GAWP, consolidates the opinions of the CoG institutions on the draft, and discusses those opinions during its meetings. The interviews also confirmed that the role and commitment of the Legislative Offices and Ministries of Finance in the State level, the RS, and the BD in reviewing the draft GAWPs was either very limited or non-existent<sup>110</sup>.

Owing to the gaps in establishing and fulfilling the CoG functions of co-ordination and scrutiny of policy content and in providing guidelines to ministries on policy development and sectoral-strategy development, and to the lack of systematic co-ordination between key CoG bodies, the value for the indicator 'Fulfilment of critical functions by the centre-of-government institutions' at the State level is 2.

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<sup>105</sup> The BiH State Decision on the Annual Work Planning, Monitoring and Reporting on the Work in the Institutions of BiH No. 94/14, adopted on 18 November 2014, Official Gazette of BiH No. 94/14; the FBiH Government Regulation on Planning and Monitoring of Government Work, adopted on 23 October 2014, Official Gazette of BiH No. 89/14; and the RS Government Decision on the Procedure for Planning, Monitoring, and Reporting on the Realisation of Strategies and Plans of the Government and Administrative Bodies of the RS Government No. 04/1-012-2-1328/16, adopted on 9 June 2016, Official Gazette of the RS No. 50/16.

<sup>106</sup> The RoP of the BD Government, April 2013, Articles 28 and 29, Official Gazette of the BD No. 9/13.

<sup>107</sup> Decision of the RS Government on the Procedure for Planning, Monitoring, and Reporting on the Realisation of Strategies and Plans of the Government and Administrative Bodies of the RS Government No. 04/1-012-2-1328/16, adopted on 9 June 2016, Official Gazette of the RS No. 50/16, Article 14.

<sup>108</sup> Article 14, section 2 of the RS Government Decision cited above on the procedure for planning, monitoring and reporting on strategies and plans states that prior to initiating the process of preparing the strategy and the strategic document, the competent authority is to prepare and submit to the RS Government for consideration and approval a project task document. This document should justify the need for the development of the strategy, provide an outline of the strategic document, and describe the processes for the preparation of the methodology and the evaluation and consultation of strategic plans.

<sup>109</sup> The FBiH Government Regulation on Planning and Monitoring of Government Work, adopted in October 2014, Article 4.

<sup>110</sup> Except for the BD where the preparation of the Legislative Plan is co-ordinated by the Legislative Office.

### Fulfilment of critical functions by the centre-of-government institutions

This indicator measures to what extent the minimum requirements for functions critical to a well-organised, consistent and competent policy-making system are fulfilled by the centre-of-government (CoG) institutions.

As this indicator is used to assess the fulfilment of the minimum requirements, it does not measure outcomes or include quantitative sub-indicators. The outcomes of some of these critical functions are captured by other indicators on policy development and co-ordination.

Overall indicator value 0 1 **2** 3 4 5

| Sub-indicators   | Points      |
|--|-------------|
| 1. Critical functions are assigned to CoG institutions by legislation              | 7/8         |
| 2. Availability of guidelines to line ministries and other government bodies       | 2/4         |
| 3. Institutionalisation of co-ordination arrangements between the CoG institutions | 0/4         |
| <b>Total<sup>111</sup></b>   | <b>9/16</b> |

**At all levels of the administration, the respective legal and regulatory frameworks have established most of the critical CoG functions. However, the function of co-ordinating the content of proposals and their implementation has not been established at any level. While formal guidelines for the planning and monitoring of government work have been adopted at all levels, formal guidance in the areas of policy development and sectoral-strategy development is still not available. At all levels of BiH, the prioritisation of the annual work of the respective Governments and the collaboration between CoG institutions in reviewing ministerial proposals remain weak.**

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

The majority of EI functions have been established in the respective EI institutions at all levels of the administration. At the State level, the DEI exercises EI functions. In the FBiH, this role is shared by the EI Office and the OLFBiH, which is responsible for harmonisation of the FBiH regulations with EU regulations. In the RS, the Ministry of Economic Relations and Regional Co-operation (MERRC), in cooperation with the Office of the Prime Minister, exercises these functions. In the BD, EI functions have been assigned to the EI Office. The BiH authorities have not formally established functions for the co-ordination of accession negotiations, as this area is not yet relevant for the country.

As defined in the Law on the CoM of BiH<sup>112</sup>, the Law on Ministries and other Bodies of Administration of BiH<sup>113</sup>, and the Decision of the CoM on the DEI<sup>114</sup>, the DEI has been given the ultimate mandate of co-ordinating and harmonising all EI-related activities of the relevant institutions at all levels of the administration<sup>115</sup>. The DEI has also been tasked to lead and co-ordinate the communication with EU structures on all EI-related matters; to participate in the preparation of policy proposals, draft laws and EI-related regulations and guidelines; and to provide advice concerning issues of harmonisation of the processes and activities of all of the jurisdictions of BiH for the implementation of obligations related to

<sup>111</sup> Point conversion ranges: 0-2=0, 3-5=1, 6-9=2, 10-12=3, 13-14=4, 15-16=5.

<sup>112</sup> Law on the CoM of BiH of 17 July, 2013, Article 23, Official Gazette of BiH Nos. 30/03, 42/03, 81/06, 76/07, 81/07, 94/07 and 24/08.

<sup>113</sup> Law of the State on Ministries and other Bodies of Administration of BiH, 7 March 2003, Article 18, Official Gazette of BiH Nos. 5/03, 42/03, 26/04, 42/04, 45/06, 88/07, 35/09, 59/09 and 103/09.

<sup>114</sup> Decision of the CoM on the Directorate for European Integration (DEI) of December 2003, Article 3.

<sup>115</sup> The key EI-related functions that are expected to be defined and fulfilled by CoG institutions are the following: 1) overall daily co-ordination; 2) planning of EI, including the costing of reforms; 3) monitoring of preparations for the EI process; 4) co-ordination of the transposition of the *acquis*; 5) co-ordination of EU assistance; and 6) co-ordination of EI-related negotiations.

EI. Although the DEI, at the State level, has an overall mandate to lead and co-ordinate all EI matters for the whole country, all levels of the administration share the responsibility and authority for EI. However, co-ordination and co-operation between the different levels of the administration on EI-related issues are limited.

Formally adopted guidelines are available to support the fulfilment of EI functions in the areas of reporting<sup>116</sup> and alignment of national legislation with the *acquis*<sup>117</sup>. The DEI has provided guidelines for reporting on the EI process, which are applied at all levels of the administration, either directly or through further decisions adopted at the level of the Entities and the BD<sup>118</sup>. In the area of alignment of national legislation with the *acquis*, each level of the administration has developed and applies its own guidelines. No guidelines have been developed, however, by the administration in the areas of EI planning, planning and monitoring of EU assistance, participation and management of EI-related negotiations, and translation of the *acquis*<sup>119</sup>.

In August 2016, the CoM adopted a decision establishing a new EI co-ordination system<sup>120</sup>. All levels of the administration have appointed their representatives to this new structure, which should help to strengthen the overall co-ordination of EI matters across all levels of BiH. An interministerial co-ordination forum for EI matters at both political and administrative levels has been established for the whole country under the recently adopted EI Co-ordination System. The following new structures for co-ordination of the EI process have been established under the system: 1) Collegium for EI, 2) Ministerial Conferences, 3) Commission for EI, and 4) EI Working Groups. All levels of the administration, including cantons, have appointed representatives to these structures.

Although the establishment of the EI Co-ordination System in BiH represents a step forward, the system is not yet fully functional. The Collegium for EI, which is the main political co-ordination body, met once in 2016 and once in the first half of 2017, and the Commission for EI, the main administrative body for EI, met twice in 2016 and three times in the first half of 2017.

In 2015 and 2016, the DEI led the process of preparation of an EU Action Plan<sup>121</sup> for the Implementation of the Priorities from the 2015 and 2016 EU reports on BiH. The EU Action Plan is the only countrywide EI planning document that has been formally approved. The EU Action Plan was prepared in close co-operation with all levels of the administration and was approved by the CoM in March 2017. In addition to the EU Action Plan, the RS and the BD have developed their own separate plans to facilitate

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<sup>116</sup> "DEI Guidelines for Reporting in the EI Process" of October 2016; the FBiH Government Conclusion on the Adoption of the "Guidelines for the Preparation of Responses to Questions in the Questionnaire of the European Commission"; the RS "Methodology for Development of Answers to Questions in the Questionnaire of the European Commission for the Preparation of the Opinion on the Application for Membership in the European Union", approved by the Order of the RS Minister for Economic Relations and Regional Co-operation No. 17.03-020-1177-1/16 of 20 December 2016.

<sup>117</sup> BiH Decision on Alignment Procedures of BiH Legislation with the *acquis* of 26 July 2016, Official Gazette of BiH No. 75/16; the FBiH Regulation on the Procedure for the Harmonisation of Legislation of the FBiH with the Regulations of the European Union No. 2120/2016 of 12 August 2016, Official Gazette of BiH No. 98/16; the RS Decision on the Procedure of Harmonising Legislation of the RS with the *acquis* and Legal Acts of the Council of Europe No. 04/1-012-2-678/11 of 7 April 2011, Official Gazette of the RS No. 46/11; "Instructions on How to Fill in the Comparative Review of Harmonisation of a Draft and Proposal of Regulations with the *acquis* and Legal Acts of the Council of Europe", Official Gazette of BiH No. 102/14; "Instructions on How to Fill in the Statement about Harmonisation of a Draft and Proposal of Regulations with the *acquis* and Legal Acts of the Council of Europe" of 3 November 2016, Official Gazette of BiH No. 102/14.

<sup>118</sup> The FBiH and the BD use the State-level guidelines, while the RS has adopted a separate "Methodology for Preparing Answers to Questions to the Questionnaire of the European Commission to Support Formulation of the Opinion on the Application for Membership to the EU" and "The RS Methodology of Reporting to the Institutions of the EU in the EI Process" of 18 January 2016, No. 17-03-020-131/16.

<sup>119</sup> Manuals for the translation of EU legislation are available at the State and the FBiH levels. The RS has adopted a decision on the co-ordination of work in the EI process.

<sup>120</sup> The CoM Decision on the Co-ordination System of the EI Process in BiH of 23 August 2016, Official Gazette of BiH No. 72/16.

<sup>121</sup> The EU Action Plans are available for download from the DEI website, [http://www.dei.gov.ba/dei/dokumenti/prosirenje/default.aspx?id=18183&langTag=bs-BAni%20plan\\_lzvie%C5%A1taj%20za%20BiH%202015\\_BHS%20-%20final%20\(3\).pdf](http://www.dei.gov.ba/dei/dokumenti/prosirenje/default.aspx?id=18183&langTag=bs-BAni%20plan_lzvie%C5%A1taj%20za%20BiH%202015_BHS%20-%20final%20(3).pdf)

and support EI within their respective jurisdictions<sup>122</sup>. A strategic programme for the country's legal approximation with the *acquis* has yet to be adopted.

The DEI prepared monitoring reports on implementation of the EU Action Plan which were approved by the CoM<sup>123</sup>. The DEI does not consistently provide formal opinions on EI-related policy proposals prior to their submission to the CoM for final approval.

Overall, given the weaknesses and shortcomings in the co-ordination of the EI process for the whole country, the value for the indicator 'Fulfilment of European integration functions by the centre-of-government institutions' at the State level is 2.

| Fulfilment of European integration functions by the centre-of-government institutions   |   |   |          |   |   |   |
|---|---|---|----------|---|---|---|
| This indicator measures to what extent the minimum criteria for European integration functions are fulfilled by the CoG institutions.   |   |   |          |   |   |   |
| As this indicator is used to assess the fulfilment of the minimum criteria, it does not measure outcomes or include quantitative indicators. The outcomes of some of these critical functions are captured by other indicators on policy development and co-ordination. |   |   |          |   |   |   |
| Overall indicator value   | 0 | 1 | <b>2</b> | 3 | 4 | 5 |

| Sub-indicators   | Points      |
|--|-------------|
| 1. Proportion of the EI functions that are assigned to the CoG institutions by law | 5/6         |
| 2. Availability of guidelines to line ministries and other government bodies       | 1/4         |
| 3. Government's capacity for co-ordination of EI                                   | 2/8         |
| <b>Total<sup>124</sup></b>   | <b>8/18</b> |

**The EI co-ordination structure has been formally established for the whole country, and the majority of EI-related functions have been assigned to the DEI and other relevant institutions at all levels of the administration. Functions for the planning and regular monitoring of EI are not exercised fully for the whole country. The DEI has a mandate for the co-ordination of the EI process across the whole country, however, the integration process has been seriously hampered by the lack of co-operation between the respective institutions at the levels of the State, the two Entities, and the BD.**

#### Key recommendations

##### Short-term (1-2 years)

- 1) All levels of the administration should establish the legal and institutional frameworks for co-ordinating the policy content of proposals within the CoG. The relevant CoG institutions should take methodological responsibility for developing and strengthening the policy-making process.
- 2) All levels of the administration should support the operationalisation and functioning of the new EU Co-ordination System. They should also develop and adopt guidelines in the areas of EI planning, planning and monitoring of EU assistance, EI-related negotiation, and translation of the *acquis*.

<sup>122</sup> The RS Action Plan for Harmonising Legislation of the RS with the *acquis* and Legal Acts of the Council of Europe, adopted by the RS Government in February 2016 by Conclusion No. 04/1-012-2-372/16 (the action plan has been developed since 2010); the BD Programme of Medium-Term Priorities for EU Integration in the BD 2015-2020 of October 2015.

<sup>123</sup> The latest monitoring report on the implementation of measures from the Action Plan for the implementation of the priorities from the EU Report on Bosnia and Herzegovina for 2016 was adopted by the CoM of BiH during its 102<sup>nd</sup> meeting held on 23 May 2017; [http://www.vijeceministara.gov.ba/saopstenja/sjednice/zakliucci\\_sa\\_sjednica/default.aspx?id=25409&langTag=bs-BA](http://www.vijeceministara.gov.ba/saopstenja/sjednice/zakliucci_sa_sjednica/default.aspx?id=25409&langTag=bs-BA)

<sup>124</sup> Point conversion ranges: 0-2=0, 3-5=1, 6-9=2, 10-13=3, 14-16=4, 17-18=5.

- 3) The CoM of BiH (DEP), the FBiH Government (FIDP), and the BD Government should develop and adopt guidelines in the area of sectoral strategy development.

**Medium-term (3-5 years)**

- 4) The EI-related functions and guidelines in BiH should be fully harmonised across the different levels of the administration to ensure effective co-ordination and implementation of EI-related activities and measures.

**Key requirement: Policy planning is harmonised, aligned with the government’s financial circumstances and ensures that the government is able to achieve its objectives<sup>125</sup>.**

The values of the indicators assessing Bosnia and Herzegovina’s performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



**Analysis of Principles**

**Principle 3: Harmonised medium-term policy planning is in place, with clear whole-of-government objectives, 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.**

There is no single, medium-term policy-planning system covering the whole country. The policy-planning systems in the State, the Entities and the BD include central-government planning documents and sectoral strategies that help to plan and implement policies within the authority and jurisdiction of each level of the administration. The key medium-term planning documents at all levels of the administration include the exposés of the Chairman of the CoM and the Prime Ministers (the Government Programme), the Medium-Term Government Programme, and medium-term institutional plans (in the case of the State and the FBiH<sup>126</sup>), the GAWP, the EU Action Plan, the Budget Framework Document (BFD)<sup>127</sup>, and sectoral strategies.

The medium-term policy-planning systems have been established through separate laws and regulations at all levels of the administration, except in the BD. Even though the regulations on planning are different at the State level and in the Entities<sup>128</sup>, they all foresee the elaboration of medium-term plans,

<sup>125</sup> This analysis covers all levels of the administration, but the values of the indicators presented under this key requirement have been calculated on the basis of the assessment at the State level.

<sup>126</sup> Individual plans for ministries and other government institutions exist at the levels of the BiH State and the FBiH. Medium-term institutional plans, which are linked to the Medium-Term Government Programme, are elaborated by the ministries and adopted by the respective minister.

<sup>127</sup> The Budget Framework Document (BFD) contains macroeconomic projections and forecasts of budget resources for a three-year period. The preparation of the annual budget is based on the BFD (at all levels of administration).

<sup>128</sup> Decision on Medium-Term Planning, Monitoring and Reporting in the Institutions of BiH of 23 July 2014, Official Gazette of BiH No. 62/14; Instruction on Methodology in the Process of Mid-Term Planning, Monitoring and Reporting in the Institutions of BiH of June 2015, Official Gazette of BiH No. 44/15; Decision on Annual Work Planning, Monitoring and Reporting on the Work in the Institutions of BiH, adopted by the CoM in November 2014, Official Gazette of BiH No. 94/14; Instruction on the Preparation of the Annual Work Programme and Reports on the Work of BiH Institutions,

on the basis of which annual government plans are developed. A new process and methodology for the elaboration of medium-term plans in the RS were adopted in 2016, but they have not yet been put into operation<sup>129</sup>.

No regulations or guidelines on the development of sectoral strategies have been prepared at any level. The planning decision of the RS<sup>130</sup> includes a section dedicated to sectoral-strategy elaboration. However, the decision provides only limited information on the structure of a sectoral strategy and describes only the approval process.

All levels of the administration have assigned institutional responsibilities for government-level policy planning. However, at the State level and in the Entities, several institutions share the planning roles and responsibilities. For example, at the State level, medium-term planning is the responsibility of the DEP, the CoM and MoFT, while responsibility for annual, institutional and governmental planning is allocated between the OCCoM and the SGGCoM. In the FBiH, the FIDP co-ordinates medium-term planning, while the GS leads annual planning. Furthermore, in the case of the FBiH, both institutions provide technical support to the Commission on Programmes and Reports on the Work of the Federal Government of BiH<sup>131</sup>. In the RS, the development strategy, the medium-term plans and sectoral strategies are co-ordinated by the Strategic Planning and Monitoring Unit, while the development of the GAWP is co-ordinated by the Government Session Division of the SGG, with technical support from the SGG's Strategic Planning and Monitoring Unit. In the BD, planning activities are co-ordinated by the SGBD.

Guidance on policy planning, reporting and the medium-term budget process, primarily in the form of written formal guidelines, is available to ministries across all levels. In addition, at the State level, guidance and support are provided to ministries for the development of medium-term and annual plans of the Government and to individual institutions<sup>132</sup>. Also at the State level, ministries and institutions are consulted during the stage of the actual drafting of the plans. Overall, due to limited consultation and limited involvement of CoG institutions and other ministries during the preparatory process, planning documents are lengthy<sup>133</sup> and of poor quality, and the prioritisation of objectives, activities and projects is lacking.

A review of documentation supporting a sample of five strategies<sup>134</sup> from all four levels of the administration shows that the formal opinions of other ministries and institutions are not systematically collected before the final approval of the strategies. Opinions were only available in the sample of strategies provided by the RS.

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adopted by the CoM on 14 May 2015, Official Gazette of BiH No. 45/15; Regulation of the FBiH Government on Planning and Monitoring of Government Work, adopted on 31 October 2014, Official Gazette of BiH No. 89/14.; and the RS Government Decision on the Procedure of Planning, Monitoring, and Reporting on the Realisation of Strategies and Plans of the Government and Administrative Bodies of the RS Government of 9 June 2016, Official Gazette of the RS No. 50/16.

<sup>129</sup> Decision of the RS Government on the Procedure of Planning, Monitoring, and Reporting on the Realisation of Strategies and Plans of the Government and Administrative Bodies of the RS Government No. 04/1-012-2-1328/16 of 9 June 2016, Official Gazette of the RS No. 50/16.

<sup>130</sup> *Idem*, Article 14.

<sup>131</sup> Regulation of the FBiH Government on Planning and Monitoring of Government Work, adopted by the FBiH Government on 23 October 2014, Articles 11, 16 and 20, Official Gazette of BiH No. 89/14.

<sup>132</sup> DEP officials provided this information during the assessment interviews.

<sup>133</sup> For example, the BiH GAWP is approximately 250 pages long and the FBiH plan has about 350 pages.

<sup>134</sup> The following strategies were reviewed: at the State level – Strategy on Migration and Asylum and Action Plan for the period 2016-2020, Medium-Term Debt Management Strategy of BiH, Traffic Framework Strategy for the period 2016-2030, and Framework Strategy for Transport in BiH for the period 2016-2030. At the FBiH level – Strategy to Improve the Life of People with Disabilities, Anti-corruption Strategy 2016-2019, Transport Strategy, and Action Plan for the 2016 Strategy for Preventing Domestic Violence. At the RS level – Industry Development Strategy and Policy of the RS 2016-2020, Employment Strategy of the RS 2016-2020, Development Strategy for Small and Medium-sized Enterprises of the RS 2016-2020, Strategy for the Foreign Investment Promotion Proposal of the RS 2016-2020, and Public Roads Development Strategy Proposal of the RS 2016-2025. The BD did not provide any strategies for review.

Alignment between central planning documents at all levels of the administration is weak. The priorities expressed in the GAWPs and in the BFDs are not coherent<sup>135</sup>. Furthermore, it is impossible to compare the alignment of policy priorities between central planning documents because the GAWPs are structured and presented based on ministerial functions, while the BFDs provide costs based on the organisational units of government institutions. While the BFDs do not include outcome-level indicators for measuring the achievement of government priorities, the GAWPs do so for only about 3%<sup>136</sup> of the objectives.

The GAWPs at all levels of the administration include legislative commitments. At the State and FBiH levels, non-legislative activities and indicators are also included in the plans. Overall, the GAWPs across all levels are assessed as being unrealistically planned. This assessment has been confirmed by the level of the backlog, which is calculated to be as high as 77% of all legislative measures. The backlog is even higher (100%) for strategy-development commitments in the FBiH (Figure 1). In 2014, the legislative backlog at the State level was estimated to be 14%, and the strategy-development backlog to be 25%. In the following year, the legislative backlog increased to 34%, while the strategy-development backlog decreased to 14%<sup>137</sup>. The situation with regard to the legislative and strategy-development backlogs at the respective levels of BiH deteriorated in 2016, as the relevant rates were higher than those calculated for 2014 and 2015. The RS is performing the best in fulfilling its legislative commitments, although the rate of its backlog is still calculated to be 39%, while the State is performing the best in fulfilling its strategy-development commitments, with an estimated backlog of 38%.

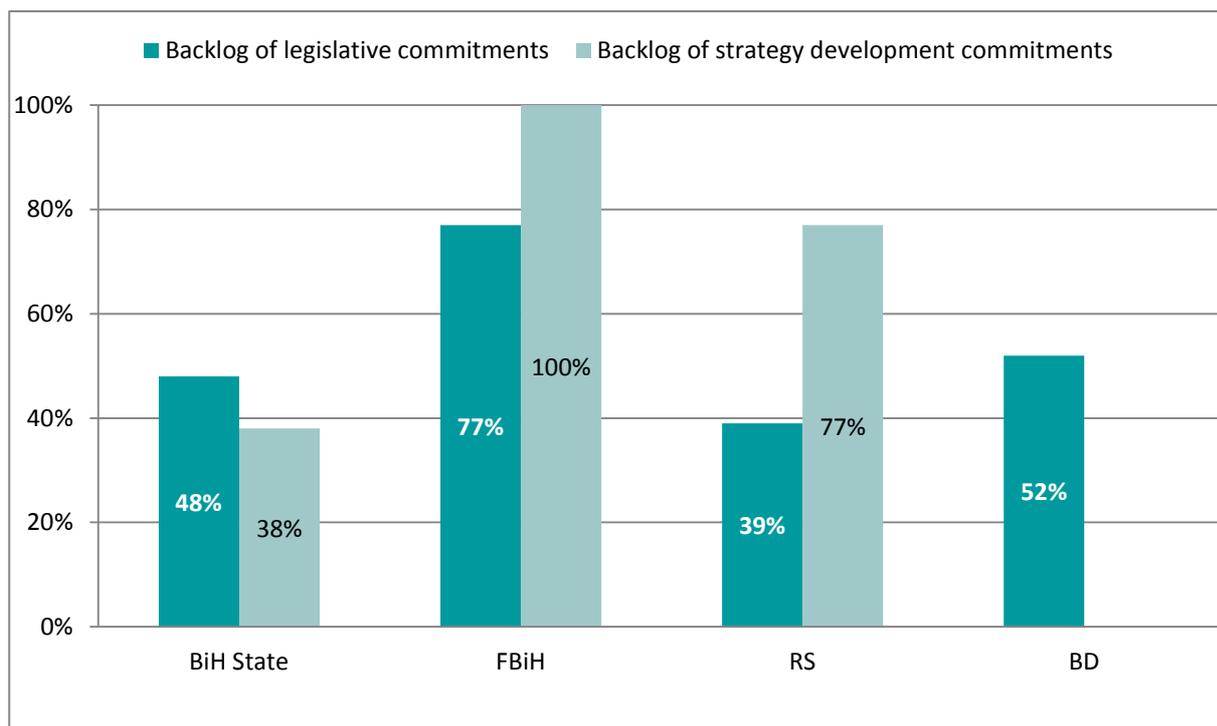
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<sup>135</sup> For example, the BFD identifies budget users and priority projects or programmes that require the largest amount of additional funding (e.g. reconstruction of helicopters; construction of border crossings between BiH and Serbia; and construction of the facility for relocation of the Prosecutor's Office), while the GAWP identifies sectoral priorities (e.g. integrated growth through the promotion of regional trade and mutual investment and the development of non-discriminatory and transparent trade policies; smart growth in innovation, digitisation and mobility of young people; and commitment to competitiveness on the basis of quality rather than labour costs).

<sup>136</sup> In the case of the GAWP at the State level, only 2.8% of the indicators were assessed to be outcome-based, and for the FBiH GAWP, the result was even lower.

<sup>137</sup> For detailed, comparative figures on backlogs, see OECD (2017), *Functioning of the Centres of Government in the Western Balkans*, SIGMA Paper No. 53, OECD Publishing, Paris, pp. 29 and 33, <http://dx.doi.org/10.1787/2bad1e9c-en>

**Figure 1. Backlog of legislative and strategy-development commitments in relevant government planning documents of the BiH administration, 2016 (% of total)**



Source: SIGMA calculations are based on the information and data provided during the assessment. No information on sector strategy development was provided regarding the work programme of the BD Government.

While formally all levels of the administration require the provision of information on the financial implications of draft regulations, primarily through the relevant RoP of the CoM or Government, the review of the last five sectoral strategies adopted in 2016<sup>138</sup> showed that the costing of strategies had not been carried out adequately. Only two of the five strategies reviewed actually contained information on potential costs. An assessment of the consistency of the strategies with the medium-term budgetary framework was also hampered by the fact that the BFD, which is the main medium-term financial-planning document, does not include financial projections for the sector, strategy or programme.

Given the weaknesses and gaps in the legal and regulatory framework for policy planning and sector-strategy development and the low-level alignment between key central planning documents, the value for the indicator 'Quality of policy planning' at the State level is 1.

<sup>138</sup> The BD did not provide a sample of strategies for assessment.

| Quality of policy planning   |   |          |   |   |   |   |
|--|---|----------|---|---|---|---|
| This indicator measures the legislative, procedural and organisational set-up established for harmonized policy planning and the quality and alignment of planning documents. It also assesses the outcomes of the planning process (specifically the number of planned legislative commitments and sector strategies carried forward from one year to the next) and the extent to which the financial implications of sectoral strategies are adequately estimated. |   |          |   |   |   |   |
| Overall indicator value  | 0 | <b>1</b> | 2 | 3 | 4 | 5 |

| Sub-indicators   | Points       |
|--|--------------|
| 1. Adequacy of the legal framework for policy planning                               | 3/7          |
| 2. Availability of guidance to line ministries during the policy-planning process    | 3/4          |
| 3. Alignment between central policy-planning documents                               | 0/6          |
| 4. Planned commitments carried forward in the legislative plan of the government (%) | 1/4          |
| 5. Planned sectoral strategies carried forward (%)                                   | 2/4          |
| 6. Completeness of financial estimates in sector strategies                          | 1/5          |
| 7. Alignment between planned costs in sector policy plans and medium-term budget (%) | 0/3          |
| <b>Total<sup>139</sup></b>   | <b>10/33</b> |

**The regulatory framework governing policy planning is established at all levels of the administration, with the exception of the BD. Sufficient guidance is available to line ministries, but the respective CoGs at all levels of BiH have failed to produce realistic plans. This assessment has been confirmed by the high proportion of legislative and strategy-development commitments that have been carried forward to the following year. No rules have been set for the development of sectoral strategies, except in the RS, and the practice of costing strategies has been sporadic. No clear links have been created between sectoral strategies and the medium-term financial planning document.**

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

BiH has not succeeded in establishing a regulatory framework for medium-term planning and monitoring of progress on EI for the whole country, which is complicated because of the constitutional set-up. The planning function remains decentralised at the levels of the BiH State, the two Entities and the BD.

Nevertheless, acting upon the conclusion of the CoM of BiH<sup>140</sup>, the DEI, in co-operation with the two Entities, the BD and the Cantons, has developed an EU Action Plan, which aims to plan all EI-related measures for the entire country, based on the EU Progress Reports for 2015 and 2016<sup>141</sup>. The latest EU Action Plan, adopted in 2017, includes measures and activities that aim to address the priorities set out in the 2016 EU Progress Report. All levels of the administration have contributed to the development of the EU Action Plan, which is the only EI-planning document covering the whole country that has been formally adopted.

The EU Action Plan is a comprehensive document comprised of a total of 634 measures. The plan is clearly organised and is presented in accordance with the logic and structure of the 2015 and 2016 EU progress reports on and covers *acquis* negotiation chapters. The plan establishes implementation

<sup>139</sup> Point conversion ranges: 0-5=0, 6-11=1, 12-17=2, 18-23=3, 24-29=4, 30-33=5.

<sup>140</sup> Conclusion of the CoM, 84<sup>th</sup> session held on 29 November 2016, No. 05-07-1-3420-5/16.

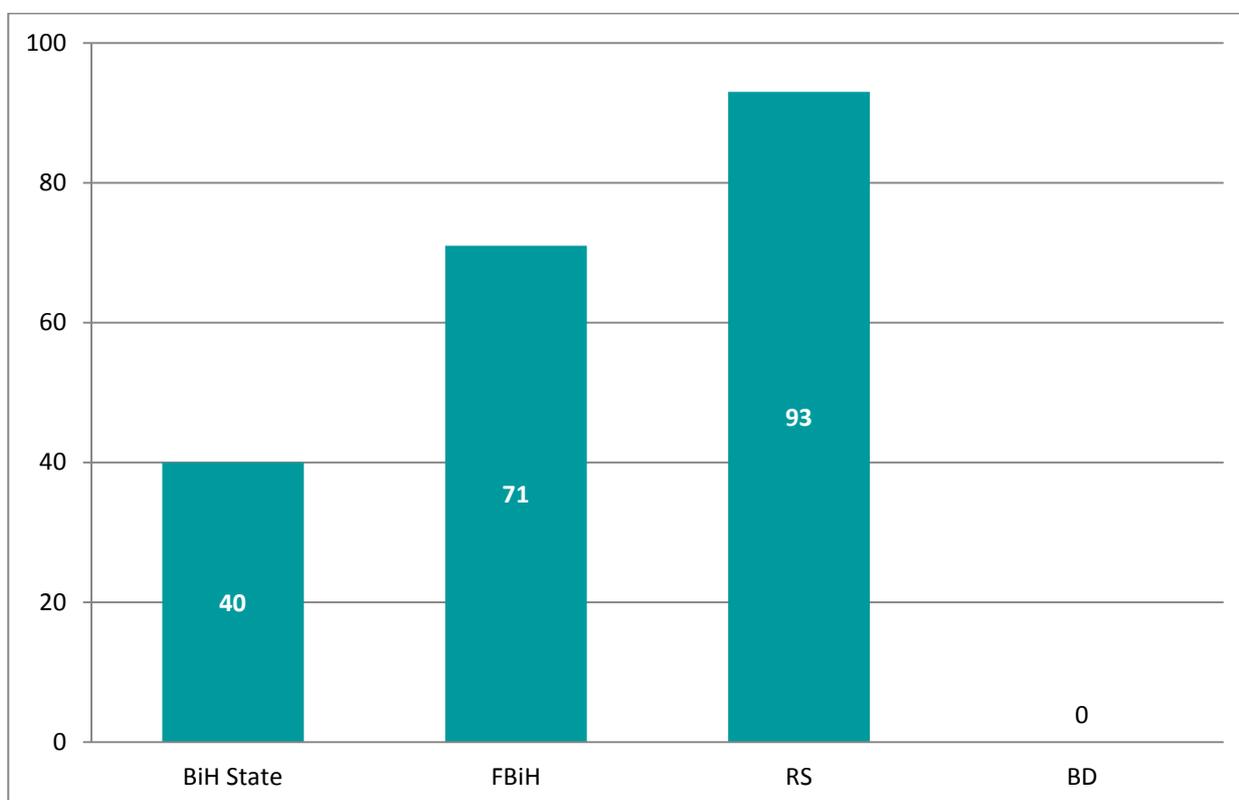
<sup>141</sup> The EU Action Plan for 2016 was adopted at the 43rd session of the CoM, held on 17 February 2016. The EU Action Plan for 2017 was adopted at the 93rd session of the CoM, held on 8 March 2017.

deadlines for all measures for the period 2017-2018. However, the EU Action Plan does not provide any information on either the potential cost of reforms or the sources of funding. Furthermore, the plan does not provide complete information about legislative and non-legislative commitments across all levels of the administration to ensure harmonised planning and transposition of the *acquis*. Therefore, a strategic programme for the country's legal approximation with the *acquis* has yet to be adopted.

It is not possible to assess the effectiveness of implementation of the EU Action Plan for the whole country because consistent information is not available concerning the implementation of measures at all levels of the administration (including some cantons) and the format of the plan has changed significantly<sup>142</sup>.

Furthermore, the EU Action Plan is not aligned with the GAWPs except in the RS, where approximately 93% of all legislative commitments (draft laws) in the plan have been included in the RS Government's work programme. At the State and the FBiH levels, alignment of the EU Action Plan with the relevant GAWPs has been calculated to be 40% and 71% respectively. The BD Government's work plan is not aligned with the EU Action Plan<sup>143</sup>.

**Figure 2. Alignment of EI planning documents with the 2017 GAWPs (% of legislative commitments appearing in both documents)**



Source: SIGMA calculations, based on information provided during the assessment.

The BiH Parliamentary Assembly, the Parliament of the FBiH, the National Assembly of the RS and the BD Assembly have agreed to co-operate on EI-related issues. The leaders of the Parliaments of all levels have also adopted action plans for strengthening the roles of Parliaments in the context of EI.

Overall, due to the incomplete and weak regulatory framework for medium-term EI planning, the

<sup>142</sup> To enable the measurement of the implementation rate of the whole plan, complete and consistent information concerning each individual measure will be required from all levels of the BiH administration. In addition, the structure of the EU Action Plan for 2017 was changed from the structure of the 2016 plan. At the State level, the percentage of EI commitments carried forward from 2016 to 2017 has been calculated as 24%.

<sup>143</sup> Seven EI-related legislative commitments included in the EU Action Plan are due to be implemented by the BD in 2017; none of these commitments was included in the BD Government's work plan for 2017.

absence of costing for activities included in the EU Action Plan, and the low level of alignment between the EU Action Plan and the GAWPs, the value for the indicator ‘Quality of policy planning for European integration’ at the State level is 1.

| Quality of policy planning for European integration  |   |   |   |   |   |   |
|--|---|---|---|---|---|---|
| This indicator analyses the legislative set-up established for policy planning of the European integration (EI) process and the quality and alignment of planning documents for EI. It also assesses the outcomes of the planning process (specifically the number of planned legislative EI-related commitments carried forward from one year to the next) and the implementation rate of planned EI-related commitments. |   |   |   |   |   |   |
| Overall indicator value  | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators  | Points      |
|---|-------------|
| 1. The legal framework enables harmonised planning of EI                                    | 0/2         |
| 2. Quality of planning documents for EI   | 2/6         |
| 3. EI-related commitments carried forward   | 3/4         |
| 4. Implementation rate of the government’s plans for EI-related legislative commitments (%) | 0/4         |
| <b>Total<sup>144</sup></b>  | <b>5/16</b> |

**A medium-term EI planning system has not been established for the whole country. The main EI planning document – the EU Action Plan – is a comprehensive document, providing detailed information on priority measures across all levels of the administration. However, the EU Action Plan is not properly aligned with the GAWPs, with the exception of the GAWP of the RS. Information on the costs of measures and sources of funding has not been provided in the EU Action Plan, which makes it impossible to assess the overall financial sustainability of the plan. Furthermore, the plan, in its current form, does not provide complete and consistent information about all legislative and non-legislative commitments across all levels of the administration to ensure harmonised planning and transposition of the EU *acquis*.**

<sup>144</sup> Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

***Principle 5: Regular monitoring of the government's performance enables public scrutiny and supports the government in achieving its objectives.***

The legal obligations for monitoring the Government's performance and budget execution have been established through separate laws and regulations at each level of the administration. At the State<sup>145</sup>, FBiH<sup>146</sup>, RS<sup>147</sup> and BD<sup>148</sup> levels, the relevant legal framework defines the requirements for reporting on the implementation of the GAWPs, including the legislative plans and the budget, on an annual basis. According to the existing legislation, the GAWP reports and the budget execution reports have to be submitted to the relevant Parliament. However, the existing legislative frameworks at all levels of the administration have not established any requirement or procedure for reporting on the implementation of sectoral strategies and the EU Action Plan.

No formal requirement exists for the publication of regular reports on the GAWPs. A clear obligation to publish regular reports is established, however, and is followed in practice in the case of the budget execution at the State<sup>149</sup> and FBiH<sup>150</sup> levels. However, no regulatory requirement has been established and no practice has been made of preparing and publishing regular implementation reports on the GAWPs, the EU Action Plan and sector strategies<sup>151</sup> at any level of the administration. The State level publishes a report on the implementation of its GAWP and its Legislative Plan. However, reports on the implementation of the EU Action Plan, the respective GAWPs and sectoral strategies of the Entities and the BD are not available publicly.

The GAWPs at all levels include primarily output-level indicators and, in the case of the State, the FBiH and the BD, they also indicate targets. However, the implementation reports do not follow consistently the structure and logic of the GAWPs. For example, although the GAWP of the State includes output-level indicators, those indicators are not discussed and presented in the annual implementation report. Instead, the report discusses key policy and legislative activities, international agreements and the EI process, and presents the progress towards budgetary targets and resources. The report on the implementation of the EU Action Plan for 2016 mainly describes activities completed and actions carried out. The same applies to the annual reports on strategy implementation provided by the RS, which primarily discuss the main developments and activities in generic terms. None of the other levels provided samples of monitoring reports on strategies for the assessment.

Overall, due to the existing gaps in the legal framework for monitoring and reporting and the poor quality of the reports, the value for the indicator 'Quality of government monitoring and reporting' at the State level is 1.

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<sup>145</sup> Decision on Annual Planning, Monitoring and Reporting on the Work in the Institutions of BiH, adopted by the CoM in November 2014, Articles 9-11, Official Gazette of BiH No. 94/14; Law on Financing of Institutions of BiH, adopted on 2 December 2014, Official Gazette of BiH No. 61/04, Article 22.

<sup>146</sup> The FBiH Government Regulation on Planning and Monitoring of Government Work, adopted by the Government of the FBiH in October 2014, Article 20; Law on the Budget of the FBiH, adopted on 16 December 2013, Article 96, Official Gazette of BiH No. 102/13.

<sup>147</sup> The RS Government Decision on the Procedure of Planning, Monitoring, and Reporting on the Realisation of Strategies and Plans of the Government and Administrative Bodies of the RS Government, adopted on 9 June 2016, Official Gazette of the RS No. 50/16, Section 2; Law on the Budget of the RS, December 2012, Article 46, Official Gazette of the RS No. 121/12.

<sup>148</sup> The RoP of the BD Government, April 2013, Article 29.

<sup>149</sup> Law on Financing of Institutions of BiH, adopted on 2 December 2004, Official Gazette of BiH No. 61/04, Article 24.

<sup>150</sup> Law on the Budget of the FBiH, adopted on 16 December 2013, Article 100, Official Gazette of BiH No. 102/13.

<sup>151</sup> Only the RS administration submitted three reports on strategy implementation from 2016.

### Quality of government monitoring and reporting

This indicator measures the strength of the legal framework regulating reporting requirements, the quality of government reporting documents and the level of public availability of government reports.

Overall indicator value 0 **1** 2 3 4 5

| Sub-indicators   | Points      |
|--|-------------|
| 1. The legal framework enables good monitoring and reporting | 3/8         |
| 2. Quality of reporting documents                            | 0/12        |
| 3. Public availability of government reports                 | 3/5         |
| <b>Total<sup>152</sup></b>                                   | <b>6/25</b> |

The legal framework for monitoring and reporting across all levels does not establish fully the requirements and standards for reporting on key government planning documents, including the EU Action Plan and sectoral strategies. Furthermore, no formal requirement has been established to publish reports on key government planning documents at all levels (except for reports on budget execution). While reports on the implementation of GAWPs are prepared at all levels of the administration, they are published at the State level only. The quality of published reports is poor, as they do not contain information on progress towards the achievement of outcomes and objectives.

#### Key recommendations

##### Short-term (1-2 years)

- 1) CoGs responsible for the preparation of the GAWPs at the respective levels of the administration should strengthen their efforts and focus on the preparation of more realistic central planning documents.
- 2) The Governments of the FBiH, the RS and the BD should review and amend their respective legal frameworks to ensure that the preparation and publication of regular implementation reports on the GAWPs as well as reports on the implementation of sectoral strategies are formally required by the legislation.
- 3) The CoM and the Governments of the RS, the FBiH and the BD should jointly establish a countrywide approach to medium-term planning and reporting on EI-related matters, based on the EI Co-ordination System. All EI-related planning documents at the levels of the Entities and the BD should be harmonised so as to be consistent with the EU Action Plan and to thereby enable clear and effective monitoring and reporting. The plans should include complete information on all EI-related measures (both legislative and non-legislative), and provide cost estimates and information on the sources of funding.
- 4) Monitoring and reporting requirements should be revised at all levels of the administration so that the reports include information on the progress towards policy objectives and indicators.
- 5) All levels of the administration should develop a methodology and process for sectoral strategy development and ensure that those strategies are prepared and adopted in accordance with Government work plans.

##### Medium-term (3-5 years)

- 6) The CoM and the Governments of FBiH and RS should review and evaluate their respective regularity frameworks and established functions for medium-term and annual planning, with a view to

<sup>152</sup> Point conversion ranges: 0-3=0, 4-7=1, 8-12=2, 13-17=3, 18-21=4, 22-25=5.

optimising and harmonising existing systems and practices both within each administration and across all levels. If required, all levels of the administration should redefine these functions so as to ensure the clear definition of responsibilities.

**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<sup>153</sup>.**

The values of the indicators assessing Bosnia and Herzegovina’s performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



### **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.**

No single, countrywide CoG exists in BiH, and decision-making powers are delegated to the CoM and the Governments of the FBiH, the RS and the BD. At all levels of the administration, the key legal acts establishing and defining legislative and decision-making processes are the following: the laws on government<sup>154</sup>, the RoPs<sup>155</sup>, the uniform rules for legislative drafting<sup>156</sup>, and the regulations on consultation<sup>157</sup>. The above-mentioned regulations clearly establish the requirements and functions in relation to the preparation and organisation of Government sessions, ensuring the review and checks on items submitted to the Government and the legal scrutiny of proposals.

The RoP at all levels of the administration except in the BD establish the list of institutions designated to review materials submitted to the Government session for final approval and those institutions that are to provide mandatory opinions. At the State level, the LOCoM, the MoFT, the DEI, and the Ministry of Justice (MoJ) are required to provide opinions on policy proposals before these items can be considered

<sup>153</sup> This analysis covers all levels of the administration, but the values of the indicators presented under this key requirement have been calculated on the basis of the assessment at the State level.

<sup>154</sup> Law on the CoM of BiH, Official Gazette of BiH Nos. 30/03, 42/03, 81/06, 76/07, 81/07, 94/07 and 24/08; Law on the Government of the FBiH, Official Gazette of BiH No. 19/03; Law on the Government of the RS, Law on the Government of the BD, Official Gazette of the BD No. 19/07.

<sup>155</sup> The RoP of the CoM of July 2003, Official Gazette of BiH No. 22/03; the RoP of the Government of the FBiH, Official Gazette of BiH No. 79/09; the RoP of the Government of the RS, Official Gazette of the RS No. 10/09; and the RoP of the Government of the BD, Official Gazette of the BD No. 9/13.

<sup>156</sup> “Unified Rules for Legislative Drafting in the Institutions of BiH”, Official Gazette of BiH, Nos. 11/05, 58/14 and 60/14; “Rules and Procedures for the Drafting of Laws and Other Regulations of the FBiH”, Official Gazette of the FBiH No. 71/14; “Rules for Drafting Laws and Other Regulations of the RS”, Official Gazette of the RS No. 24/14; and “Unified Rules and Procedures for Drafting Legal Acts of the BD”, Official Gazette of the BD No. 1/12.

<sup>157</sup> Regulations on Consultations in Legislative Drafting in BiH”, Official Gazette of BiH No. 05/17; Regulation on the “Rules for the Participation of Stakeholders in the Process of Preparation of the Federation’s Legal Regulations and Other Acts”, adopted by the FBiH Government at its 53rd session on 4 June 2012, Official Gazette of the FBiH No. 51/12; “The RS Guidelines for the Actions of Administrative Bodies of the Republic on Participation and Consultation of the Public in Legal Drafting”, Official Gazette of the RS, Nos. 123/08 and 73/12; Decision on Public Consultation in Drafting Regulations and Procedures in the BD, adopted on 2 March 2017.

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by the CoM for final approval<sup>158</sup>. In the FBiH, opinions are required from the OLFBIH, the MoF and the MoJ<sup>159</sup>. In the RS, opinions are required from the SL, the MoF, the MoJ and the MERRC<sup>160</sup>. The RoP of the BD Government stipulate the submission of mandatory opinions, including from the LOBD, the Finance Directorate, and the Public Attorney before a proposal can be considered for final approval.

None of the government institutions in BiH has been designated to review the overall quality of proposals or its alignment with Government priorities and previously announced policies. Furthermore, no institution has been authorised to return proposals on the basis of flawed content.

A review of samples of draft laws<sup>161</sup> at all levels of the administration showed that government institutions had performed legal and financial scrutiny to varying degrees. For example, at the State level, an MoFT opinion was missing for three laws, while for one law no mandatory opinion at all had been given. In the case of the FBiH sample, the opinion of the MoFT was missing from the packages of documentation supporting two draft laws. Similarly, in the BD sample, mandatory opinions on financial implications were missing for three draft laws. The package of documentation supporting the laws included in the RS sample did contain all of the required opinions<sup>162</sup>. It was not possible to assess the timeliness of the submission of opinions by ministries to the Government sessions, since neither at the State level nor the Entity level was the required information provided<sup>163</sup>.

All levels of the administration communicate Government decisions after the sessions, through either press conferences or publication on government websites<sup>164</sup>. The minutes of Government sessions are distributed to all participants and they are formally approved in the next Government session. The agendas of Government sessions are made publicly available by the relevant bodies at all levels; in the case of the FBiH, the agenda is actually published before the start of the Government session, albeit only a few hours before the meeting<sup>165</sup>. A summary of decisions after each session of the CoM is published online<sup>166</sup>. However, challenges remain in terms of ensuring that all decisions of the CoM, the Governments of the Entities and the BD are made publicly available. Government decisions are also published in the Official Gazettes. However, the Official Gazettes do not provide access to all type of decisions (for example, decisions that are not normative by nature and/or relative to a specific policy or programme).

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<sup>158</sup> The RoP of the CoM, Article 46.

<sup>159</sup> The RoP of the FBiH Government, Article 27.

<sup>160</sup> The RoP of the RS Government, Article 17.

<sup>161</sup> The following draft laws were submitted by the State level: draft Law on Salaries, draft Law on the Amendments of the Law on Traffic Safety on the Roads in BiH, draft Law on Amendments of the Law on International and Inter-Entity Road Transportation, draft Law on Salaries and Other Compensations in Courts of BiH, and draft Law on Amendments to the Law on Drugs and Medicine. The following draft laws were submitted by the RS: draft Law on the Amendments to the Law on Income Tax, draft Law on Banks of the Republic of Srpska, draft Law on Food, draft Law on General Product Safety in the Republic of Srpska, and draft Law on the Tax System in the Republic of Srpska. The following draft laws were submitted by the BD: draft Law on Protection and Rescue of People and Material Goods from Natural and Other Disasters, draft Law on Execution of the Budget for 2016, draft Law on Water, and draft Law on Restitution of Abandoned Property. The FBiH administration did not provide a sample of draft laws for assessment.

<sup>162</sup> This information is based on a review of documentation provided during the assessment. If opinions from some levels of the administration were not provided in the package of documentation sent to SIGMA for assessment, it was assumed that those opinions were also not available/included in the package of documentation supporting the proposal submitted to the relevant CoM or Government for final approval.

<sup>163</sup> In the BD, it is estimated that all draft proposals approved during the last quarter of 2015 and 2016 (165 in 2015 and 53 in 2016) were submitted on time. This estimation is based on information provided by officials of the BD during the assessment.

<sup>164</sup> The relevant government websites have been checked.

<sup>165</sup> This information is based on the findings of the assessment interviews with government institutions at all levels.

<sup>166</sup> The summaries of the CoM decisions are available online:  
[http://www.vijeceministara.gov.ba/saopstenja/sjednice/saopstenja\\_sa\\_sjednica/Archive.aspx?langTag=bs-BA&template\\_id=92&pageIndex=1](http://www.vijeceministara.gov.ba/saopstenja/sjednice/saopstenja_sa_sjednica/Archive.aspx?langTag=bs-BA&template_id=92&pageIndex=1).

Overall, the level of perceived clarity and stability of Government decisions in BiH is low. According to the 2017 Balkan Barometer survey, only 32% of BiH businesses considered that the laws and regulations affecting them had been clearly written, were not contradictory and did not change frequently<sup>167</sup>.

Based on the above shortcomings and gaps in the existing regulatory framework and the practice of decision making, the value for the indicator 'Transparency and legal compliance of government decision-making' at the State level is 1.

| Transparency and legal compliance of government decision making   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|
| This indicator measures the legal framework established for ensuring legally compliant decision making, the consistency of the government in implementation of the established legal framework, the transparency of government decision making, and businesses' perception of the transparency of government policy making. |   |   |   |   |   |   |
| Overall indicator value   | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators  | Points             |
|---|--------------------|
| 1. The legal framework establishes procedures for government sessions                         | 2/5                |
| 2. Consistency of the CoG in setting and enforcing the procedures                             | 1/4                |
| 3. Timeliness of ministries' submission of regular agenda items to the government session (%) | 0/3 <sup>168</sup> |
| 4. Openness of government decision-making process   | 2/4                |
| 5. Perceived clarity and stability of government policy making by businesses (%)              | 0/4                |
| <b>Total<sup>169</sup></b>  | <b>5/20</b>        |

**The legal framework and responsibilities for preparing Government sessions and ensuring legal and financial compliance are established within the relevant regulatory frameworks at all levels of the administration. However, in practice, legal and financial scrutiny of policy proposals at the final stage of the decision-making process is not carried out fully and consistently. No CoG body in BiH reviews proposals to check their coherence and consistency with Government priorities and previously announced policies. Furthermore, no institution has been authorised to send back draft proposals if the content or the package is inadequate. The agendas of meetings of the CoM and the Governments of the FBiH, RS and BD have been made available publicly.**

***Principle 7: The parliament scrutinises government policy making.***

There is no single parliament in BiH with countrywide rights and responsibilities. The relations between the executive branches and the Parliaments are regulated through the respective RoPs of the CoM and the Governments, the Laws on Government and the RoPs of the Parliaments<sup>170</sup>.

Overall, the regulatory framework for conducting parliamentary scrutiny of government policy making is in place at all levels of the administration. The RoPs of the Parliaments<sup>171</sup> enable the exercise of the

<sup>167</sup> Balkan Barometer, annual survey conducted by the Regional Cooperation Council (RCC), <http://www.rcc.int/seeds/results/3/balkan-business-barometer>. The actual question asked was whether "laws and regulations affecting [my] company [are] clearly written, not contradictory and [do] not change too frequently." The percentage of respondents to the question who had answered "strongly agree" and "tend to agree" were included in the final result.

<sup>168</sup> The relevant data was not provided to SIGMA.

<sup>169</sup> Point conversion ranges: 0-1=0, 2-5=1, 6-9=2, 10-13=3, 14-17=4, 18-20=5.

<sup>170</sup> The RoP of the House of Representatives of BiH; the RoP of the House of Peoples of BiH; the RoP of the House of Representatives of the FBiH; the RoP of the House of Peoples of the FBiH; the RoP of the National Assembly of the RS; the RoP of the House of Representatives of the BD; the RoP of the House of Peoples of the BD.

<sup>171</sup> The RoP of the House of Representative of BiH, Articles 140 and 159; the RoP of the House of Representatives of the FBiH, Article 117; and the RoP of the National Assembly of the RS, Articles 258 and 263.

oversight functions of the executive branch, mostly through parliamentary questions (oral or written) and through regular government activity reports as/when requested by the Parliament.

At all levels of the administration, draft laws submitted to the Parliament must be accompanied by explanatory memoranda<sup>172</sup>. The submitted package should provide information concerning the constitutional basis and rationale for the initiation of the draft law, the principles of the preparation of the draft law, as well as information on estimated costs and financial resource requirements.

A review of a sample of five draft laws<sup>173</sup> submitted by the administrations to their respective Parliaments showed that the above formal requirements have been fully respected at the State and the RS levels<sup>174</sup>.

Overall, the rules and requirements for preparing new legislation are largely the same for all of the Parliaments and Governments<sup>175</sup>. The Governments of the FBiH and the RS, however, are also required to develop RIAs for draft laws, while at the State level RIA has been piloted, with the support of an externally-funded project.

The Governments at all levels participate in the discussion of new draft laws initiated within the Parliaments. These discussions are stipulated by the relevant legislation<sup>176</sup>.

A review of a sample of the three most recently approved laws initiated by MPs in 2016 in the State<sup>177</sup>, the RS<sup>178</sup>, and the BD<sup>179</sup> showed that the CoM and the Government of the RS provided their opinions regarding all three respective laws. In the case of the BD samples, all mandatory opinions were included in the package, including opinions on legal compliance, harmonisation with EU legislation, and financial impact<sup>180</sup>. As the FBiH did not submit a sample of laws for the assessment, it was not possible to assess compliance against this particular sub-indicator at the FBiH level.

The work programmes of the Parliaments are planned on the basis of the legislative commitments set out in the respective GAWPs. Planning on this basis is a standard requirement and practice at all levels of

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<sup>172</sup> *Ibid.*

<sup>173</sup> The following draft laws were submitted by the State level: draft Law on Salaries, draft Law on the amendments to the Law on Traffic Safety on the Roads in BiH, draft Law on Amendments to the Law on International and Inter-Entity Road Transportation, draft Law on Salaries and Other Compensations in Courts of BiH, and draft Law on Amendments to the Law on Drugs and Medicine. The following draft laws were submitted by the RS: draft Law on Amendments to the Law on Income Tax, draft Law on Banks, draft Law on Food, draft Law on General Product Safety, and draft Law on the Tax System. The following draft laws were submitted by the BD: draft Law on Protection and Rescue of People and Material Goods from Natural and Other Disasters, draft Law on Execution of the Budget for 2016, draft Law on Water, and draft Law on Restitution of Abandoned Property.

<sup>174</sup> The FBiH did not provide a sample of draft laws for assessment. Thus this particular sub-indicator could not be analysed, and it is assumed that the practice does not exist at the FBiH level. The BD Government submitted the draft laws and mandatory opinions, but no explanatory information was included in the package.

<sup>175</sup> The drafting rules and guidelines followed by the Parliaments and the Governments of BiH are largely the same. At the State level, the requirements for law drafting are established in the RoP of the CoM (Article 66), the "Unified Rules for Legislative Drafting in the Institutions of BiH" (Article 60), the RoP of the House of Representatives (Article 95), and the RoP of the House of Peoples (Article 105). In the FBiH, the requirements for law drafting are set out in the RoP of the Government (Article 26), the RoP of the House of Representatives (Article 164), and the RoP of the House of Peoples (Article 156). In the RS, the requirements for law drafting are set out in the RoP of the Government (Article 37) and the RoP of the National Assembly (Article 208).

<sup>176</sup> The RoP of the House of Representative of BiH, Article 97; the RoP of the House of Representatives of the FBiH, Article 165; the RoP of the National Assembly of the RS, Article 284.

<sup>177</sup> The State level: Law on Sport, Law on Salaries and Remunerations in the Institutions of BiH; and Law on Public Broadcasting.

<sup>178</sup> The RS: Law on the Status of Officials of Local Self-Government Units, Law on Amendments to the Law on Labour Relations in Administrative Authorities, and Law on Amendments to the Law on Income Tax.

<sup>179</sup> The BD: Law on Amendments to the Law on Education in Primary and Secondary Schools, Law on Amendments to the Law on Civil Service in Public Administration Bodies, and Law on Amendments to the Law on Public Administration.

<sup>180</sup> At the State level, only the draft Law on Public Broadcasting included an opinion of the LOCoM.

the administration<sup>181</sup>. However, the co-ordination of work between the respective services of the Parliaments and the CoM and the Governments of the Entities and the BD takes place on an *ad hoc* basis, and no regular meetings are held between the relevant administrative bodies of the Parliaments and the executive branches to co-ordinate, plan and prepare for the legislative work.

It is not possible to calculate the proportion of draft laws proposed by the Governments, as the required information across all levels of the administration was not provided. At the State level, it is calculated that the CoM had initiated 25 of the total of 47 laws (53%) approved by the Parliament during 2015. The CoM does not follow its own legislative plan, however, as only 65% of all draft laws submitted to the Parliament for approval in 2016 were included in its legislative plan.

The share of Government-sponsored laws adopted in 2016 through the urgent procedure was very high across all levels of the administration. The highest usage of this procedure was in the RS (71%), while the lowest was in the FBiH (38%). At the State level, the relevant percentage was 58%; 7 of the 12 laws considered by the BiH Parliamentary Assembly were approved through the urgent procedure.

At the same time, it should be noted that all of the Parliaments have the practice of considering all draft laws in a timely manner, without significant delays. At the State level, 83% of the draft laws submitted were approved within a year, while the same indicator in the FBiH and the RS was 100%, i.e. all laws submitted to the Parliaments of the Entities were considered and decisions on those draft laws were made within a year.

At all levels, the RoPs of the Parliaments<sup>182</sup> require that the Governments designate Government members to present the Government-sponsored draft laws at plenary sessions of the Parliaments and during committee meetings. Overall, representatives of the executive branch participate in the discussions of draft laws in the Parliaments<sup>183</sup>.

In 2016, at the State and RS levels, reports on the implementation of several laws were discussed by the relevant Parliaments<sup>184</sup>. As the other levels of the administration did not provide any information on the discussion of law implementation reports, it is assumed that such a practice does not exist at those levels.

Given the limited involvement of the Parliaments in the discussion of the implementation of Government policies and the high number of laws adopted through the extraordinary procedure, the value for the indicator 'Parliamentary scrutiny of government policy making' at the State level is 3.

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<sup>181</sup> The RoP of the House of Representatives of BiH, Article 65; the RoP of the House of Representatives of the FBiH, Article 88; the RoP of the National Assembly of the RS, Article 181.

<sup>182</sup> The RoP of the House of Representatives of BiH, Article 108; the RoP of the House of Representatives of the FBiH, Article 51; the RoP of the National Assembly of the RS, Article 284.

<sup>183</sup> The respective Parliaments do not have detailed statistics on the participation of Government representatives in committee meetings or plenary sessions. However, this practice was confirmed during the assessment interviews with representatives of the Parliaments and CoG institutions.

<sup>184</sup> Conclusions of the 48<sup>th</sup> session of the House of Representatives of BiH.

### Parliamentary scrutiny of government policy making

This indicator measures the extent to which the parliament is able to scrutinise government policy making. The legal framework is assessed first, followed by an analysis of the functioning of important parliamentary practices and outcomes.

Overall indicator value 0 1 2 **3** 4 5

| Sub-indicators  | Points       |
|---|--------------|
| 1. Strength of regulatory and procedural framework for parliamentary scrutiny of government policy making | 5/5          |
| 2. Completeness of supporting documentation for draft laws submitted to the parliament                    | 3/3          |
| 3. Co-ordination of governmental and parliamentary decision-making processes                              | 1/2          |
| 4. Systematic review of parliamentary bills by government   | 1/1          |
| 5. Alignment between draft laws planned and submitted by the government (%)                               | 1/2          |
| 6. Timeliness of parliamentary processing of draft laws from the government (%)                           | 1/2          |
| 7. Use of extraordinary proceedings for the adoption of government-sponsored draft laws (%)               | 0/5          |
| 8. Government participation in parliamentary discussions of draft laws                                    | 2/2          |
| 9. Basic parliamentary scrutiny of the implementation of policies   | 2/2          |
| <b>Total<sup>185</sup></b>  | <b>16/24</b> |

**Overall, the regulatory framework and the required procedures for scrutiny of the Governments by the Parliaments have been adequately defined and established at all levels of the administration. The legislative programmes of the Parliaments are prepared on the basis of the legislative commitments included in the annual work programme of the relevant level of the administration. However, no practice has been established of regular meetings between the administrative bodies of the Parliaments and the Governments so as to better co-ordinate planning and implementation. The extensive use of the urgent procedure for the approval of laws and the limited discussion on the implementation of laws and policies are major issues in most levels of the administration.**

#### **Key recommendations**

##### **Short-term (1-2 years)**

- 1) All levels of the administration should ensure that all CoG institutions fully adhere to the requirements and standards for the preparation and scrutiny of policy proposals.
- 2) The relevant CoG institutions in charge of reviewing final policy proposals at all levels of the administration should be given a sufficient mandate and resources to carry out complete checks on the content of policy proposals, including their compliance and consistency with wider government priorities and previously announced policies, as well as with EI commitments, so as to inform final decision making. In addition, the relevant designated bodies should hold the necessary power to return policy proposals for further deliberation if major flaws have been identified.
- 3) The criteria and practice of adopting legislation through the urgent (accelerated) procedure should be reviewed at all levels of the administration, with the objective of significantly reducing the proportion of laws that are considered through this shortened approval process.

<sup>185</sup> Point conversion ranges: 0-3=0, 4-7=1, 8-11=2, 12-16=3, 17-20=4, 21-24=5.

- 4) The Governments of the FBiH, the RS and the BD should ensure that all decisions are made available publicly.

**Medium-term (3-5 years)**

- 5) The CoM and the Governments of the FBiH, the RS and the BD should develop a methodology and procedures for preparing implementation reports on key laws and strategies. These reports should be submitted to the relevant Parliaments.
- 6) The existing regulatory frameworks and procedures governing the final decision-making systems within the Governments (i.e. making government decisions, Government session agendas, and regular reports of GAWPs and strategies publicly available) should be reviewed and the necessary changes introduced, with the aims of increasing transparency and openness and building public trust in the work of the Government.

**Policy development**

**Key requirement: Inclusive, evidence-based policy and legislative development enables the achievement of intended policy objectives<sup>186</sup>.**

The values of the indicators assessing Bosnia and Herzegovina’s performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



**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 government objectives.**

Due to the specificities of the constitutional set-up, the responsibility for policy development in the different BiH jurisdictions and sectors of the economy is designated to various ministries at the different

<sup>186</sup> The values of the indicators presented under this key requirement (Principles 8-12) reflect the lowest result among all levels of the administration (excluding the BD).

levels – the State, the two Entities and the BD – which in many respects operate and exercise their powers independently from each other. While the analysis presented under this key requirement covers all four levels of the administration, the value of the indicator is based on the lowest value at the State and the Entity levels.

At the State level, nine ministries are responsible for the development and implementation of policies, laws, other regulations and general acts falling within their respective scopes<sup>187</sup>. In general, the Law on Ministries at the State level establishes the core functions, roles and responsibilities of all ministries. However, the MoJ, in addition to its core responsibilities, has also been designated by legislation as being responsible for carrying out other tasks, such as those that “are not within the competence of other Ministries”<sup>188</sup>. According to the 2017 Work Plan<sup>189</sup> of the CoM, certain agencies and institutes have been designated as the lead government institutions responsible for the development of laws and by-laws<sup>190</sup>.

In addition, the Ministry of Foreign Trade and Economic Relations (MoFTER) and the Ministry of Civil Affairs (MCA) have been given responsibility for carrying out certain tasks that “relate to defining basic principles, co-ordinating activities and harmonising plans of the Entity authorities and defining a strategy at the international level” in specified fields<sup>191</sup>. The existing regulatory framework does not provide further details on how the two Ministries should exercise these specific functions in terms of policy development.

The internal organisation of the State-level ministries, described in their rulebooks, consists of sectors and sub-divisions, each of which is responsible for a specific field<sup>192</sup>. Policy departments lead the policy development process, and departments of legal affairs support the process of drafting regulations. As a rule, civil servants in the policy departments lead the work on developing and drafting laws<sup>193</sup>.

Each of the Entities has 16 ministries, the responsibilities and functions of which are defined by law<sup>194</sup>. The internal organisation of ministries, described in their rulebooks, consists of sectors and departments, each of which is responsible for a specific field<sup>195</sup>. However, a review of a sample of ministerial rulebooks showed that not all tasks and responsibilities have been defined<sup>196</sup>.

The structure and organisation of internal departments and units in the BD have been established through the organisational plan of the BD<sup>197</sup>. The inspection organisation is an integral part of the BD administration.

At the State, FBiH and RS levels, the responsible policy sector/unit in ministries leads the overall policy-development process, while the departments responsible for legal affairs support the process by

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<sup>187</sup> The State: Law on Ministries and other Bodies of Administration of BiH (BiH Law on Ministries), Article 4.

<sup>188</sup> The Law on Ministries, Article 13.

<sup>189</sup> The State Government Work Plan 2017.

<sup>190</sup> See the 2017 Work Plan of the CoM of BiH, items 1.1.2.1; 1.1.2.9; 1.1.3.1; 1.1.4.4; 2.1.12.1; 2.1.16.1; 2.1.16.3; 2.1.16.4; 6.2.2.1; 6.2.2.3 and 14.1.9.4.

<sup>191</sup> The Law on Ministries, Articles 9 and 13. The MoFTER is responsible for agriculture, energy, environment, natural resources, and tourism. The MCA is responsible for health and social care; pensions; science and education; labour and employment; culture and sport; and geodetic, geological and meteorological affairs.

<sup>192</sup> The rulebooks of the MoFTER and the MCA were provided to SIGMA during the assessment.

<sup>193</sup> This finding is based on interviews during the assessment.

<sup>194</sup> The FBiH: Law on Federation Ministries and other Bodies of the Federation Administration, of 21 October 2002, Articles 6-20a, Official Gazette of BiH No. 58/02. The RS: Law on the Republic Administration December 2008, Articles 16-31, Official Gazette of the RS No. 118/08

<sup>195</sup> This information is based on an analysis of the rulebooks for the Federal Ministry of Environment and Tourism and the Federal Ministry of Agriculture, Water and Forestry. For the RS, rulebooks were provided for the Ministry of Agriculture, Forestry and Water Management; the Ministry of Industry, Energy and Mining; the Ministry of Health and Social Welfare; and the Ministry of Spatial Planning, Construction and Ecology.

<sup>196</sup> The assessment is based on the review of the rulebook of the FBiH Ministry of Agriculture and Water Management and the Federal Ministry of Environment and Tourism.

<sup>197</sup> Organisational Plan of the Mayor’s Office of the BD.

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preparing draft legal texts of regulations. Ministers in the State<sup>198</sup>, the FBiH<sup>199</sup> and the RS<sup>200</sup> are responsible for the policy-development process. They also have ultimate responsibility for submitting policy proposals to the relevant government bodies for final approval.

Ministries in the FBiH have additional internal structures, the Collegiums<sup>201</sup>, which are intended to play a central role in policy planning and policy development. However, these structures do not function properly across all ministries<sup>202</sup>.

Ministries at the State level, in the FBiH and the RS do not have established internal rules and procedures for developing policies and drafting legislation. For example, the relevant minister determines the initiation of a public consultation or an inter-ministerial consultation on a case-by-case basis, depending on the advice of the division/department or working group responsible for the development of the policy proposal concerned. Consultation and involvement of all relevant departments within a ministry during policy development have thus not been ensured at any level<sup>203</sup>.

The proportion of staff working on policy development within ministries has been assessed as being adequately ensured at both the FBiH<sup>204</sup> and the RS<sup>205</sup> levels (more than 30% of the total number of staff). This proportion suggests that the FBiH and the RS ministries are oriented in general towards policy development. Information on the number of staff working in the State-level ministries was not provided to SIGMA, meaning that it was not possible to assess the adequacy of staff resources working on policy development. Incomplete information was provided on the number of staff working in policy departments at the BD level<sup>206</sup>.

Overall, the regulatory and procedural framework required for effective policy making within ministries has substantial shortcomings at all levels. Ministries at all levels operate without clear internal rules for policy development, and some sub-ordinate bodies can also initiate draft legislation. The value for the indicator 'Adequacy of organisation and procedures for supporting the development of implementable policies' is 2.

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<sup>198</sup> The BiH Law on Ministries, Article 20.

<sup>199</sup> The RoP of the FBiH Government, Article 12.

<sup>200</sup> The RoP of the RS Government, Article 6.

<sup>201</sup> The Rulebooks of the FBiH Ministry of Agriculture and Water Management, Article 47, and the FBiH Ministry of Environment and Tourism, Article 26.

<sup>202</sup> This finding is based on interviews with FBiH officials.

<sup>203</sup> This finding is based on assessment interviews. In addition, the internal rules of ministries were not provided for all of the samples requested from the CoM and the Governments of the FBiH and the RS. If internal rulebooks are not available for all ministries, this also suggests a lack of clarity concerning internal policy-development processes within ministries.

<sup>204</sup> This assessment is based on a review of three sample FBiH ministries: the Ministry of Agriculture and Water Management – 63%; the Ministry of Development, Entrepreneurship and Crafts – 59%; and the Ministry of Environment and Tourism – 39%.

<sup>205</sup> The percentages of staff working in policy development per ministry in the RS are as follows: Ministry of Special Planning, Construction and Ecology – 52%; Ministry of Agriculture, Forestry and Water Management – 57%; Ministry of Industry, Energy and Mining – 86%; and Ministry of Health and Social Welfare – 62%.

<sup>206</sup> Staff numbers were provided for the Economic Department and for the organisations that fulfil the CoG roles within the BD. However, no complete overview was provided of all BD staff numbers.

### Adequacy of organisation and procedures for supporting the development of implementable policies

This indicator measures the adequacy of the regulatory framework to promote effective policy making, and whether staffing levels and the basic policy-making process work adequately at the level of ministries.

Overall indicator value 0 1 **2** 3 4 5

| Sub-indicators   | Points             |
|--|--------------------|
| 1. Adequacy of the regulatory framework for effective policy making  | 3/4                |
| 2. Staffing of policy-development departments (%)                    | 0/2 <sup>207</sup> |
| 3. Adequacy of policy-making processes at ministry level in practice | 0/6 <sup>208</sup> |
| <b>Total</b> <sup>209</sup>  | <b>3/12</b>        |

The organisational structures, roles and responsibilities of the ministries in their respective policy areas and sectors are established by law at all levels of the administration. However, not all roles have been clearly defined. Furthermore, at the State level, in addition to the ministries, subordinate bodies can also initiate new legislative proposals. The ministries of the two Entities are assessed to be oriented towards policy development in view of the proportion of staff dedicated to policy work. No assessment in this regard could be made for the ministries at the State level or in the BD, as the required information was not provided. The ministries at all levels do not have internal rules and regulations for the development of policies and legislation.

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

The SAA between the EU and BiH has been in force since 2015<sup>210</sup>. Given the obligation to ensure that future legislation is compatible with the *acquis* and to better co-ordinate EI processes between the different levels of the administration, in January 2016 the CoM created a new co-ordination structure, the EI Co-ordination System<sup>211</sup>.

Within the framework of the new EI Co-ordination System, representatives of the CoM, the Governments of the FBiH, the RS, the BD and the ten Cantonal Governments have agreed to co-operate in the implementation of activities related to EI. At the highest political level, co-ordination is ensured by the Collegium for EI and by Ministerial Conferences. The Commission for EI conducts co-ordination at the administrative level, while the technical preparation of files takes place in the EI Working Groups.

The effectiveness and functioning of this new mechanism, especially its impact in terms of strengthening and improving the transposition and legal harmonisation processes for the whole country, could not be assessed, as the system is not yet fully functional, and the internal operational arrangements and processes have not yet been tested in the Entities and the BD.

<sup>207</sup> The relevant information was not provided for the assessment.

<sup>208</sup> Ditto.

<sup>209</sup> Point conversion ranges: 0=0, 1-2=1, 3-5=2, 6-8=3, 9-10=4, 11-12=5.

<sup>210</sup> The Stabilisation and Association Agreement (SAA) was signed in 2008 and entered into force on 1 June 2015. Official Gazette of BiH No. 23/11.

<sup>211</sup> Decision on the Co-ordination System of the EI process in BiH, adopted by the CoM on 23 August 2016, Official Gazette of BiH No. 72/16.

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At the State level, the DEI is responsible for co-ordinating the required EI activities, including the process of harmonisation with EU legislation<sup>212</sup>. All legislative proposals dealing with legal harmonisation must bear the letters “EI” on the first page. EI-related proposals are submitted to the DEI for its opinion prior to submission to the CoM for final approval<sup>213</sup>. The DEI also has responsibility for overall EI co-ordination across all levels of the administration.

At the FBiH level, the Office for EI is responsible for the overall co-ordination of the EI process<sup>214</sup>, while the OLFBiH is responsible for ensuring the conformity of national legislation with the *acquis* and the quality of the Tables of Concordance<sup>215</sup>.

In the RS, the MERRC is responsible for the overall co-ordination of the EI process, including the legal harmonisation with the *acquis* and the assessment of the Tables of Concordance<sup>216</sup>. The Legislative Secretariat is responsible for ensuring conformity with national legislation<sup>217</sup>.

In the BD, the EI Office co-ordinates the EI process. The Legislative Office is tasked with reviewing all new policy proposals and issuing opinions on their conformity with the *acquis*<sup>218</sup>. The BD Parliament has adopted a programme of priorities for the EI process for 2015-2020.

Since EU legislation is available in Croatian, which is one of the official languages of BiH, government institutions across all levels of the administration have access not only to the English versions but also to the official Croatian versions of the EU Directives and regulations for transposition.

Tables of Concordance are required by regulations at the State<sup>219</sup>, the FBiH<sup>220</sup>, the RS<sup>221</sup> and the BD<sup>222</sup> levels. Such tables are consistently produced for all EI transposition commitments at the State<sup>223</sup> and the RS<sup>224</sup> levels. However, at the FBiH level, no transposition case was submitted for assessment. The practice of using Tables of Concordance by the FBiH ministries could therefore not be confirmed.

The EU Action Plan<sup>225</sup> prepared by the DEI is the only EI planning document for the whole country as the strategic programme for the country’s legal approximation with the *acquis* has yet to be adopted. It lists the activities aimed at implementing the priorities derived from the EU Progress Report on the

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<sup>212</sup> The Law on the CoM of BiH, Article 23.

<sup>213</sup> The RoP of the CoM, Article 31.

<sup>214</sup> The Rulebook on the Internal Organisation of the Office of the Government of the FBiH for EI, March 2016, Article 3, Official Gazette of BiH No. 48/16.

<sup>215</sup> The RoP of the FBiH Government, Article 27.

<sup>216</sup> The RoP of the RS Government, Article 17-1b.

<sup>217</sup> *Idem*, Article 17-1a.

<sup>218</sup> Official Gazette of the BD No. 49/14.

<sup>219</sup> The Decision on the Instruments for Harmonisation of BiH Legislation with the EU *acquis*, adopted on 7 October 2016, Official Gazette of BiH No. 75/16.

<sup>220</sup> The Rulebook on the Internal Organisation of the Office of the Government of the FBiH for Legislation and Harmonisation with EU Regulations, Article 3, Official Gazette of BiH No. 103/14.

<sup>221</sup> The RS Decision on the Procedure of Harmonising Legislation of the Republika Srpska with the *acquis* and Legal Acts of the Council of Europe No. 04/1-012-2-678/11 of April 2013, Article 6, Official Gazette of the RS Nos. 46/11, 1/14 and 95/14.

<sup>222</sup> The BD Decision on Procedures in the Process of Harmonization of Legislation of the Brčko District of BiH with the EU Law, Article 2.

<sup>223</sup> This finding is based on the analysis of a sample comprised of the following five proposals at the State level: draft Law on Amendments to the Law on Working Hours, Mandatory Rest Periods for Mobile Workers, and Devices for Recording in Road Transport; the Rulebook on Standards of Functioning and other Issues relevant to the Work of the Immigration Centre; the Decision on the Conditions of Cross-border Traffic of Hazardous Waste, in line with the Convention on the Control of Trans-boundary Movements of Hazardous Waste and its Disposal; the draft Rulebook on the Manner of Price Control, Manner of Forming Prices of Medicine, and Manner of Reporting on Medicine Prices in BiH; and the Decision on Placing on the Market Lighters Safe for Children.

<sup>224</sup> This finding is based on the analysis of a sample comprised of the following five proposals at the RS level, for which Tables of Concordance were provided: draft Law on General Product Safety, draft Veterinary Law, draft Criminal Code Law, draft Law on Banks, and draft Law on Food.

<sup>225</sup> The most recent Action Plan, approved in March 2017, was based on the 2016 EU Progress Report on BiH.

implementation of priorities by BiH<sup>226</sup>. The RS has developed its own Action Plan on EI. The FBiH is using the DEI plan and the obligations derived from that plan. However, it has not been possible to assess the implementation rate or the backlog of EI commitments based on the EU Action Plan for the whole country, as the structure and format used for the EU Action Plans of 2015 and 2016 have changed, and information on the implementation of measures at all levels has not been made available. The EU Action Plan also does not provide clear information concerning the legislative commitments that are linked with transposition<sup>227</sup>. Furthermore, the EU Action Plan, in the current format, does not allow a harmonised approach to the transposition of EU legislation across all levels of the administration. The relevant sub-indicators assessing the implementation rate and the backlog of the EI legislative commitments therefore could not be assessed.

Given the weaknesses in the planning and implementation of EI commitments and the lack of information concerning the implementation of transposition-related legislative commitments by the different levels of the administration, the value for the indicator 'Government capability for aligning national legislation with the European Union *acquis*' is 2.

| Government capability for aligning national legislation with the European Union <i>acquis</i> .   |   |   |          |   |   |   |
|---|---|---|----------|---|---|---|
| This indicator measures the adequacy of the legal framework for the <i>acquis</i> alignment process, the government's consistency in using the tables of concordance in the <i>acquis</i> alignment process and the availability of the EU <i>acquis</i> in the national language. It also assesses the results of the <i>acquis</i> alignment process, focusing on the planned <i>acquis</i> alignment commitments carried forward from one year to the next and how the government is able to achieve its <i>acquis</i> alignment objectives. |   |   |          |   |   |   |
| Overall indicator value   | 0 | 1 | <b>2</b> | 3 | 4 | 5 |

| Sub-indicators  | Points             |
|---|--------------------|
| 1. Adequacy of the regulatory framework for the <i>acquis</i> alignment process   | 4/5                |
| 2. Use of tables of concordance in the <i>acquis</i> alignment process (%)        | 0/2 <sup>228</sup> |
| 3. Translation of the <i>acquis</i> into the national language                    | 2/2                |
| 4. <i>Acquis</i> alignment commitments carried forward (%)                        | 0/4                |
| 5. Implementation rate of legislative commitments for <i>acquis</i> alignment (%) | 0/4                |
| <b>Total<sup>229</sup></b>  | <b>6/17</b>        |

**A new mechanism for the co-ordination of EI processes and co-operation between the State level, the FBiH, the RS and the BD was formally established in 2016 but is not yet fully operational. The planning of *acquis* alignment at each level is based on the implementation of the priorities identified in the EU Progress Report. Tables of Concordance are required by regulation and are consistently followed by the ministries at the State and RS levels, but not at the FBiH level. It is not possible to calculate the percentage of legislative commitments carried forward to the following year and the implementation rate of EI-related measures due to the incomparability of plans, the absence of a country programme for legal approximation and the lack of information on implementation.**

<sup>226</sup> The 2016 EU Progress Report, prepared by the European Commission: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_bosnia\\_and\\_herzegovina.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_bosnia_and_herzegovina.pdf)

<sup>227</sup> In total, 634 measures were included in the 2017 EU Action Plan and, according to the DEI, no consensus was reached on 20 measures.

<sup>228</sup> The relevant information was not provided for the assessment.

<sup>229</sup> Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-17=5.

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

Due to the complex constitutional arrangements, BiH does not have a unified, countrywide approach to policy making, and each level of the administration has its own separate system and procedures.

Ministries at the State level use only basic tools for policy development and analysis. The “Unified Rules for Legislative Drafting in the Institutions of BiH” stipulate that all regulatory proposals must be accompanied by an explanation. The Explanation should give the reasons for introducing a new regulation and provide a justification for the selected policy option<sup>230</sup>. It should also provide a description of the mechanisms of implementation<sup>231</sup>, a clarification of the financial resources necessary for implementation, and the financial impacts<sup>232</sup>. The scope of this requirement is very broad and includes – among other things – new laws and by-laws<sup>233</sup>. However, no quality scrutiny of the content of the Explanation is carried out. It is up to the relevant body responsible for developing the regulation to establish the quality of policy analysis required<sup>234</sup>. Draft amendments to the “Unified Rules for Legislative Drafting in the Institutions of BiH” that introduce a requirement to carry out an RIA on new proposals have been developed<sup>235</sup>. However, the preparation and planning for implementation of the new RIA rules are assessed to be inadequate<sup>236</sup>.

At the State level, regulations require ministries to provide estimates of the expected costs of new policy proposals on the state budget<sup>237</sup>. The MoFT conducts a scrutiny with regard to the cost estimates and the demands on the budget. However, the costing of proposals is not based on guidelines nor on a common approach by all budget beneficiaries<sup>238</sup>.

The requirements for RIA are embedded in the policy-making systems of both the FBiH<sup>239</sup> and the RS<sup>240</sup>. The guidelines supporting RIA at the FBiH level are comprehensive, include examples from the FBiH and are available online. The requirement to carry out RIA on new policy proposals in the RS has been established, in particular through the RoP of the RS Government<sup>241</sup>. The RIA guidelines explain the process and requirements for conducting RIA during the policy development process, are supported by examples of RIA files and are available online<sup>242</sup>.

In the BD, the analysis of new proposals has been regulated by the “Unified Rules and Procedures for Drafting Legal Acts of the BD”. No RIA system is in place at the BD level.

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<sup>230</sup> “Unified Rules for Legislative Drafting in the Institutions of BiH”, Official Gazette of BiH Nos. 11/05, 58/14 and 60/14, Article 62.

<sup>231</sup> *Idem*, Article 64.

<sup>232</sup> *Idem*, Article 65.

<sup>233</sup> *Idem*, Article 58.

<sup>234</sup> This finding is based on interviews with government institutions at the State level and on the absence of quality scrutiny for the content of the Explanation.

<sup>235</sup> The amendments had not been fully approved at the cut-off date for submission of information for this report.

<sup>236</sup> This finding is based on the interviews with officials at the State level.

<sup>237</sup> This requirement has been integrated into the RoP of the State and into the “Unified Rules for Legislative Drafting in the Institutions of BiH”.

<sup>238</sup> This finding was confirmed by the MoFT in interviews.

<sup>239</sup> Decree on the RIA Procedure, Official Gazette of the FBiH No. 55/14.

<sup>240</sup> The RoP of the FBiH Government, Articles 17 and 37d; the RoP of the RS Government, Article 37(h).

<sup>241</sup> The requirement to conduct RIA is embedded in the Decision on the Implementation of the RIA Process in Legislative Drafting Procedures, Official Gazette of the RS No. 56/2015. It is also referenced in the “Rules for Making Draft Laws and Other Regulations of the RS”, Official Gazette of the RS No. 24/14.

<sup>242</sup> The RIA guidelines at the RS level and the supporting RIA files are available online::

<http://www.regodobrenja.net>;

<http://www.regodobrenja.net/admin/files/docs/Metodoloski%20prirucnik%20za%20procjenu%20uticaja%20propisa%20I.pdf>;

<http://www.regodobrenja.net/admin/files/docs/Metodoloski%20prirucnik%20za%20procjenu%20uticaja%20propisa%20II.pdf>.

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Both Entities require an assessment of the impacts on the state budget for each proposal, laid down in their RoP<sup>243</sup>. The MoF of each Entity is responsible for the quality control of the estimates of budget impacts provided by ministries. In the BD, fiscal impact analysis is required by regulations, and the Finance Directorate is responsible for quality control<sup>244</sup>.

In the FBiH, the regulatory framework is supported by a manual on fiscal impact assessment and detailed reporting forms<sup>245</sup>. However, the practice of carrying out costing of policies, based on this detailed manual, could not be confirmed<sup>246</sup>. The RIAs that were provided for the review did not contain information with regard to the impacts on the state budget.

Ministries in the RS should prepare a financial impact statement for each proposal. However, no guidance is available on how to carry out a budget impact assessment. In practice, the costing of policies is considered as not being carried out in practice because the required statements on costs were not included in the packages of documentation supporting a sample of five new draft laws initiated in the RS<sup>247</sup>.

In both the FBiH and the RS, the MoF is the designated institution responsible for issuing opinions on policy proposals. In the case of the FBiH, the MoF opinion was missing from one file from those analysed<sup>248</sup>. In the RS, the MoF opinions were provided for all five laws analysed.

In the FBiH, the GS is responsible for the quality control of RIAs but the quality control function is not performed in practice. The annual reports of the GS on the development of RIA showed that it was fully aware of the challenges that the administration was facing in order to establish a proper RIA system<sup>249</sup>. The main shortcomings have been a lack of planning of the RIA process, the limited involvement of the GS in the RIA development process (which has hindered the scrutiny of RIAs), and the absence of proper enforcement mechanisms that would enable the GS to return low-quality RIA reports to the drafting ministry. Furthermore, only 27% of draft laws were actually supported by an RIA or another type of analysis<sup>250</sup>.

In the RS, the MERRC is responsible for the quality control of RIAs. The Ministry issues its opinions on proposals, but the quality control function has not been properly embedded within the policy-development process. For example, the Ministry does not have a formal right to return RIAs of low quality to the originating ministry. In addition, the administration develops mostly “short RIAs”, which offer only limited policy analysis.

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<sup>243</sup> The RoP of the FBiH Government, Article 26; the RoP of the RS Government, Article 17 (c).

<sup>244</sup> “Unified Rules and Procedures for Drafting Legal Acts of BD”, Article 76.

<sup>245</sup> The 2016 Rules of Procedure of the FBiH for the Preparation of the Statement of Fiscal Assessment of Laws and Other Regulations and Acts of the FBiH on the Budget.

<sup>246</sup> The packages of the following five draft laws of the FBiH approved in 2016 were analysed: draft Law on Tourism, draft Law on Pensions and Disability Insurance, draft Law on Voluntary Pension Funds, draft Law on Bankruptcy, and draft Law on Budget Execution for 2017.

<sup>247</sup> The following five packages of draft laws of the RS approved in 2016 were analysed: draft Law on Mining, draft Law on General Product Safety, draft Law on Population Protection from Communicable Disease, draft Law on the Drina National Park; and draft Law on the Procedure for Reporting Corruption and Protection of Persons Reporting Corruption.

<sup>248</sup> The opinion of the MoF of the FBiH was missing for the FBiH draft Law on Pensions and Disability Insurance.

<sup>249</sup> Reports on the implementation of the Decree on the RIA Procedure in 2015 and 2016, drafted by the GS of the FBiH.

<sup>250</sup> Annex 1 to the Reports of the GS of the FBiH on the implementation of the Decree on the RIA Procedure.

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A sample of policy proposals (five draft proposals at the State level<sup>251</sup>, two RIA reports from the FBiH<sup>252</sup> and five from the RS<sup>253</sup>) were analysed as part of the assessment. Overall, the quality of analysis supporting the new policy proposals was found to be very poor across all levels. In all cases, the problem definition and the objectives were not properly stated. The likely impacts on the state budget were not adequately analysed. Similarly, the discussion and analysis of the implementation and enforcement arrangements of the new proposals were limited, even though several draft laws were likely to have significant impacts and would entail complex implementation<sup>254</sup>. Monitoring of the implementation of a decision and future evaluation were addressed only occasionally. As a result, the practice of carrying out analysis to support policy making across all levels of the administration has been assessed as very low.

Although the BD does not have a formal RIA system, regulation<sup>255</sup> requires the proponent of a new policy proposal to carry out an analysis of the problem in order to explain the need for a new regulation.

Overall, given the weaknesses and shortcomings in the regulatory framework and in the practice of analysing new proposals to inform policy making, including the absence of application of even basic tools for analysis and the lack of information available for assessment, the value for the indicator 'Evidence-based policy making' is 0.

| Evidence-based policy making  |   |   |   |   |   |   |
|---|---|---|---|---|---|---|
| This indicator measures the functioning of evidence-based policy making. It assesses the legal requirements and practice regarding the use of basic consultative processes, budgetary impact assessment and regulatory impact assessment. Moreover, it assesses the availability of training and guidance documents for impact assessment, the establishment of the quality control function, and the quality of analysis supporting the development of draft laws. |   |   |   |   |   |   |
| Overall indicator value   | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators  | Points      |
|---|-------------|
| 1. Use of basic analytical tools and techniques to assess the potential impacts of new draft laws | 1/2         |
| 2. Use of budgetary impact assessment prior to approval of policies                               | 1/3         |
| 3. Use of broad Regulatory Impact Assessments   | 0/3         |
| 4. Availability of guidance documents on RIAs   | 0/2         |
| 5. Quality control of RIAs  | 0/3         |
| 6. Quality of analysis in RIAs  | 0/15        |
| <b>Total<sup>256</sup></b>  | <b>2/28</b> |

<sup>251</sup> The following draft proposals were analysed at the State level: draft Law on Amendments to the Law on International and Inter-Entity Road Transport, the draft Law on Amendments to the Law on Basics of Traffic Safety on the Roads in BiH, draft Law on Amendments to the Law on Salaries and Other Compensations in Judicial and Prosecutorial Institutions, draft Law on Amendments to the Law on Medicines and Medical Devices, and draft Law on Amendments to the Law on Salaries and Allowances in BiH Institutions.

<sup>252</sup> The RIAs of the following draft laws of the FBiH were analysed: draft Law on Tourism and draft Law on Voluntary Pension Funds.

<sup>253</sup> The RIAs of the following draft laws of the RS were analysed: draft Law on Mining, draft law on General Product Safety, draft Law on Population Protection from Communicable Disease, draft law on the Drina National Park, and draft Law on the Procedure for Reporting Corruption and Protection of Persons Reporting Corruption.

<sup>254</sup> For example, the draft Law on Amendments to the Law on International and Inter-Entity Road Transport at the State level, the draft Law on Tourism for the FBiH, and the draft Law on General Product Safety for the RS.

<sup>255</sup> "Unified Rules and Procedures for Drafting Legal Acts of the BD", Article 71.

<sup>256</sup> Point conversion ranges: 0-2=0, 3-7=1, 8-12=2, 13-18=3, 19-23=4, 24-28=5.

**Despite RIA requirements and availability of relevant methodologies and guidelines at the Entity level, the overall quality of the analyses supporting policy proposals is very poor across all levels of the administration. There are serious shortcomings and the final decision making on policy proposals across all levels is not based on evidence and analysis. The requirement to assess the financial implications of policy proposals has been regulated at all levels of the administration but, in practice, this is not implemented consistently.**

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

Public consultation is regulated through several laws and regulations at the State<sup>257</sup>, FBiH<sup>258</sup>, RS<sup>259</sup> and BD<sup>260</sup> levels.

The State-level regulation on public consultation was amended in 2017<sup>261</sup> and now requires all ministries to use a central government website<sup>262</sup> for public consultation on policy proposals (for both primary and secondary legislation). Stakeholders are to submit their responses through this website. The regulations stipulate that a draft proposal should be revised and updated on the basis of the analysis of comments and additional information gathered through public consultations to support the final decision.

A proposal that is sent to the CoM for approval must be accompanied by a report on the consultation process, with a summary of comments received from stakeholders, and an explanation as to whether those comments were fully taken into consideration or not. If these required documents on public consultation have not been provided, the proposal should not be included on the agenda for a meeting of the CoM<sup>263</sup>. State-level institutions are also required to appoint a co-ordinator for public consultation.

The requirement for the ministries at the State level to carry out public consultation also applies to the work plans of ministries<sup>264</sup>. The regulation on public consultation does not regulate standards for public meetings and other forms of consultation. Neither do the rules oblige the publication of a summary report on the outcome of public consultation, which would include an explanation as to whether such consultation had been taken into consideration before the proposal was finalised<sup>265</sup>.

The regulatory framework in the FBiH obliges ministries to announce upcoming public consultations in advance. The requirement to carry out public consultation applies to a broad scope of policy documents and proposals, including sub-legislative acts. The regulations set a minimum duration for public consultation and oblige line ministries to draft a report on the outcome of the consultation process. They also require that the report on public consultation be made public. However, no requirement is established with regard to the publication of supporting documents, such as RIA reports, accompanying a draft proposal.

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<sup>257</sup> The Regulations on Consultations in Legislative Drafting in BiH; the RoP of the CoM, Article 66; and the “Unified Rules for Legislative Drafting in the Institutions of BiH”, Article 75.

<sup>258</sup> The FBiH Decree on Rules of Participation of the Interested Public in the Procedures of Preparation of the Federation’s Legislation and Other Regulations, 2012.

<sup>259</sup> The RS “Guidelines for the Actions of Administrative Bodies of the Republic on Participation and Consultation of the Public in Legal Drafting”.

<sup>260</sup> “Unified Rules and Procedures for Drafting Legal Acts of the BD”, January 2012, Official Gazette of the BD No. 1/12, and the Decision on Public Consultation in Drafting Regulations and Procedures in the BD, March 2017.

<sup>261</sup> “Rules for Consultation on Legal Drafting”, published on 27 January 2017, Official Gazette of BiH No. 05/17.

<sup>262</sup> <https://ekonsultacije.gov.ba/>

<sup>263</sup> This obligation does not apply to proposals included in the exceptions listed in Article 24 of the “Rules for Consultation on Legal Drafting”.

<sup>264</sup> “Rules for Consultation on Legal Drafting”, Article 6.

<sup>265</sup> Article 20 of the “Rules for Consultation on Legal Drafting” requires that line ministries prepare an overview of the comments received during a public consultation, which is to be submitted to the CoM. As the required samples of overviews of public consultation on a sample of laws were not provided, this could not be assessed.

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The regulations in the RS on public consultation require the appointment of a public consultation co-ordinator to the relevant lead institution<sup>266</sup>. The regulatory framework sets a minimum duration for public consultation and obliges line ministries to draft a report on the outcome of the consultation process<sup>267</sup>. However, no requirement has been set with regard to informing stakeholders in advance of upcoming consultations. Neither has a requirement been set to publish supporting documents accompanying a draft proposal when it is presented for public consultation. Furthermore, no requirement has been established to publish the outcome of a public consultation.

In the BD, the requirements for public consultation were adopted only in March 2017. The implementation of these requirements could thus not be analysed as part of this assessment.

Scrutiny of the quality of public consultation has been assessed as weak at all levels of the administration. The GS at the State level only checks whether the obligatory documents have been provided and does not review the content or the quality of analysis of these documents.

No government institution in the FBiH or the RS is responsible for quality control of the public consultation process, and no scrutiny is carried out with regard to the outcomes of public consultation. At the RS level, the SL has the obligation to return proposals that are not in line with the reporting requirements set by the guidelines for consultation. However, no CoG institution verifies the way in which the consultation process was conducted or that the outcomes of public consultations are used in the final phase of policy formulation<sup>268</sup>.

**Table 5: Presence of essential elements for public consultation within the regulatory framework of the State level, the FBiH, the RS and the BD.**

|   | State | FBiH | RS  | BD  |
|---|-------|------|-----|-----|
| Regulations set out the procedure for public consultation   | Yes   | Yes  | Yes | Yes |
| Public consultation is required for both primary and secondary legislation  | Yes   | Yes  | Yes | No  |
| Obligation to notify stakeholders in advance about public consultation  | No    | Yes  | No  | No  |
| Minimum duration for public consultation is established   | Yes   | Yes  | Yes | Yes |
| Obligation to report on the outcome of public consultation (as part of the documentation submitted to the Government for final approval, including information on comments and whether they were accepted or not) | No    | Yes  | Yes | No  |
| Obligation to make publicly available the report on the outcome of public consultation  | No    | Yes  | No  | Yes |
| Obligation to publish during public consultation, relevant policy documents, such as the explanatory note and RIA report.   | No    | No   | No  | No  |

Source: Information provided during the assessment by each level of the administration.

<sup>266</sup> The RS “Guidelines for the Treatment of Administrative Bodies of the Republic on Participation and Consultation of the Public in Legal Drafting”, Article 3.

<sup>267</sup> The RoP of the RS Government, Article 32.

<sup>268</sup> The RS “Guidelines for the Actions of Administrative Bodies of the Republic on Participation and Consultation of the Public in Legal Drafting”, Article 16.

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Unfortunately, complete information concerning the details of the public consultation process, carried out by a sample of ministries across all levels of the administration was not provided. It has therefore not been possible to fully assess the practice of public consultation<sup>269</sup>. For the FBiH, out of the five draft laws analysed, only the draft Law on Tourism had evidence that public consultation had been carried out<sup>270</sup>. The RIA report on the draft Law on Voluntary Pension Funds, another sample law from the FBiH, states that public consultation was organised as part of the preparation of the draft law but no evidence was provided to confirm this statement. Similarly, while the package of documentation supporting the sample of new draft laws initiated in the RS states that public consultation was carried out, the evidence provided does not further substantiate this statement<sup>271</sup>. No substantive evidence of the practice of public consultation has been provided with regard to the sample of draft laws submitted for assessment by the State and BD levels.

Overall, due to the incomplete regulatory frameworks for public consultation across all levels of the BiH administration, the poor and inconsistent implementation of existing practices, and the lack of available evidence confirming the actual practice of public consultation, the value for the indicator ‘Public consultation on public policy’ is 0.

The RoP of the CoM<sup>272</sup> and the RoP of the Governments of the FBiH<sup>273</sup>, the RS<sup>274</sup> and the BD<sup>275</sup> regulate interministerial consultation. A review of the regulatory framework at each level of the administration, however, showed that essential elements are absent, which hinders effective co-ordination and interministerial consultation on policy proposals and initiatives.

**Table 6: Presence of essential elements for interministerial consultation within the CoM and the Governments of the FBiH, the RS and the BD**

|   | BiH State | FBiH | RS  | BD  |
|---|-----------|------|-----|-----|
| Regulations set out the procedure for interministerial consultation   | Yes       | Yes  | Yes | Yes |
| Minimum duration is set for written interministerial consultation   | No        | No   | No  | Yes |
| Obligation to consult the CoG bodies is stipulated  | Yes       | Yes  | Yes | Yes |
| Obligation to consult all affected government bodies is stipulated  | Yes       | Yes  | Yes | Yes |
| Obligation to inform the government about the outcome of the consultation process is stipulated   | Yes       | No   | Yes | No  |
| Interministerial co-ordination and conflict resolution mechanisms are built into the decision-making process at the top administrative level. | No        | No   | No  | No  |

Source: Information provided during the assessment by each level of the administration.

<sup>269</sup> Full details were required concerning public consultation on a sample of five draft laws organised by ministries at all levels of the administration. However, full information was not provided at any level of administration.

<sup>270</sup> The FBiH draft Law on Tourism was consulted online in combination with the organisation of meetings. A report on the suggestions submitted by stakeholders was presented to the Government. This overview provided an explanation of how the Ministry concerned had taken the stakeholders’ suggestions forward. However, SIGMA was unable to assess fully all of the requirements as the relevant information was not provided, such as information concerning prior notification and provision of information to stakeholders on the start of the consultation, adherence to the minimum deadlines for public consultation and publication of the consultation report.

<sup>271</sup> The five new draft laws constitute the same sample as the one analysed under Principle 10 above.

<sup>272</sup> Article 31. However, Article 75 of the “Unified Rules for Legislative Drafting in the Institutions of BiH” sets a wider framework for interministerial consultation on draft laws and proposals.

<sup>273</sup> Article 27; and the Law on the Organisation of Administrative Bodies, Article 21.

<sup>274</sup> Article 17.

<sup>275</sup> “Unified Rules and Procedures for Drafting Legal Acts of BD”, Article 9.

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No effective mechanism for conflict resolution has been established at any level of the administration, including at the level of senior officials<sup>276</sup>. Assessment of the interministerial consultation process, based on a review of a sample of draft laws of the State, the FBiH and the RS<sup>277</sup>, showed that interministerial consultation has not been fully embedded within the policy-making process, and there are major weaknesses and shortcomings.

At the State level, no opinions were provided for one of the sample draft laws out of the five examined, while the opinion of the MoFT was missing for another<sup>278</sup>. In the case of the FBiH, the OLFBiH and the MoF did not provide their opinions on any of the five draft laws reviewed. The opinion of the MoJ was missing for a draft law that clearly affects the public administration<sup>279</sup>. For the RS, the SL, MoF and MERRC provided their opinions on all five draft proposals. In the BD, documentation and opinions were provided for only one sample draft law<sup>280</sup> out of the five requested, and key opinions required concerning interministerial consultation were missing.

In the State, the FBiH and the RS, in general only CoG institutions provided their opinions on the draft laws. Other ministries and state bodies submitted their opinions only sporadically, even though the draft laws were clearly relevant for a substantial number of them<sup>281</sup>.

In view of the persistent problems of various elements of the regulatory framework, such as the absence of interministerial co-ordination and conflict-resolution mechanisms, as well as the inability to assess the actual practice of interministerial consultation for a sample of draft laws reviewed due to the limited information provided, the value for the indicator 'Interministerial consultation on public policy' is 1.

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<sup>276</sup> No body for conflict resolution is listed in the RoP of the CoM, and the RoP of the Governments of the FBiH and the RS. Interviews with the representatives at all levels confirmed that no formal or informal structures were in place for conflict resolution by senior management (e.g. regular meetings of secretaries-general).

<sup>277</sup> The five draft laws analysed constituted the same sample as the ones analysed under Principle 10 (for all levels).

<sup>278</sup> The following draft laws and opinions were reviewed at the State level: draft Law on Amendments to the Law on International and Inter-Entity Road Transport: no opinions; draft Law on Amendments to the Law on Basics of Traffic Safety on the Roads in BiH: opinions from the LOCoM and the MoFT; draft Law on Amendments to the Law on Salaries and Other Compensations in Judicial and Prosecutorial Institutions: opinions from the LOCoM, the High Judicial and Prosecutorial Council, the Ministry of Human Rights and Refugees, the Department for EI, and the MoFT; draft Law on Amendments to the Law on Medicines and Medical Devices: opinion from the LOCoM; draft Law on Amendments to the Law on Salaries and Allowances in BiH Institutions: opinions from the LOCoM, the Department for EI, and the MoFT.

<sup>279</sup> The following draft laws and opinions were reviewed at the FBiH level: draft Law on Budget (proposed by the MoF): opinion from the OLFBiH; draft Law on Tourism: opinions from the MoF and the OLFBiH; draft Law on Pensions and Disability Insurance: opinions from the MoJ and the OLFBiH; draft Law on Voluntary Pension Funds (proposed by the MoF): opinion from the MoJ; and draft Law on Bankruptcy (proposed by the MoJ): opinion from the MoF.

<sup>280</sup> At the BD level, information was provided on only the draft "Rules on Conditions for Performing Exchange Transactions".

<sup>281</sup> At the State level, only opinions from other (non-CoG) ministries were included in the package of documentation supporting the draft Law on Amendments to the Law on Salaries and Other Compensations in Judicial and Prosecutorial Institutions. At the FBiH and the RS levels, CoG institutions provided opinions on the draft laws, with the MoJ of the FBiH sometimes also providing an opinion on law proposals.

### Public consultation on public policy

This indicator measures the implementation of public consultation processes in developing policies and legislation. It assesses the regulatory framework, the establishment of the quality control function on public consultation and the consistency in publishing draft laws for written public consultation online, and tests whether minimum standards for public consultations were upheld for approved drafts laws.

Overall indicator value **0** 1 2 3 4 5

| Sub-indicators   | Points              |
|--|---------------------|
| 1. Adequacy of the regulatory framework for an effective public consultation process | 3/10                |
| 2. Quality assurance of the public consultation process                              | 0/3                 |
| 3. Regularity in publishing draft laws for written public consultation               | 0/4                 |
| 4. Test of public consultation practices   | 0/24 <sup>282</sup> |
| <b>Total<sup>283</sup></b>   | <b>3/41</b>         |

### Interministerial consultation on public policy

This indicator measures the adequacy of the regulatory framework for the interministerial consultation process and tests the system in practice for five draft laws.

Overall indicator value 0 **1** 2 3 4 5

| Sub-indicators  | Points              |
|---|---------------------|
| 1. Adequacy of the regulatory framework for an effective inter-ministerial consultation process | 3/9                 |
| 2. Test of interministerial consultation practices  | 0/12 <sup>284</sup> |
| <b>Total<sup>285</sup></b>  | <b>3/21</b>         |

The public consultation requirement is embedded in the regulatory framework for policy making across all levels of the administration. However, shortcomings and gaps have been revealed in the legal framework for quality control and the oversight of public consultation. The actual practice of public consultation across all levels is of a poor quality, and it is not yet being used as a core element of policy making.

Overall, interministerial consultation is regulated at all levels, but gaps and shortcomings have been found in regulatory frameworks at the different levels of the administration, and the existing rules and requirements have not been consistently applied in practice. The relevant CoG institutions performing important checks have not been consistently consulted on policy proposals prior to their submission for final approval.

<sup>282</sup> The relevant data was not provided for the assessment.

<sup>283</sup> Point conversion ranges: 0-6=0, 7-13=1, 14-20=2, 21-27=3, 28-34=4, 35-41=5.

<sup>284</sup> The relevant data was not provided for the assessment.

<sup>285</sup> Point conversion ranges: 0-2=0, 3-6=1, 7-10=2, 11-14=3, 15-18=4, 19-21=5.

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

Separate regulatory frameworks, in place at each level of the administration, establish the rules and procedures for legislative drafting and publication of legislation. The “Unified Rules for Legislative Drafting in BiH Institutions” provide guidance for legal drafting at the State level. Similar guidelines have been prepared at the FBIH, RS and BD levels. In the FBIH, the guidance is included in the “Rules and Procedures for the Drafting of Laws and Other Regulations”<sup>286</sup>. In the RS, the relevant guidance is included in the “Rules for Drafting Laws and Other Regulations”<sup>287</sup>. These rules define the standards for the structure and style of legislation, and they also stipulate the procedural requirements for preparing regulations. Officials in the BD work on the basis of the “Unified Rules and Procedures for Drafting Legal Acts of the BD”.

At the State level, the LOCoM is responsible for issuing opinions on policy proposals before they are sent to the CoM for final approval. The LOCoM assesses the compliance of a draft law proposal with the “Unified Rules” as well as with the Constitution and laws of BiH<sup>288</sup>. However, the LOCoM only provides opinions on draft laws and regulations that are to be adopted by the CoM. No quality control is carried out for secondary legislation that is to be approved by ministries<sup>289</sup>. The scrutiny of legal quality is exercised by the OLFBiH in the FBIH, the SL in the RS, and the LOBD in the BD.

Although the regulations at the levels of the State and the Entities require that legal proposals be submitted for quality scrutiny during the interministerial consultation process, a review of a sample of cases provided during the assessment showed that this scrutiny has not taken place consistently and systematically. At the State level, the LOCoM provided its opinion on four of the five files reviewed<sup>290</sup>, as was the case in the BD. The OLFBiH did not provide its opinion on two of the five adopted draft reviewed as part of this assessment<sup>291</sup>. The SL in the RS provided opinions on all five draft laws analysed.

At the State level, none of the four laws approved in 2015 was amended within a year. In the FBIH, the percentage of laws amended within one year of their adoption was calculated to be 22%<sup>292</sup>, while in the RS it was 10%<sup>293</sup>. It has not been possible to assess the stability and consistency of legislation at the BD level because the relevant information on the number of laws amended within a year was not provided.

Businesses in BiH do not consider the laws and regulations affecting them to be clearly written and stable. According to the Balkan Barometer Survey, only 32% of businesses had a positive perception of the clarity and stability of government policy making<sup>294</sup>.

Overall, due to the frequent changes in legislation and the lack of clarity of the laws, as perceived by BiH businesses, the value for the indicator ‘Predictability and consistency of legislation’ is 2.

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<sup>286</sup> “Rules and Procedures for the Drafting of Laws and Other Regulations of the FBIH”, Official Gazette of BiH No. 71/14.

<sup>287</sup> “Rules for Drafting Laws and Other Regulations of the RS”, Official Gazette of the RS No. 24/14.

<sup>288</sup> Law on the CoM of BiH, Article 25, and the RoP of BiH, Article 31a.

<sup>289</sup> This finding was confirmed during the interviews with the LOCoM.

<sup>290</sup> The draft laws reviewed were the following: draft Law on Amendments to the Law on Basics of Traffic Safety on the Roads in BiH; draft Law on Amendments to the Law on Salaries and Other Compensations in Judicial and Prosecutorial Institutions; draft Law on Amendments to the Law on Medicines and Medical Devices; and draft Law on Amendments to the Law on Salaries and Allowances.

<sup>291</sup> The FBIH draft laws reviewed were the draft Law on Voluntary Pension Funds and the draft Law on Bankruptcy.

<sup>292</sup> Of the nine draft laws adopted by the FBIH in 2015, two were amended within a year.

<sup>293</sup> This percentage was based on a review of approved legislation; 2 of the 21 draft laws approved by the RS Parliament in 2015 were amended within a year.

<sup>294</sup> This percentage was based on the preliminary findings of the 2017 Balkan Barometer survey. The survey asked whether businesses considered that “laws and regulations affecting [their] company [were] clearly written, not contradictory and [did] not change too frequently”. The result included the percentage of respondents who answered “strongly agree” or “tend to agree”. Balkan Barometer, annual survey conducted by the Regional Cooperation Council (RCC), <http://www.rcc.int/seeds/results/3/balkan-business-barometer>.

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At the State level, the LOCoM ensures that all regulations adopted by the CoM are submitted for publication in the Official Gazette<sup>295</sup>. Publication in the Official Gazette is required before the legislation can enter into force, but not necessarily for its application in practice<sup>296</sup>. At the FBiH level, the Secretary General of the Government is responsible for the publication of decisions adopted by the FBiH Government<sup>297</sup>. At the RS level, the SGG has the responsibility for publication of the decisions of the RS Government<sup>298</sup>. In the BD, the General Affairs Unit of the SGBD fulfils this role<sup>299</sup>.

The State and the FBiH both publish their legislation in their own Official Gazettes, which are available from the same website<sup>300</sup>. The online version of the FBiH Official Gazette includes legislation adopted by the Parliament and the CoM as well as legislation and regulations adopted by the FBiH Government and the Sarajevo Canton. The RS and the BD publish their legislation in separate Official Gazettes<sup>301</sup>.

At both the State and the FBiH levels, the process for publication in the Official Gazette has not been defined in regulations<sup>302</sup>; only the bodies responsible for publication have been identified. The requirements have not been defined for issues such as the documents that need to be published, the deadlines for publication after submission of the documents, and the responsibilities of the bodies submitting legislation to the Official Gazette. At neither the State level nor the FBiH level have functioning processes and procedures been put in place to ensure the consolidation of all primary and secondary legislation<sup>303</sup>. Apart from the overview of documents that need to be published, the RS has demonstrated similar problems and weaknesses in terms of the regulatory framework for publishing legislation.

All primary and secondary legislation is available in a central registry at the State, the FBiH and the RS levels. However, for the State and the FBiH, only the legislation adopted since 2009 is available in electronic form and legislation adopted before 2009 is effectively unavailable to the public, as it can only be obtained for a fee. Also, the Official Gazette of the RS is only accessible for a fee, and therefore no single source provides access free-of-charge to all laws and sub-legal acts. Since no procedures for consolidating legislation have been established at the State or Entity level, the consolidated versions of legislation have not been made available systematically.

Based on the results of the 2017 Balkan Barometer Survey, the perceived availability of laws and regulations affecting businesses is 43%<sup>304</sup>.

In view of the inadequacy of the regulatory framework and the limited access to legislation, the value for the indicator 'Accessibility of legislation' is 0.

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<sup>295</sup> The RoP of CoM, Article 101.

<sup>296</sup> "Unified Rules for Legislative Drafting in the Institutions of BiH", Article 21. However, the Decision on the Co-ordination System in the EI Process in BiH states in Article 15 that legislation "shall enter into force on the day of its adoption and shall be published in the Official Gazette of BiH".

<sup>297</sup> The RoP of the FBiH Government, Article 92.

<sup>298</sup> The RoP of the RS Government, Article 63(7).

<sup>299</sup> The RoP of the BD Government, Article 41.

<sup>300</sup> The Official Gazettes of the BiH State and the FBiH levels are published on the following website: [www.sluzbenilist.ba](http://www.sluzbenilist.ba)

<sup>301</sup> The Official Gazette websites of the RS and the BD levels are as follows:  
[www.slglasnik.org](http://www.slglasnik.org) and <http://skupstinabd.ba/ba/index.html>

<sup>302</sup> No such regulations were provided for the assessment, and the lack of requirements for the publication of legislation was confirmed during the assessment interviews.

<sup>303</sup> This finding, based on the analysis of the legal framework and the lack of a clear procedure for consolidation therein, was confirmed during the interviews with the relevant government institutions at the State and the FBiH levels.

<sup>304</sup> Balkan Barometer, annual survey conducted by the Regional Cooperation Council (RCC), <http://www.rcc.int/seeds/results/3/balkan-business-barometer>.

### Predictability and consistency of legislation

This indicator measures the predictability and consistency of legislation. It assesses the availability of training and guidance along with the establishment of the quality control function. The consistency of laws is assessed based on the ratio of laws amended one year after adoption, and predictability is assessed through the perceived consistency of interpretation of business regulations.

Overall indicator value 0 1 **2** 3 4 5

#### Sub-indicators

#### Points

|  |             |
|--|-------------|
| 1. Availability of guidance documents on legal drafting                          | 2/2         |
| 2. Quality assurance on legal drafting   | 1/3         |
| 3. Laws amended one year after adoption (%)                                      | 0/3         |
| 4. Perceived clarity and stability of government policy making by businesses (%) | 0/2         |
| <b>Total<sup>305</sup></b>   | <b>3/10</b> |

### Accessibility of legislation

This indicator measures both the regulatory framework for making legislation publicly available and the accessibility of legislation in practice, based on the review of the availability of legislation through the central registry and as perceived by businesses.

Overall indicator value 0 1 2 3 4 5

#### Sub-indicators

#### Points

|   |             |
|---|-------------|
| 1. Adequacy of the regulatory framework for public accessibility of legislation | 1/6         |
| 2. Accessibility of primary and secondary legislation in practice               | 0/8         |
| 3. Perceived availability of laws and regulations affecting businesses (%)      | 0/2         |
| <b>Total<sup>306</sup></b>  | <b>1/16</b> |

**The process of scrutiny of the quality of legislative proposals is defined in regulations at all levels of the administration, but those regulations are not being applied consistently in practice. The regulatory framework for the publication of legislation lacks essential clarity and requirements. Legislation is published in different Official Gazettes, and it is not accessible to the public free of charge. Consolidated versions of legislation are not being prepared. The stability of government policy making and the availability of laws and regulations, as perceived by businesses, are low.**

#### Key recommendations

##### Short-term (1-2 years)

- 1) All levels of the administration should ensure that ministries develop and enforce clear internal rules for policy development.
- 2) Evidence-based policy making, through the consistent and regular application of RIA, should be ensured at all levels of the administration. The CoM should implement the RIA methodology.

<sup>305</sup> Point conversion ranges: 0=0, 1-2=1, 3-4=2, 5-6=3, 7-8=4, 9-10=5.

<sup>306</sup> Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

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- 3) All levels of the administration should ensure that the legal framework for public consultation is enhanced and that policy proposals submitted for adoption are checked in terms of their compliance with the standards and requirements for consultation.
- 4) All levels of the administration should introduce rules and procedures for preparing the consolidated texts of major laws. Free access to legislation at all levels of the administration should be ensured.
- 5) All levels of the administration should ensure that all CoG institutions are always involved and consulted during interministerial consultations and that other relevant government bodies are also involved, if necessary.

**Medium-term (3-5 years)**

- 6) The BiH Parliamentary Assembly, together with the CoM, should create a single portal for the publication of all legislation adopted by State government bodies as well as by government bodies at the FBiH, the RS and the BD levels.

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## Public Service and Human Resource Management

## PUBLIC SERVICE AND HUMAN RESOURCE MANAGEMENT

### 1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015-JUNE 2017

#### 1. State of play

Since 2015, the scope of the civil service has not changed significantly. Due to complex constitutional arrangements and the organisational structure of the country, separate civil service laws (CSLs) are in place for the institutions of the State, the Federation of BiH (FBiH), the Republika Srpska (RS) and the Brčko District (BD). In addition, separate CSLs are in place at the FBiH level in six of the ten cantons. The public service system in BiH remains seriously fragmented, and shortcomings in the implementation of the legal framework and the institutional set-up persist. The horizontal scope<sup>307</sup> of the public service is incomplete, and the vertical scope<sup>308</sup> is inconsistently defined. The system is becoming more fragmented, especially in the FBiH, where an increasing number of cantons have adopted separate CSLs.

No comprehensive, countrywide strategic document on the civil service exists. In 2015, the Public Administration Reform Co-ordinator's Office (PARCO) initiated the co-ordination of the process of preparing for the development of a new Public Administration Reform (PAR) Strategic framework, with the support of SIGMA. However, the Governments of both Entities have not agreed the scope of the framework or the extent of the action plan(s).

Despite a solid legal basis, merit-based recruitment is not sufficiently safeguarded in practice. Application procedures are overly formal at some levels (the State and the FBiH), and the capacities of selection/competition committees are inadequate. Exceptions from merit-based recruitment in the hiring of temporary personnel and ensuring ethnic representation are impairing application of the merit principle.

Senior managerial positions are included in the scope of the civil service at all levels of the administration in BiH. However, all levels regularly allow direct or indirect political influence on appointments of senior managerial posts. An example of such practices at the FBiH level is the adoption and subsequent annulment of amendments to the CSL by the Constitutional Court. There is also an ongoing practice of appointing "acting heads" at all levels.

The salary system is based on job classifications and pay grades, but fairness and coherence across the public service of BiH are not ensured, due to different salary regulations in the institutions at the State, the Entities and the BD levels.

The agencies responsible for civil servants' development are in place, but inter-institutional co-operation is inadequate, the transfer of knowledge is not systematic, and mobility of trainers and trainees between administrative levels is rare. The right of civil servants to training and the duty of the public service to provide that training are reflected in the legislation, but the resources available for training are limited (in some cases the training budget has been reduced to zero). Regulations stipulating performance appraisal are in place but grade inflation indicates that it is only a paper exercise and at the BD level it is not carried out at all.

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<sup>307</sup> According to the SIGMA Principles of Public Administration, the horizontal scope of public service contains at least the positions with the public authority to exercise powers conferred by public law and with the responsibility for safeguarding the general interests of the state or other public bodies in the institutions listed. OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, p. 44, <http://www.sigmaweb.org/publications/Principles-of-Public-Administration-Edition-2017-ENG.pdf>.

<sup>308</sup> According to the SIGMA Principles of Public Administration, the vertical scope of public service clearly determines the upper and lower division lines between political appointees, public servants and support staff. OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, p. 44, <http://www.sigmaweb.org/publications/Principles-of-Public-Administration-Edition-2017-ENG.pdf>.

## 1.2. Main developments

The following section describes key changes in the public administration for each key requirement<sup>309</sup> and main developments, based on the indicators used in the SIGMA 2015 Baseline Measurement Reports.

There has been no progress against the key short-term recommendations of the SIGMA 2015 Baseline Measurement Report<sup>310</sup>. With amendments to the CSL in December 2015, further and deeper fragmentation was introduced at the FBiH level, including the exclusion of senior managerial positions from the CSL and unco-ordinated drafting of civil service legislation at the cantonal level. Also, the roles of the FBiH Civil Service Agency (CSA) and the cantonal authorities were diminished. These changes were annulled by the FBiH Constitutional Court<sup>311</sup> at the end of 2016, but the consequences of its application over a short period of time cannot be fully determined yet. However, as required by the FBiH Constitutional Court's decision, the FBiH Government has annulled the amendments to three Decrees: 1) the Decree on Internal Organisation of Federal Administrative Bodies; 2) the Decree on Conditions and Procedures of Recruitment and Selection and Dismissal of Persons that are not Civil Servants in the Public Administration Bodies and Administrative Service of the FBiH; and 3) the Decree on Core Activities within the Competence of the Civil Service which are carried out by Civil Servants, the Conditions for carrying out these Activities and the Exercise of Certain Rights arising from Employment<sup>312</sup>.

A Reform Agenda for BiH 2015-2018 was adopted in July 2015 to boost economic reforms, improve fiscal sustainability and provide a temporary strategic framework for PAR and civil service reform, with action plans adopted at all levels. However, the Agenda lacks the detailed and coherent measures necessary to implement civil service reform and development.

In addition, the Council of Ministers (CoM) of BiH has recently adopted<sup>313</sup> a Framework Policy for the Development of the Human Resource Management (HRM) Function in the BiH Civil Service Structures. The document was developed with SIGMA support in 2013, but only endorsed at the technical level by the Supervisory Board for the HRM strand of PAR. Although the framework was meant to be a common platform for future developments in the area of HRM, except for the recent adoption at the State level, no other Government has taken a stance on this document.

No other strategic document dealing with the public service and HRM has been adopted at any level of the administration.

At the level of the RS, amendments to the Law on the Administration of the Republic, adopted in early 2016, give the RS CSA clear authority for the training and professional development of civil servants<sup>314</sup>. The CSA has adopted the amendments of the Rulebook on Recruitment and Selection<sup>315</sup> which has simplified the procedure for submission of documents and reduced the costs for prospective civil service candidates; however, the cost of the professional exam remains a concern.

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<sup>309</sup> OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, [http://www.sigmaweb.org/publications/Principles-of-Public-Administration\\_Edition-2017\\_ENG.pdf](http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf).

<sup>310</sup> OECD (2015), *Baseline Measurement Report: Bosnia and Herzegovina*, OECD Publishing, Paris, <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-BiH.pdf>.

<sup>311</sup> The FBiH Constitutional Court Decision No. U-13/16 of 7 December 2016.

<sup>312</sup> Official Gazette of the FBiH No. 23/17.

<sup>313</sup> Document adopted on 13 June 2017 at the 105th Session of the CoM. More information is available in local languages at: [http://www.vijeceministara.gov.ba/saopstenja/sjednice/saopstenja\\_sa\\_sjednica/default.aspx?id=25497&langTag=bs-BA](http://www.vijeceministara.gov.ba/saopstenja/sjednice/saopstenja_sa_sjednica/default.aspx?id=25497&langTag=bs-BA).

<sup>314</sup> Law on Amendments to the Law on the Administration of the Republic, Article 11, Official Gazette of the RS No. 15/2016.

<sup>315</sup> Amendments to the Rulebook on Unique Rules and Procedures of Public Competition for Recruitment and Appointment of Civil Servants, Official Gazette of the RS No. 24/15.

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In the BD, the Assembly adopted amendments to the CSL<sup>316</sup> that simplify vacancy announcement procedures and, to reduce budget costs, restrict remuneration levels for members of various *ad hoc* committees in the civil service.

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

There is no progress at any level of the administration concerning the scope of the public service, the policy and legal frameworks and institutional set-up of the public service. The system remains seriously fragmented across all levels, and inconsistencies and deficiencies regarding the horizontal and vertical scopes have not been corrected. The annulment of the amended CSL at the FBiH level has partially remedied the negative trend in the FBiH, but the legal and practical problems have not been fully resolved.

There is no strategic document on the civil service at the country level or at any of the administrative levels, with the exception of the HRM Policy Framework at the State level.

The CSAs in both Entities have prepared training strategies, and the governments have adopted them. These training strategies include all the necessary elements, but their practical value is very limited, due to insufficient funding from the budgets for implementation. International donors fund the majority of activities.

In addition to deficiencies within the legal framework, further difficulties are caused by practices that are not harmonised between the administrative levels. Institutional set-ups remain inadequate at the State and FBiH levels, where responsibilities are not clearly delineated between the ministries responsible for public administration<sup>317</sup> and the CSAs. Little or no co-operation exists between the levels concerning HRM practices. The Human Resource Management Information System (HRMIS) register is still not functioning and is not connected to other national databases.

None of the short-term recommendations of the SIGMA 2015 Baseline Measurement Report or the SIGMA 2016 Monitoring Report<sup>318</sup> have been implemented.

**Table 1. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

|                    | 2015 Baseline Measurement Indicator  | 2015 value | 2017 value |
|--------------------|--|------------|------------|
| <b>Qualitative</b> | Extent to which the scope of public service is adequate, clearly defined and applied in practice.                            | 2          | 1          |
|                    | Extent to which the policy and legal frameworks for professional and coherent public service is established and implemented. | 2          | 2          |
|                    | Extent to which the institutional set-up enables consistent HRM practices across the public service.                         | 2          | 2          |

<sup>316</sup> Official Gazette of the BD Nos. 09/14 and 37/15.

<sup>317</sup> The State and the FBiH Ministries of Justice.

<sup>318</sup> OECD (2016), *Monitoring Report: Bosnia and Herzegovina*, OECD Publishing, Paris, pp. 8-9, <http://www.sigmaweb.org/publications/Monitoring-Report-2016-BiH.pdf>.

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

No progress has been made at any level in professionalising the public service through good managerial standards and HRM practices. None of the SIGMA recommendations from the 2015 Baseline Measurement Report have been implemented. The system for civil service recruitment, demotion and termination of employment remains formally solid, but the merit principle is not safeguarded in practice. This is especially true because certain sections of the civil service have their own recruitment rules, application procedures are overly bureaucratic and the capacities of competition committees are weak, with a high rate of fluctuation of members. In addition, with the exception of the State level, the majority of members of competition committees come from the recruiting institution. Furthermore, exceptions from merit-based recruitment in the hiring of temporary personnel and ensuring ethnic representation are impairing application of the merit principle. Various methods of assessing candidates (written tests, interviews, etc.) are used differently among the levels, with no evidence of effectiveness or fairness.

Objective criteria for termination of employment are explicitly established in the legislation at all levels, but, in most cases, termination of service is due to retirement.

All levels of government in BiH regularly allow direct or indirect political influence on appointments of senior managerial posts. Examples of such practices are observed at different levels, including appointing “acting heads”, the passed and subsequently annulled CSL at the FBiH level, and attempts to amend the CSL at the State level. The most severe breach of the Principles of Public Administration was observed at the FBiH level, where the CSL was amended despite warnings from the European Commission and SIGMA on many violations of the Principles. The Law was later annulled by the FBiH Constitutional Court, but the consequences of its application over a short period of time cannot be fully determined yet.

The coherence of salaries of civil servants across BiH is not ensured, due to different salary regulations and different policies at all levels. The salary systems are based on job classifications and pay grades, but no Government in BiH has conducted a thorough analysis and grading of jobs, making it difficult to establish the extent to which the principle of fairness is implemented in the area of salaries and compensation in general. Human resources development for civil servants is regulated in the legislation at all levels. Four agencies (one at each level and some also in cantons as well) are responsible for development of civil servants. Co-operation between the levels is insufficient, the transfer of knowledge is not systematic, and the mobility of trainers and trainees between administrative levels is rare (although at the levels of the State and the FBiH sometimes the same trainers are used). Separate strategies for civil service training exist at the levels of both the Entities, while at the State level, the civil service training strategy is a part of the overall CSA mid-term planning. At the BD level, there is no strategy for civil service training. Professional training is carried out differently from level to level, and the resources for training are limited. Regulations stipulating performance appraisal are in place in the BD, but grade inflation indicates that appraisals are carried out only as a paper exercise; data was not provided by the FBiH. Other elements of human resources development are not reflected in the legislation at any level.

To prevent and fight corruption, legislation is in place, as is the institution, the Agency for the Prevention of Corruption and Co-ordination of the Fight Against Corruption (ACA), and the strategic document. However, the ACA is active only at the State level, where integrity plans and anti-corruption action plans of individual administrative bodies are principally adopted. Furthermore, the ACA has limited powers to enforce those plans, and it has no power at the level of the Entities and the BD, which have adopted their own strategies and established their own bodies (the Anti-Corruption Team in the FBiH, Commission for Strategy Implementation in the RS, and Commission for Corruption Prevention and Co-ordination of Activities in the BD). This indicates that prevention of corruption is not coherent across BiH, and the perception of corruption is at the same level as in previous years. Disciplinary sanctions and

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procedures are regulated in the legislation, but there is no information on implementation across the public service.

**Table 2. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

|                     | 2015 Baseline Measurement indicator   | 2015 value                   | 2017 value                   |
|---------------------|---|------------------------------|------------------------------|
| <b>Qualitative</b>  | Extent to which the recruitment of public servants is based on the merit principle in all its phases.   | 3                            | 2                            |
|                     | Extent to which the termination of employment of public servants is based on merit.   | 3                            | 3                            |
|                     | Extent to which political influence on the recruitment and dismissal of senior managerial positions in the public service is prevented.                 | 2                            | 1                            |
|                     | Extent to which the remuneration system of public servants is fair and transparent and applied in practice.   | 3                            | 3                            |
|                     | Extent to which the training system of public servants is in place and applied in practice.   | 3                            | 3                            |
|                     | Extent to which the performance appraisal system of public servants is in place and applied in practice.  | 3                            | 3                            |
|                     | Extent to which the integrity and anti-corruption system of the public service is in place and applied in practice.                                     | 3                            | 3                            |
|                     | Extent to which the disciplinary procedures against public servants are established to promote individual accountability and avoid arbitrary decisions. | 3                            | 3                            |
| <b>Quantitative</b> | Annual turnover of civil servants at the level of central administration.   | Not available <sup>319</sup> | Not available                |
|                     | Percentage of vacant positions filled by external competition in the civil service at the level of central administration.                              | Not available                | Not available                |
|                     | Percentage of women in senior managerial positions in the civil service at the level of central administration.   | Not available <sup>320</sup> | Not available <sup>321</sup> |
|                     | Annual turnover of senior managerial civil servants at  | Not                          | Not                          |

<sup>319</sup> Here and hereafter, within this comparative table, “not available” means that no countrywide statistics are available for this indicator.

<sup>320</sup> “Not available” means that no aggregated countrywide statistics are available. The available data indicates that the percentage of women in senior managerial positions at the level of the 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.

<sup>321</sup> “Not available” means that no aggregated countrywide statistics are available. The available data indicates that the percentage of women in senior managerial positions at the level of the central administration in 2016 was 21.08% in the FBiH and 36% in the RS. No data was provided for the State and BD levels.

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|  |   |               |               |
|--|---|---------------|---------------|
|  | the level of central administration.  | available     | available     |
|  | Percentage of vacant senior managerial positions at the level of central administration filled by external competition. | Not available | Not available |

## 2. ANALYSIS

### Policy, legal and institutional frameworks for public service

This analysis covers seven Principles for the public service and human resource management area grouped under two key requirements. It includes a summary analysis of the indicator(s) used to assess against each Principle, including sub-indicators<sup>322</sup>, and an assessment of the state of play for each Principle. For each key requirement short- and medium-term recommendations are presented.

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

The values of the indicators assessing Bosnia and Herzegovina's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



### Analysis of Principles

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

The civil service remains fragmented, both formally and in practice. The constitutional arrangements and the organisational structure of the country allow for all administrative levels to have their own independent legislative basis for the civil service systems. The systems are particularly fragmented and inconsistent within the FBiH. The CSL of the FBiH applies only to civil servants in FBiH institutions. Six of the ten cantons functioning within the FBiH have adopted their own CSLs<sup>323</sup>, following a decision of the Constitutional Court of the FBiH<sup>324</sup> which allows cantons to pass their own public administration legislation. The other cantons are still applying the Law on Civil Servants (CSL) in the FBiH. This is causing further fragmentation of the system and means it is impossible to apply common civil service practice across the country.

As explained in detail in the 2016 SIGMA Monitoring Report<sup>325</sup>, the horizontal scope of the public service is not in line with the Principles of Public Administration at all administrative levels. Although the legislation governing the aspects of HRM is generally in line with the merit principle, significant parts of the civil service are totally or partially excluded from the general rules (e.g. independent and

<sup>322</sup> OECD (2017), *Methodological Framework for the Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

<sup>323</sup> West Herzegovina Canton in 2008; Posavina Canton in 2010; Una Sana Canton in 2012; Canton 10 in 2014; Sarajevo Canton in 2016; and Tuzla Canton in 2017.

<sup>324</sup> The FBiH Constitutional Court Decision No. U-27/09 of 22 February 2011.

<sup>325</sup> OECD (2016), *Monitoring Report: Bosnia and Herzegovina*, OECD Publishing, Paris, pp. 8-9, <http://www.sigmaweb.org/publications/Monitoring-Report-2016-BiH.pdf>.

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constitutional bodies at the State level and parliamentary staff at the RS level<sup>326</sup>). The situation has not improved. There have been announcements on new, more comprehensive legislation and attempts to draft it (e.g. a new draft CSL, as a basis for new legislation covering most of the public sector in the FBiH), but no official version has been proposed yet.

The vertical scope remains inconsistently defined. Civil service positions and supporting services are not adequately delineated<sup>327</sup>. At the State and FBiH levels, the requirement for a university degree has been used as the demarcation line between civil service positions and support staff. At the RS and BD levels, the CSL makes a distinction between civil servants who carry out core public administration activities (such as legal drafting, policy implementation and administrative decision making) and those who carry out technical support activities (such as drivers and maintenance workers). In the RS, financial services staff are also considered to be support staff, which creates problems in terms of equity with other personnel (especially in salary levels). Such variations among the levels create practical problems (e.g. mobility).

The delineation between political appointees and senior civil service staff is formally clear at all administrative levels, except FBiH. Proposed changes to the FBiH CSL threatened to blur the line between political appointees and senior civil servants. During the period between the temporary decision of the FBiH Constitutional Court<sup>328</sup> (when implementation was suspended) and the Court's final decision<sup>329</sup> (when the changes were annulled), some institutions in the FBiH started using the amended CSL, despite the fact that the amendments were being challenged before the Constitutional Court. This raises the question of possible consequences. It has been established that at least one senior managerial post was filled on the basis of the amended Law and had been awaiting the final ruling. In addition, there were changes to some of the internal organisational regulations in a certain number of institutions within the FBiH Government. But, in the absence of official information on this matter, the available data (gathered via interviews) was not sufficient to establish the real extent of the problem. It is clear, however, that the legal consequences of the annulled Law have not been redressed. Annulment of the Law by the Constitutional Court is a positive development, but the delineation between political appointees and senior civil service staff remains blurred, as no measures have been taken to address the legal consequences of its application over a short period. In addition, some of the cantonal laws<sup>330</sup> followed the example of the FBiH CSL. A serious threat of politicisation of senior managerial posts remains (discussed in more detail under Principle 4).

The number of civil servants in 2016 has increased significantly at all administrative levels except at the State level. The increase of 5-10% represents a stark contrast to the proclaimed commitment of the Entity Governments to freeze new employment.

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<sup>326</sup> The BiH regulatory Agency of Communication is an example of excluding employees from the civil service legislation by its own decision, which opens also questions of the constitutionality of such a decision. There are many other examples at all levels where specific sectoral legislation excludes employees of different institutions and agencies, which do not belong to the core state administration, from the civil service and salary systems.

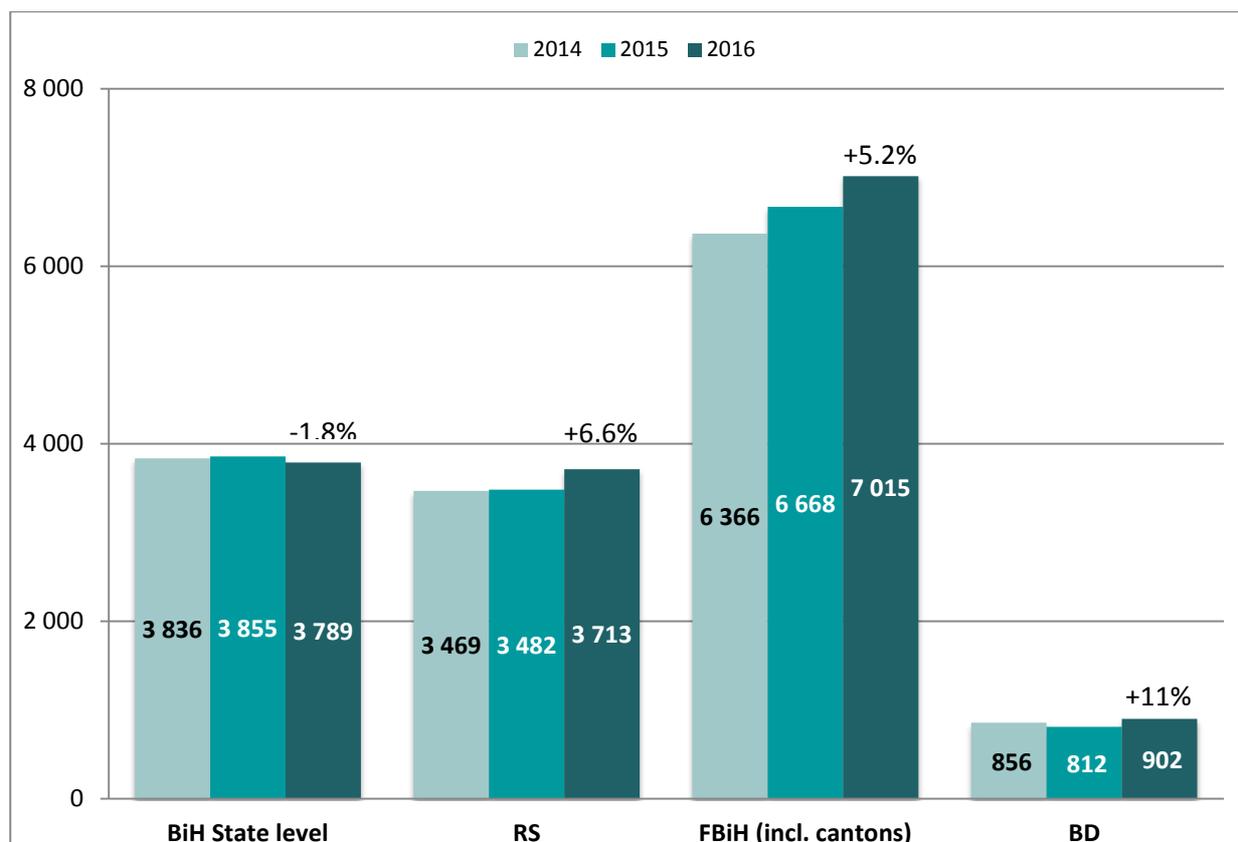
<sup>327</sup> OECD (2016), *Monitoring Report: Bosnia and Herzegovina*, OECD Publishing, Paris, p. 9, <http://www.sigmaweb.org/publications/Monitoring-Report-2016-BiH.pdf>.

<sup>328</sup> The FBiH Constitutional Court Decision No. U-13/16 of 28 June 2016.

<sup>329</sup> The FBiH Constitutional Court Decision No. U-13/16 of 7 December 2016.

<sup>330</sup> OECD (2016), *Monitoring Report: Bosnia and Herzegovina*, OECD Publishing, Paris, p. 9, <http://www.sigmaweb.org/publications/Monitoring-Report-2016-BiH.pdf>.

**Figure 1. Number of civil servants**



Source: Agencies for civil service from all levels of government

In light of the above factors, especially the fact that the line between political and civil service posts in the FBiH has been blurred by the changes and subsequent legal consequences of the annulled CSL, the value for the indicator 'Adequacy of the scope of public service' is 1.

| Adequacy of the scope of public service  |   |   |   |   |   |   |
|--|---|---|---|---|---|---|
| This indicator measures the extent to which there is a legal framework establishing an adequate horizontal, vertical and material scope for the public service <sup>331</sup> , and whether it is consistently applied across the public sector. |   |   |   |   |   |   |
| Overall indicator value  | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators  | Points             |
|---|--------------------|
| 1. Clarity in the legislative framework of the scope of the civil service           | 1/2                |
| 2. Adequacy of the horizontal scope of the public service                           | 0/6 <sup>332</sup> |
| 3. Comprehensiveness of the material scope of civil service legislation             | 2/2                |
| 4. Exclusion of politically-appointed positions from the scope of the civil service | 0/2                |
| 5. Clarity of the lower division line of the civil service                          | 1/1                |
| Total <sup>333</sup>  | 4/13               |

**The public service system remains seriously fragmented, with ten different CSLs in place. Although the disputed CSL amendments at the FBiH level have been annulled, the legal consequences have not been restituted. The horizontal scope of public service is incomplete, and the vertical scope is defined inconsistently at all levels.**

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

Since 2015, there have been no changes regarding the PAR strategic framework. Several attempts (the Common Policy framework of HRM for all administrative levels, the Reform Agenda for BiH 2015-2018 and the Operational Plan for the Development of the PAR Strategic framework 2016-2020<sup>334</sup>) have not resulted in the adoption of a strategic document on PAR. The Common Policy framework of HRM<sup>335</sup> which was drafted in 2014, has been adopted at the State level only. The PARCO initiated the process of preparing for the development of a new PAR Strategic framework in 2015, and the co-ordinating bodies from all levels of government were established, but the Entity Governments have not agreed the scope of the framework or the extent of the action plan(s).

The strategic documents for civil service training are in place in both Entities (the Framework Training Plan for Civil Servants of the Public Administration Bodies in the RS for the Period 2015-2018<sup>336</sup> and the

<sup>331</sup> OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, [http://www.sigmaweb.org/publications/Principles-of-Public-Administration\\_Edition-2017\\_ENG.pdf](http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf). SIGMA applies the narrow scope of public service, covering: 1) ministries and administrative bodies reporting directly to the government, prime minister or ministers (i.e. the civil service, strictly speaking); administrations of the parliament, the president and the prime minister; 2) other administrative bodies at the level of the central administration, if they are responsible for safeguarding the general interests of the state or other public bodies; and 3) independent constitutional bodies reporting directly to the parliament. The scope of public service thus does not cover institutions at the level of the sub-national administration and special types of public service, elected and politically appointed officials, or support and ancillary personnel in the administrative bodies.

<sup>332</sup> No data provided.

<sup>333</sup> Point conversion ranges: 0-3=0, 4-5=1, 6-7=2, 8-9=3, 10-11=4, 12-13=5.

<sup>334</sup> OECD (2016), *Monitoring Report: Bosnia and Herzegovina*, OECD Publishing, Paris, p. 11, <http://www.sigmaweb.org/publications/Monitoring-Report-2016-BiH.pdf>.

<sup>335</sup> The draft document is of a very general and declaratory nature and lacks basic strategic components such as measures, measurable indicators, deadlines.

<sup>336</sup> <http://adu.vladars.net/latn/?page=76>.

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Training Strategy for Civil Servants in the Institutions of the FBiH 2016-2020<sup>337</sup>). Both documents include all the necessary strategic elements and are being implemented, despite insufficient funding. Civil service training at the State level, which is a part of the CSA's overall mid-term planning, is being implemented.

Except at the FBiH level, the primary and secondary legislation at all levels is formally sufficient to allow flexibility and ensure stability of the civil service, but practical application remains a challenge (discussed in more detail under Principles 3 and 4). In addition to the disputed changes to the CSL, which were annulled by the FBiH Constitutional Court, the civil service system within the FBiH remains deeply fragmented, with the adoption of separate CSLs in six of the ten cantons.

The institutional set-up for HRM has been established at all levels and remains unchanged<sup>338</sup>, with policy-making and implementation responsibilities divided between the ministries and the CSAs. At the level of the State and the FBiH, there are CSAs. In the RS, there is the Civil Administration Agency. In the BD, due to the relatively small size of the public administration there is only a special HR sub-department within the Department of Professional and Administrative Affairs. At all levels of government except the BD, there is a division of responsibilities in the field of HRM in public administration between the competent ministry (Ministry of Justice [MoJ] of BiH, Ministry of Public Administration and Local Self-government of the RS, MoJ of the FBiH) and the central CSAs at all levels. The ministries are responsible for proposing legislation on the civil service, and the agencies are responsible for implementing the legislation, including the preparation (or adoption) of regulations for implementation.

This division is not clear in practice at any level, especially at the level of the FBiH<sup>339</sup>, where the disputed CSL was valid for a certain period during 2016, with the consequence of diminishing the role of the CSA until the CSL amendments were annulled. The co-ordinating responsibilities and position of PARCO as a State-level institution have remained unchanged<sup>340</sup>.

The material scope of the civil service has been formally addressed in a comprehensive way at all levels in primary legislation. It includes all general provisions relevant to employment relations and management of civil servants, including: 1) scope and principles; 2) recruitment and selection; 3) rights and obligations; 4) classification of posts and remuneration; 5) performance appraisal, training and professional development; 6) disciplinary procedures (including suspension); 7) termination of employment; and 8) management and central co-ordination.

HRM units have been established in only a small number of institutions at all levels, and they rarely use modern HR practices (e.g. strategic HRM planning, competency-based recruitment, and career development). So-called "personnel administration" prevails<sup>341</sup>, and there has been no improvement in the functioning of the HRMIS at any level. Data for HRM is still manually filed in hard copies.

The functioning of the State-level Civil Service Appeal Board has improved since 2015. All members of the Board are now in place. The Board has been fully operational since 2016, and there are currently no delays in its procedures. The Civil Service Appeal Board of the RS is operational and has an operational website<sup>342</sup>. The Civil Service Appeal Board of the FBiH has an extremely heavy workload, as it is responsible for all cases at the federal and cantonal levels. There are huge backlogs and, due to a lack of funds, members of the Board are not even able to be present at court proceedings at the cantonal level in other cities. Neither the State-level Civil Service Appeal Board nor the Civil Service Appeal Board of the FBiH are available online, not even for their annual plans and reports.

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<sup>337</sup> [http://www.obuke.adsfbih.gov.ba/images/Dokumenti/Strategije/Bos\\_Strategija\\_FBiH\\_obuka\\_2016-2020.pdf](http://www.obuke.adsfbih.gov.ba/images/Dokumenti/Strategije/Bos_Strategija_FBiH_obuka_2016-2020.pdf).

<sup>338</sup> OECD (2016), *Monitoring Report: Bosnia and Herzegovina*, OECD Publishing, Paris, pp. 11-13, <http://www.sigmaweb.org/publications/Monitoring-Report-2016-BiH.pdf>.

<sup>339</sup> *Idem*, p. 13.

<sup>340</sup> *Idem*, p. 12.

<sup>341</sup> *Idem*, pp. 13-14.

<sup>342</sup> [http://www.vladars.net/sr-SP-Cyrl/Vlada/centri/odbor\\_za\\_zalbe/Pages/Pravni\\_i\\_administrativni\\_okvir.aspx](http://www.vladars.net/sr-SP-Cyrl/Vlada/centri/odbor_za_zalbe/Pages/Pravni_i_administrativni_okvir.aspx)

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The Institution of Human Rights Ombudsman of BiH also carries out independent oversight of the civil service. Data that would show the extent of complaints and the number of recommendations implemented is not available<sup>343</sup>, but the Ombudsman’s personnel indicate that complaints regarding implementation of the civil service legislation are not frequent and the Ombudsman’s recommendations are usually well implemented.

Independent supervision of the implementation of the CSL is entrusted to administrative inspections in the FBiH and the RS. At the State level and in the BD, administrative inspections are established based on their respective Laws on Administration.

Considering the factors noted above, the value for the indicator ‘Adequacy of the policy, legal framework and institutional set-up for professional human resource management in public service’ is 1.

| Adequacy of the policy, legal framework and institutional set-up for professional human resource management in public service  |   |   |   |   |   |   |
|--|---|---|---|---|---|---|
| This indicator measures the extent to which the policy, legal framework and institutional capacities are in place and enable consistent human resource management (HRM) practices across the public service, and assesses whether policies and laws are implemented to ensure proper management of the civil service, for example a functioning civil service database, availability and use of data, etc. |   |   |   |   |   |   |
| Overall indicator value  | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators  | Points |
|---|--------|
| 1. Establishment of political responsibility for the civil service in the legal framework | 0/2    |
| 2. Quality of public service policy document  | 0/4    |
| 3. Implementation and monitoring of public service policy                                 | 0/4    |
| 4. Right balance between primary and secondary legislation                                | 2/2    |
| 5. Existence of a central, capable co-ordination body                                     | 3/4    |
| 6. Professionalism of HRM units in civil service bodies                                   | 0/2    |
| 7. Existence of a functional HR database with data on the civil service                   | 0/4    |
| 8. Availability and use of data on the civil service                                      | 1/5    |
| Total <sup>344</sup>  | 6/27   |

**No comprehensive strategic document on the civil service has been elaborated countrywide nor at any level of the BiH administration. The practical application of the existing legal framework is not harmonised among the levels. The institutional set up is not regulated adequately, the roles and responsibilities of each institution for formulation and implementation of HRM policy are not clearly divided.**

<sup>343</sup> Information received from the Institution of Human Rights Ombudsman of BiH on 12 June 2017.

<sup>344</sup> Point conversion ranges: 0-3=0, 4-8=1, 9-13=2, 14-18=3, 19-23=4, 24-27=5.

**Key recommendations**

**Short-term (1-2 years)**

- 1) The CoM, both Entities' Governments and the Government of the BD should approve the new PAR Strategy, which should clearly identify leadership of the reforms (including and especially political leadership).
- 2) The CoM and the Government of the FBiH should clarify between the various administrative bodies the roles and responsibilities for civil service and HRM policy development, implementation and monitoring.
- 3) The FBiH Government should urgently redress the legal consequences of the annulled CSL of the FBiH.
- 4) The CSAs at all levels should find a workable solution for removing the barriers in making the HRMIS at all levels operational as tools for civil service strategic planning and decision making.

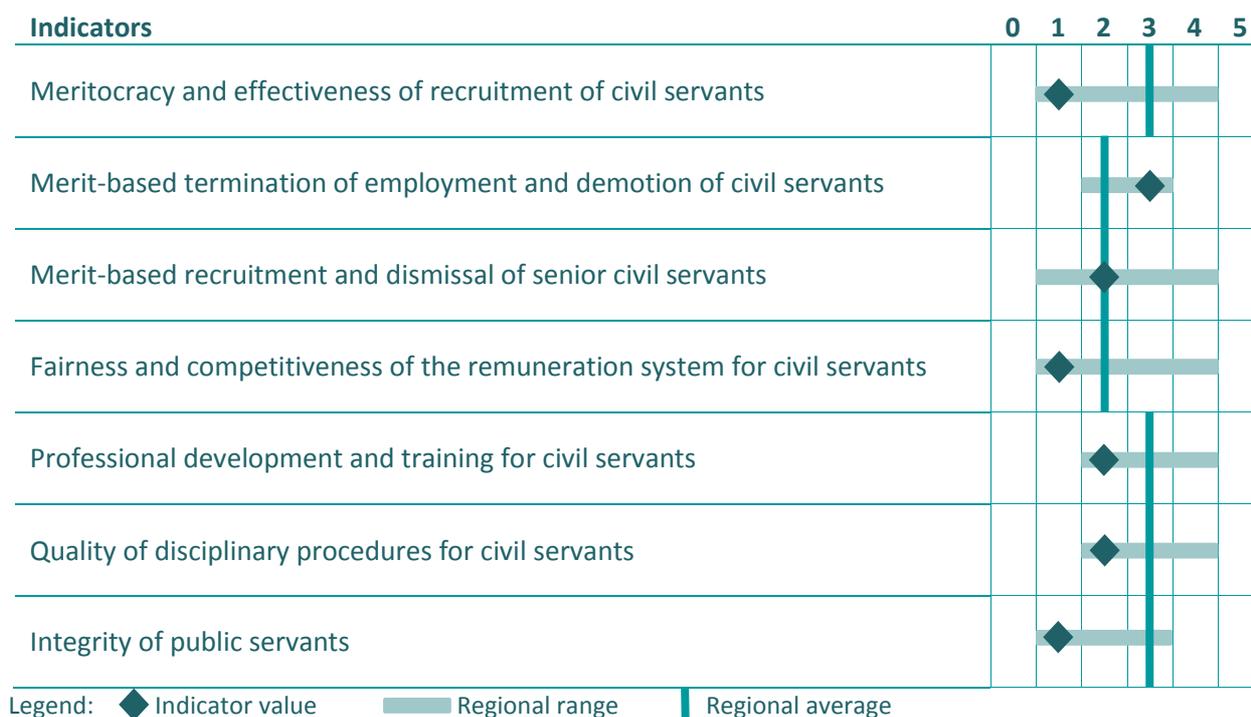
**Medium-term (3-5 years)**

- 5) Once the CoM, the Government of the FBiH and the Government of the RS have approved the new PAR Strategy and Action Plan, the CSAs of the State institutions, the FBiH and the RS, and the Sub-department for HRM of the BD should co-ordinate its implementation.
- 6) The CoM and the Governments at all administrative levels should assure the resources needed to establish functional registers of civil servants that would enable strategic HRM and the exchange of data between registers. Registers should be interoperable with financial software on salaries and other compensation.

## Human resource management

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

The values of the indicators assessing Bosnia and Herzegovina's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



### 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 administrative levels formally have a solid framework governing recruitment and selection in the civil service. Primary and secondary legislation concerning recruitment for the civil service in general establish recruitment systems that are coherent, fair and merit-based. However, in practice there are certain deficiencies. Application procedures continue to be quite formal especially at the State and FBiH levels<sup>345</sup>. Entrance examinations (one within the selection procedure and another as a professional state examination) differ between levels, and their recognition between the levels is not systematic, which creates formal obstacles for candidates. In addition, several guidelines now being developed make procedures overly bureaucratic and time-consuming, with no evidence as to how such formalities support and enable merit-based selection.

The RS has simplified the application process so that successful candidates do not need to submit original documents until the end of the selection process<sup>346</sup>, and similar measures are in place in the BD.

<sup>345</sup> OECD (2016), *Monitoring Report: Bosnia and Herzegovina*, OECD Publishing, Paris, p. 19, <http://www.sigmaweb.org/publications/Monitoring-Report-2016-BiH.pdf>.

<sup>346</sup> *Ibid.*

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In the State institutions and the FBiH<sup>347</sup>, all original documentation is requested with the application. This leads to costly and time-consuming collection of certificates and other documents for applicants.

The State-level recruitment and selection procedure for non-managerial civil servants is comprehensive and merit-based. The panel is comprised of five members (three from the CSA's list of independent experts and two from the recruiting institution). The testing procedure includes both written and oral (interview) elements. Since August 2016, the legal basis has been created for civil service institutions to embrace the model of the competency-based interview. Currently, the CSA is conducting trainings for the prospective panel members in the utilisation of the new model and so far 13 interviews have been carried out using the new approach. According to the CSA, the first feedback from the panel members has been encouraging but it is too early to draw any significant conclusions. The CSA automatically appoints the first-ranking candidate.

In the FBiH, the panel is also comprised of five members (two from the list of experts and three from the recruiting institution – the opposite of the composition used at the State level where majority of panel members belong to CSA). Since it is up to the minister/director to select panel members representing the institution, there is a risk of undue influence on the panel's decision. The panel prepares a shortlist of all successful candidates, and the final decision is made by the head of the institution, who can pick any one of the successful candidates.

In the RS, there are two panels, one that conducts the specialised exam and another that conducts the job-specific interview. The specialised exam panel is comprised of five members (or three in the case of lower-ranked civil service posts) appointed by the CSA Director for a period of two years. The interview panel has five members (three from the recruiting institution and two from the CSA list of experts), also appointed by the CSA Director.

Formally, the *ad hoc* selection committees at all levels<sup>348</sup> provide for impartiality and professionalism during recruitment procedures. But the issue remains that in all cases (three or five members), the majority of selection committee members come from the recruiting institution (except at the State level). Another adverse effect on the level of professionalism is that committee members are not sufficiently prepared or trained to participate effectively in the selection process<sup>349</sup>.

In 2015 and 2016<sup>350</sup>, considerable efforts were invested in training members of recruitment and selection committees at the State and the BD levels on how to use competencies during selection interviews. However, the evaluation of these efforts has yet to be conducted. Given that members of selection committees are appointed on an *ad hoc* basis, there is a fairly high rate of fluctuation of selection committee members. This has an adverse effect on the level of professionalism in the selection process. It also undermines the efforts of the CSAs (which are responsible for appointing members of selection committees) to establish groups of experienced experts.

At all levels except the RS, written testing of candidates exists to determine whether candidates possess a sufficient degree of knowledge in the field of public administration to carry out the duties of a civil servant. The nature and methods vary from one level to another<sup>351</sup> (as noted earlier, at the RS level the professional exam, which must be paid for, is a condition for applying for a job in civil service). Formally, the written tests are well-organised (except at the RS level<sup>352</sup>), but in practice there are many

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<sup>347</sup> The MoJ of the FBiH has proposed a new government decree which would prescribe a similar solution as well for the selection procedures in the FBiH, to the effect that successful candidates do not need to submit original documents until the end of the selection process.

<sup>348</sup> OECD (2016), *Monitoring Report: Bosnia and Herzegovina*, OECD Publishing, Paris, pp. 19-20, <http://www.sigmaweb.org/publications/Monitoring-Report-2016-BiH.pdf>.

<sup>349</sup> *Idem*, p. 20.

<sup>350</sup> *Ibid.*

<sup>351</sup> *Ibid.*

<sup>352</sup> The RS has only an oral entry interview as a selection tool without written examination. Bylaw on rules and procedures of the open competition for the employment in the civil service, Official Gazette of the RS, No. 68/09.

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deficiencies (testing knowledge only and not the competencies of the candidates<sup>353</sup>), and the tests fail to provide a good basis for merit-based recruitment<sup>354</sup>. The interview is used as a method of testing at all levels<sup>355</sup>, again with variations at different levels.

According to the research of one non-governmental organisation, “public confidence in ‘open and fair competition’ and equal treatment in the selection procedures is rather low, as the process is considered as non-transparent and subject to personal rather than objective assessment<sup>356</sup>”.

There have been no changes concerning fixed-term employment and the constitutional principle of ethnic representation that seriously disrupts and blurs both selection and recruitment procedures<sup>357</sup>. Ethnic representation is taken into account without a proper census or clear rules. In addition, candidates have the constitutional right to freely declare their ethnicity, which means that they can declare their nationality according to their expectations on which nationality will to be chosen in a particular selection process.

Objective criteria for the termination of employment are explicitly established in the legislation at all levels<sup>358</sup>. The main reason for the termination of service at all levels is retirement. Termination of employment may also result from reorganisation, but the number of such dismissals is low. There are no rules for the demotion of civil servants at any administrative level.

The right to appeal recruitment and termination of employment decisions, as well as the Appeal Boards, are regulated in the legislation at all administrative levels<sup>359</sup>. In 2016 at the State level, 65 appeals of recruitment and appointment decisions were filed, of which 60 were resolved (in 8 cases the decisions were favourable to the candidate and 2 procedures were suspended). At the level of the FBiH, of the 736 appeals filed in total (concerning not only recruitment), 395 cases on recruitment and appointment decisions were resolved. At the level of the RS, 51 appeals of recruitment decisions were filed in 2016, of which 2 were favourable to the candidate. This data confirms the huge backlog of the Civil Service Appeals Board at the FBiH level in comparison to the situation at the other levels.

Disciplinary proceedings are addressed comprehensively at all administrative levels, but there is insufficient data on the application of these provisions in practice.

Considering the factors analysed above, the value for the indicator ‘Meritocracy and effectiveness of recruitment of civil servants’ is 1. The value for the indicator ‘Merit-based termination of employment and demotion of civil servants’ is 3.

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<sup>353</sup> A good example of testing that does not determine competency is the proof of foreign-language ability by presenting language-course certificates, rather than by demonstrating the practical ability to speak and write the foreign language as part of the testing.

<sup>354</sup> OECD (2016), *Monitoring Report: Bosnia and Herzegovina*, OECD Publishing, Paris, p. 21, <http://www.sigmaweb.org/publications/Monitoring-Report-2016-BiH.pdf>.

<sup>355</sup> *Ibid.*

<sup>356</sup> BiH Centre of Civil Initiatives, *Policies, Procedures and Appointment Practice in the Public Administration BiH*, August 2014, <http://www.cci.ba/pubs/1/21/1.html>.

<sup>357</sup> OECD (2016), *Monitoring Report: Bosnia and Herzegovina*, OECD Publishing, Paris, pp. 21-22, <http://www.sigmaweb.org/publications/Monitoring-Report-2016-BiH.pdf>.

<sup>358</sup> *Idem*, p. 22.

<sup>359</sup> *Ibid.*

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**Meritocracy and effectiveness of recruitment of civil servants**

This indicator measures the extent to which the legal framework and the organisation of civil service recruitment support merit-based and effective selection of candidates wishing to join the civil service and whether this ensures the desired results in terms of competitive, fair and non-discretionary appointments that enhance the attractiveness for job-seekers and performance of the public sector.

Overall indicator value 0   **1**   2   3   4   5

| Sub-indicators   | Points             |
|--|--------------------|
| <b>Legal framework and organisation of recruitment</b>   |                    |
| 1. Adequacy of the legislative framework for merit-based recruitment for civil service positions | 11/18              |
| 2. Application in practice of recruitment procedures for civil service positions                 | 3/18               |
| <b>Performance of recruitment practices</b>  |                    |
| 3. Time required to hire a civil servant   | 0/2 <sup>360</sup> |
| 4. Average number of eligible candidates per vacancy   | 0/4                |
| 5. Effectiveness of recruitment for civil service positions                                      | 0/4                |
| 6. Retention rate of newly hired civil servants (%)  | 0/4                |
| <b>Total<sup>361</sup></b>   | <b>14/50</b>       |

**Merit-based termination of employment and demotion of civil servants**

This indicator measures the extent to which the legal framework and the human resource management practices support fair termination of employment in the civil service and fair demotion of civil servants wherever it is envisioned in the legislation. The indicator does not deal with the termination of employment and demotion of senior civil servants.

Overall indicator value 0   1   2   **3**   4   5

| Sub-indicators   | Points             |
|--|--------------------|
| <b>Legal framework and organisation of dismissals and demotions</b>                    |                    |
| 1. Objectivity of criteria for termination of employment in civil service legislation  | 6/6                |
| 2. Objectivity of criteria for demotion of civil servants in the legislative framework | 2/2                |
| 3. Right to appeal dismissal and demotion decisions to the courts                      | 2/2                |
| <b>Fairness and results of dismissal practices</b>                                     |                    |
| 4. Dismissal decisions confirmed by the courts (%)                                     | 0/4 <sup>362</sup> |
| 5. Implementation of court decisions favourable to dismissed civil servants (%)        | 0/4                |
| <b>Total<sup>363</sup></b>   | <b>10/18</b>       |

**Formally, solid legal basis are prescribed at all levels, but merit-based recruitment is not sufficiently safeguarded in practice. The application procedures are overly formalistic and the capacities of selection/competition committees are inadequate. Exceptions to merit-based recruitment in the case**

<sup>360</sup> Here and hereafter, within this indicator, zero means that no data was provided.

<sup>361</sup> Point conversion ranges: 0-7=0, 8-16=1, 17-25=2, 26-35=3, 36-43=4, 44-50=5.

<sup>362</sup> Here and hereafter, in this indicator, zero means that no data was provided.

<sup>363</sup> Point conversion ranges: 0-2=0, 3-6=1, 7-9=2, 10-12=3, 13-15=4, 16-18=5.

**of temporary personnel and in ensuring ethnic representation are additionally harming the merit principle.**

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

Senior managerial positions are included in the scope of the civil service at all levels of the administration in BiH, with differences concerning the mandate of these positions. At the RS level, senior managers are appointed for a five-year mandate<sup>364</sup>. At the level of the FBiH, the senior management level was excluded from the civil service between the end of 2015 and December 2016, when disputed amendments of the CSL were annulled by the FBiH Constitutional Court. The Court annulled the Law on both formal (procedural) grounds and substantive (material) grounds. In its decision, the Court listed a set of procedural mistakes during the legislative procedure (grounds for the use of urgent procedure were not established, and even the rules for urgent procedure were violated). The Court repeated and expanded on its reasoning related to material violations of the CSL amendments<sup>365</sup>. Among the material violations of the Constitution the Court listed were the breach of the principle of merit-based recruitment, the potential infringement of the human rights of candidates and the negative effects of the proposed amendments on the role of the FBiH CSA. At the level of the BD, it is planned in 2017, under special laws, to exclude from the civil service three out of seven senior managerial positions (the positions of the Director of the Finance Directorate, the Director of the Treasury and the Director of the Tax Administration)<sup>366</sup>.

The criteria for recruitment to senior managerial positions are formally clearly established for all levels, and candidates are required to carry out a public competition procedure similar to that for expert-level staff<sup>367</sup> and in line with the Principles. However, this was not the case during the validity and implementation period of the new but subsequently annulled CSL at the level of the FBiH, which established the so-called “category officials from Article 11a”<sup>368</sup>. As mentioned under Principle 1, it is hard to establish the true legal consequences of this Law, as no data has been provided and judiciary procedures are ongoing. On the basis of the annulled CSL, three governmental decrees were passed<sup>369</sup>, which the FBiH Government itself later annulled. There have been no measures taken to address the rest of the legal consequences (although, as reported during interviews, a number of internal acts have been amended). The current acting Director of the FBiH CSA still occupies the position, although he was appointed to the post under provisions that were subsequently annulled. This, along with the current practice in the FBiH<sup>370</sup> of appointing “acting heads”, is a serious challenge to merit-based recruitment.

In addition to attempts to amend the State CSL<sup>371</sup> during 2015 and 2016, there is an ongoing practice of appointing “acting heads” in State-level institutions, and merit-based recruitment under the open competition procedure was avoided in some cases<sup>372</sup>. Although there are no special provisions that

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<sup>364</sup> OECD (2016), *Monitoring Report: Bosnia and Herzegovina*, OECD Publishing, Paris, p. 23, <http://www.sigmaweb.org/publications/Monitoring-Report-2016-BiH.pdf>.

<sup>365</sup> The FBiH Constitutional Court Decision No. U-13/16 of 28 June 2016.

<sup>366</sup> Information received during interviews in the BD in March 2017.

<sup>367</sup> OECD (2016), *Monitoring Report: Bosnia and Herzegovina*, OECD Publishing, Paris, p. 23, <http://www.sigmaweb.org/publications/Monitoring-Report-2016-BiH.pdf>.

<sup>368</sup> *Ibid.*

<sup>369</sup> The FBiH Decree on Conditions and Procedures of Recruitment and Selection and Dismissal of Persons that are not Civil Servants in the Public Administration Bodies and Administrative Service, Official Gazette of the FBiH No. 23/17.

<sup>370</sup> According to data received from the FBiH PAR Coordinator, there were five acting heads appointed in 2016, and they still hold their positions.

<sup>371</sup> OECD (2016), *Monitoring Report: Bosnia and Herzegovina*, OECD Publishing, Paris, p. 24, <http://www.sigmaweb.org/publications/Monitoring-Report-2016-BiH.pdf>.

<sup>372</sup> Transparency International in BiH has published an analysis related to the issue of acting heads: Transparency International (2017), *Analiza imenovanja vršilaca dužnosti u institucijama Bosne i Hercegovine* [Analysis of Appointment

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define “acting heads” and the procedures for their appointment, the State-level legislation, states that appointments of senior civil servants should be made using the open competition procedure<sup>373</sup>.

The BiH CoM and the FBiH Governments can both nominate an acting head for an undefined time, without open competition, based on procedures that are unclear and not transparent.

There are some recent examples where the CoM appointed key senior civil servants as acting heads of State institutions without an open competition procedure<sup>374</sup>. In practice, however, it is not possible to establish if their selection is actually based on merit. The previously noted regular avoidance<sup>375</sup> of formal procedures also comprises the “acting heads” category. The RS CSL at least mentions this category and establishes criteria<sup>376</sup>. This is not the case in either the State or the FBiH.

At the BD level, there have also been no changes regarding the appointment of senior civil servants (senior civil servants are appointed for an indefinite period and undergo the same competition procedures as other civil servants). The new BD CSL<sup>377</sup> has a very restrictive definition of senior civil servants, which includes only seven positions<sup>378</sup>. The BD CSL defines the criteria that acting heads should fulfil, but the maximum duration of the appointment is not limited<sup>379</sup>.

At present, the rules for termination of employment for senior managerial staff are clearly established in the CSLs of all levels. They do not differ from those of expert-level staff for the senior managerial staff appointed for a fixed term of five years (this is the case for secretaries with special assignments in BiH and all senior civil servants in the RS), the expiry of their mandate is not an additional reason for termination of employment. When the mandate expires, they are appointed to an adequate post and their employment continues. Senior civil servants in the FBiH and the BD are appointed for an indefinite period, as they are at the State level for the majority of positions (except secretaries with special assignments).

Especially in the FBiH, after the annulment of the CSL and governmental decrees, the situation related to the dismissal of civil servants is unclear. Also, the tertiary legislation (ministerial acts on internal organisation) was initiated during that period, and there is no clear evidence of its consequences. With no official data, it is hard to establish the details of individual hiring and dismissals based on the procedures and acts concluded or started during the period of validation and implementation of the disputed legislation. The FBiH Government passed 14 decisions on agreements to change ministerial acts on the new internal organisation and systemisation of jobs on the basis of the amended CSL. After the Constitutional Court decision, those 14 decisions were annulled, but questions remain on concrete employment procedures within those institutions<sup>380</sup>. This and the other examples described at the levels of BiH and the RS indicate a constant political pressure on the appointment of senior civil servants, while there appears to be considerably less pressure to dismiss or demote already appointed managers.

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of Duties in Institutions of Bosnia and Herzegovina], Transparency International, Banja Luka, <https://ti-bih.org/analiza-imenovanja-vrsilaca-duznosti-u-institucijama-bosne-hercegovine/>.

<sup>373</sup> BiH CSL, Article 34.

<sup>374</sup> A recent example is the nomination of acting heads in the Public Procurement Agency and the Fund for Restitution in BiH (*Fond za povratak BiH*).

<sup>375</sup> OECD (2016), *Monitoring Report: Bosnia and Herzegovina*, OECD Publishing, Paris, p. 24, <http://www.sigmaweb.org/publications/Monitoring-Report-2016-BiH.pdf>.

<sup>376</sup> The RS CSL, Articles 41a and 42. An acting head can be appointed for a period up to 90 days without open competition. The conditions which the acting head has to fulfil are not regulated. Data on appointed acting heads in the RS is not available.

<sup>377</sup> The BD CSL, Official Gazette of the BD Nos. 09/14 and 37/15.

<sup>378</sup> Among these seven positions, there is only one acting head.

<sup>379</sup> The BD CSL, Article 49.

<sup>380</sup> There is a deadline of six months to prepare new acts, but clear legal restitution was not carried out.

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In view of the detected anomalies at all levels of government and the other factors analysed above, and despite the annulment of the disputed legislation at the FBiH level, the value for the indicator ‘Merit-based recruitment and dismissal of senior civil servants’ is 2.

| Merit-based recruitment and dismissal of senior civil servants   |   |   |   |   |   |   |
|--|---|---|---|---|---|---|
| This indicator measures the extent to which the legal framework and the organisation of recruitment and tenure conditions of the senior civil service support a professional senior management, free from undue political influence in access or termination of employment in senior civil service positions. This indicator relates to all competitions for senior positions, both external and internal. |   |   |   |   |   |   |
| Recruitment and dismissal in senior positions is treated under a separate indicator due to the importance of the role of this group of civil servants and the increased risk of politicisation and favouritism. High priority accorded to merit and competitiveness in the recruitment process reduces the possibility of political influence in appointments to such positions.                           |   |   |   |   |   |   |
| Overall indicator value  | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators   | Points             |
|--|--------------------|
| <b>Legal framework and organisation of recruitment and dismissal of senior civil servants</b>                      |                    |
| 1. Appropriateness of the scope for the senior civil service in legislation  | 2/3                |
| 2. Adequacy of the legislative framework for merit-based recruitment for senior civil service positions            | 8/15               |
| 3. Objectivity of criteria for the termination of employment of senior civil servants in the legislative framework | 4/4                |
| 4. Legislative protection of the rights of senior civil servants during demotion                                   | 2/2                |
| <b>Merit-based recruitment and termination of employment in senior civil service positions in practice</b>         |                    |
| 5. Application in practice of recruitment procedures for the senior civil service                                  | 1.5/9              |
| 6. Ratio of eligible candidates per senior-level vacancy   | 0/4 <sup>381</sup> |
| 7. Effectiveness of recruitment for senior civil service positions (%)   | 0/4                |
| 8. Women in senior civil service positions (%)   | 2/4                |
| 9. Stability in senior civil service positions   | 0/4                |
| 10. Dismissal decisions confirmed by the courts (%)  | 0/4                |
| 11. Implementation of final court decisions favourable to dismissed senior civil servants (%)                      | 0/4                |
| <b>Total<sup>382</sup></b>   | <b>19.5/57</b>     |

**The annulment of the amendments to the CSL at the FBiH level by the FBiH Constitutional Court has only partially protected the senior managerial level from direct political influence, because the legal consequences were not clearly restituted. There is a constant intention at all levels of government in BiH to allow direct or indirect political influence on appointments of senior managerial posts.**

<sup>381</sup> Here and hereafter, in this indicator, zero means that no data was provided.

<sup>382</sup> Point conversion ranges: 0-10=0, 11-19=1, 20-28=2, 29-37=3, 38-46=4, 47-57=5. SIGMA uses a rounding up convention when the total number of points for an indicator includes 0.5 points.

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

The salaries of civil servants in BiH are regulated by laws on salaries for each level of administration: at the State level, the Law on Salaries and Supplements in the institutions of Bosnia and Herzegovina<sup>383</sup>; at the level of the FBiH, the Law on Salaries and Supplements in Executive Bodies of the FBiH<sup>384</sup>; at the level of the RS, the Law on Salaries of the Employed in Administrative authorities of the Republika Srpska<sup>385</sup>; and at the level of the BD, the Law on Employees in the BD Administration<sup>386</sup>. Although civil servants' salaries at all levels are based on job classifications and pay grades, no Government in BiH has ever conducted a thorough analysis of jobs and their grading. It is, therefore, difficult to establish the principle of "equal pay for equal work".

All four laws on salaries regulate the basic principles (equal pay for equal work, transparency of salaries, fiscal accountability) and the basic elements to determine salaries of civil servants (pay grade, basic salary, coefficient, allowance and supplements). Each individual civil servant is classified in a particular pay grade by the head of the institution and confirmed by the Ministry of Finance (MoF). Payment of salaries is done centrally at each level of administration by the responsible MoF. There is no overall central register of salaries in BiH.

As there are many allowances and supplements regulated by these laws, it is difficult to determine the actual salaries of civil servants (and also the average salary for each category). The overall trend is to abolish some of the supplements (e.g. membership of managing and supervisory boards where civil servants are appointed). In addition, in 2016, the so-called extended labour relationship, in the case of the expiry of an appointed function was abolished.

With regard to verifiable data on CS salaries, the only data is the basic salaries prescribed by the laws. At the level of the BiH State, the minimum basic salary coefficient is 2.10 and the maximum 5.51 (ratio 1:2.62). At the level of the RS, the minimum basic salary coefficient is 7 and the maximum 20 (ratio 1:2.86). At the level of the FBiH, the minimum basic salary coefficient is 3.70 and the maximum 6.50 (ratio 1:1.76). This data shows incoherent and different policies for the determination of the basic salary across the BiH, and the ratio between the highest and the lowest basic salary is very low, especially in the FBiH.

Furthermore, managers have very limited resources and possibilities to stimulate civil servants with performance-related pay. Again, this is regulated in a completely different way at each level (a bonus of up to 20% per year at the State level, a special bonus per year of up to the equivalent of one basic monthly salary at the RS level, and no bonus at all at the FBiH level), which further indicates the fragmentation of the civil service salary system in BiH.

The attractiveness of the civil service could not be determined by means of comparable data on salaries, since no relevant statistical data was available or provided by any level.

Despite the formally solid legal framework for civil service salaries at each level of the administration, the overall system is not transparent and incoherent. The system is fragmented even further in the FBiH at the level of the cantons.

Given that coherence and fairness across the public service is not ensured in the different salary regulations, the value for the indicator 'Fairness and competitiveness of the remuneration system for civil servants' is 1.

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<sup>383</sup> Official Gazette of BiH Nos. 50/08, 35/09, 75/09, 32/12, 42/12, 50/12, 32/13, 87/13, 75/15, 88/15, 16/16 and 94/16.

<sup>384</sup> Official Gazette of BiH Nos. 19/02, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07, 43/09, 8/10 and 40/12.

<sup>385</sup> Official Gazette of the RS Nos. 31/14, 33/14 and 116/16.

<sup>386</sup> Official Gazette of the BD Nos. 14/06, 41/06 and 13/13.

### Fairness and competitiveness of the remuneration system for civil servants

This indicator measures the extent to which the legal framework and the organisation of the civil service salary system support fair and transparent remuneration of civil servants, in terms of both the legislative and organisational preconditions and the performance and fairness of the systems in practice.

Overall indicator value 0 **1** 2 3 4 5

| Sub-indicators  | Points             |
|---|--------------------|
| <b>Legal framework and organisation of the remuneration system</b>  |                    |
| 1. Legal obligation to base salaries on job classifications   | 2/2                |
| 2. Comprehensiveness, clarity and transparency in legal definitions of salary, criteria and procedures for allocation | 2/2                |
| 3. Availability of salary information   | 0/3 <sup>387</sup> |
| <b>Performance and fairness of the remuneration system in practice</b>  |                    |
| 4. Fairness in the allocation of base salaries in the job classification system                                       | 1/4                |
| 5. Base salary compression ratio  | 0/2                |
| 6. Managerial discretion in the allocation of bonuses   | 1/2                |
| 7. Motivational character of bonuses (%)  | 0/2 <sup>388</sup> |
| 8. Competitiveness of civil service salaries (%)  | 0/3 <sup>389</sup> |
| <b>Total<sup>390</sup></b>  | <b>6/20</b>        |

The salary system is based on job classification and pay grades, but fairness and coherence across the public service is not ensured due to different salary regulations in the State institutions, in both Entities and the BD. Recent legislation has introduced transparency, but increased fairness is required, based on thorough job evaluation.

*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 CSLs at all four levels of administration have specific provisions on the right to training for civil servants and the duty of the public service to provide it<sup>391</sup>. Other elements of professional development (appraisal, promotion and mobility) are also regulated formally within the laws and secondary legislation. Separate strategies for civil service training exist at the Entities' level (Training Strategy for Civil Servants in the Institutions of the FBiH 2016-2020<sup>392</sup> and Framework Training Plan for Civil Servants of the Public Administration Bodies in the RS for the Period 2015-2018<sup>393</sup>), while at the State level, the CS training strategy is a part of overall CSA mid-term planning. At the BD level, there is no strategy for civil service training. Annual training plans for civil servants are adopted regularly, with attention paid to the planning and execution of training sessions, but there are still no instruments for monitoring their effectiveness.

<sup>387</sup> Data not provided.

<sup>388</sup> Ditto.

<sup>389</sup> Ditto.

<sup>390</sup> Point conversion ranges: 0-3=0, 4-7=1, 8-10=2, 11-13=3, 14-16=4, 17-20=5.

<sup>391</sup> OECD (2015), *Baseline Measurement Report: Bosnia and Herzegovina*, OECD Publishing, Paris, p. 58, <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-BiH.pdf>.

<sup>392</sup> [http://www.obuke.adsfbih.gov.ba/images/Dokumenti/Strategije/Bos\\_Strategija\\_FBiH\\_obuka\\_2016-2020.pdf](http://www.obuke.adsfbih.gov.ba/images/Dokumenti/Strategije/Bos_Strategija_FBiH_obuka_2016-2020.pdf).

<sup>393</sup> <http://adu.vladars.net/latn/?page=76>.

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In BiH, four agencies are responsible for civil servants' development, and in practice inter-institutional co-operation is inadequate, transfer of knowledge is not systematic and mobility of trainers and trainees is rare (there are some trainers on both lists of the CSAs at the State level and FBiH level, but such mobility is not sufficiently promoted and is not in place at other levels). In such a complex setup, it should be noted that even professional training is carried out unsystematically and differently from level to level.

The legal framework and procedures for performance appraisal, promotion, dismissal and termination of employment are also regulated by the CSLs. Again, the legal framework exists at all levels, but implementation is not systematic. In addition, many activities concerning professional training and development are done as a mere formality, with the activity and its results having little impact on day-to-day practice. This is obvious for annual (or semi-annual) interviews and appraisals of training. These are carried out to a large extent<sup>394</sup>, but generally only as a matter of form. The results are not used for further development and planning of training sessions. Similarly, appraisals and interviews should help in evaluating whether the training sessions attended by employees had any impact on their work. Other elements of human resources development (e.g. a competency framework) are not reflected in the legislation at any level.

The funding of civil servant training is also not properly regulated. The amount of funds for training is extremely low, and institutions at all administrative levels continue to rely on international donor funds. This means that there is no stable and long-term funding in their budgets which could become the primary source of funding for training of civil servants.

In 2016, the training allocation from the budgets was BAM 66 300<sup>395</sup> at the State level, BAM 78 000<sup>396</sup> at the level of the FBiH and BAM 15 000<sup>397</sup> at the level of the RS. Data for the BD was not available. Available data shows that, on average, less than BAM 10<sup>398</sup> was spent on training per civil servant annually.

Performance appraisal is regulated by the CSLs and secondary legislation. The results of performance appraisal show that it is applied as a pure formality (at the State and RS levels, 98% of those appraised received the two highest grades) or not applied (in the BD). For the FBiH, data is not available.

The mobility and transfer of civil servants is formally established in the CSLs at all levels, but the use of these tools in practice is rare within each administration<sup>399</sup>, while no information was provided with regard to mobility and transfers between the different levels.

Considering that professional development of civil servants is heavily dependent on external factors, and that performance appraisal functions only formally, the value for the indicator 'Professional development and training for civil servants' is 2.

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<sup>394</sup> Except in the BD, where the appraisal of civil servants has not been performed since 2013, by the Mayor's decision No. 05-001113/13.

<sup>395</sup> EUR 34 000.

<sup>396</sup> EUR 40 000.

<sup>397</sup> EUR 7 700.

<sup>398</sup> EUR 5.

<sup>399</sup> Based on interviews with CSAs at all levels.

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| Professional development and training for civil servants  |   |   |   |   |   |   |
|---|---|---|---|---|---|---|
| This indicator measures the extent to which the legal framework and the organisation of training, performance appraisal, mobility and promotion support fair professional development in the civil service. |   |   |   |   |   |   |
| Overall indicator value   | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators  | Points             |
|---|--------------------|
| <b>Legal framework and organisation of professional development</b>                                 |                    |
| 1. Recognition of training as a right and a duty of civil servants                                  | 2/2                |
| 2. Co-ordination of the civil service training policy   | 2/3                |
| 3. Development, implementation and monitoring of training plans                                     | 1/3                |
| 4. Evaluation of training courses   | 1/2                |
| 5. Professionalism of performance assessments   | 2/4                |
| 6. Linkage between performance appraisals and measures designed to enhance professional achievement | 0/4                |
| 7. Clarity of criteria for and encouragement of mobility  | 1/2                |
| 8. Adequacy of legislative framework for merit-based vertical promotion                             | 2/2                |
| 9. Absence of political interference in vertical promotions   | 0/2                |
| 10. Right of civil servants to appeal against performance appraisal decisions                       | 2/2                |
| 11. Right of civil servants to appeal mobility decisions  | 2/2                |
| <b>Performance of professional development practices</b>  |                    |
| 12. Training expenditures in proportion to the annual salary budget (%)                             | 0/2 <sup>400</sup> |
| 13. Participation of civil servants in training   | 0/4 <sup>401</sup> |
| 14. Perceived level of meritocracy in the public sector (%)   | 2/5                |
| <b>Total</b> <sup>402</sup>   | <b>17/42</b>       |

The HR development of civil servants is regulated in the legislation at all levels, but in practice the resources for training are limited, in some cases 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 or it is not being used. The mobility and transfer of civil servants are regulated at all levels, but rarely used in practice.

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

The Law on the Agency for the Prevention of Corruption and the Co-ordination of the Fight Against Corruption (Law on the ACA) was adopted in 2009<sup>403</sup>. The Agency (ACA) has competencies on measures to promote integrity and prevent corruption (for State-level institutions only), but it has no investigative powers. An important step forward was the Law on Whistle Blower Protection<sup>404</sup>, adopted in 2013, which also covers only State-level institutions. The Law on the Protection of Persons Reporting Corruption was adopted at the RS level in June 2017<sup>405</sup>, but the implementation of this Law is yet to be

<sup>400</sup> Data not provided.

<sup>401</sup> Ditto.

<sup>402</sup> Point conversion ranges: 0-6=0, 7-13=1, 14-21=2, 22-29=3, 30-36=4, 37-42=5.

<sup>403</sup> Law on the Agency for the Prevention of Corruption and the Co-ordination of the Fight Against Corruption, Official Gazette of BiH Nos. 103/09 and 58/13.

<sup>404</sup> Official Gazette of BiH No. 100/13.

<sup>405</sup> Official Gazette of the RS No. 62/17.

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seen. The Entities and the BD are preparing their own laws, but they have not yet been adopted. The Strategy for the Fight against Corruption of BiH 2015-2019 and its Action Plan<sup>406</sup> were adopted in 2015. Institutions at all levels of government were involved in preparing the Strategy and in promoting the further development of countrywide integrity plans.

The CSL for the State level has no special provisions on the measures to prevent or fight against corruption in the civil service. The State level Law on the ACA defines corruption<sup>407</sup> for all civil servants at all levels of the BiH administration, but the ACA has no competencies to implement the State Law on the ACA at any level other than the State level institutions<sup>408</sup>. Furthermore, the ACA does not co-operate with the Central Election Committee, which is responsible for the register on the property of elected officials. The FBIH adopted a Law on the Withdrawal of Illegally Acquired Property<sup>409</sup>, but its implementation is ineffective<sup>410</sup>. For institutions at the State, the RS and the BD levels, such a regulation does not yet exist.

All State-level institutions have adopted integrity plans, and 54 anti-corruption plans and anti-corruption contact points were established in 46 of the 75 institutions<sup>411</sup>. ACA, which has 33 employees, is also providing 2 trainers for a variety of training courses on ethics and integrity in civil service. At the State level, training on integrity/anti-corruption is organised by the CSA.

In 2016, the FBIH Government adopted its Strategy for the Fight against Corruption 2016-2019 and an Action Plan. During the same year, the Anti-Corruption Team of the FBIH Government was set up to implement the Strategy.

As early as 2013, the RS adopted its own Strategy to fight against corruption (for 2013-2017) and formed its own Commission for Strategy implementation. The RS MoJ co-operates with ACA on information and data related to corruption exchange, by the end of 2017 all public sector institutions should adopt integrity plans. According to a SIGMA interview with RS officials, a new strategy is being developed, since the previous one expires at the end of 2017.

In 2016, the BD also formed a Commission for the prevention of corruption and co-ordination of activities. The draft Law being prepared would regulate the fight against corruption in the BD, and envisages the establishment of an independent anti-corruption institution.

The integrity of the civil service is formally well protected at the level of State institutions, with more progress in some institutions<sup>412</sup>. According to SIGMA's interview with the ACA, amendments to the Law on the ACA are being drafted to extend the ACA's competencies to the public sector at all levels of government. In the meantime, the Ministry of Defence<sup>413</sup> has adopted the Rulebook<sup>414</sup> on Assessing Corruption Sensitivity for individual positions. The methodology for assessing corruption sensitivity has been developed by the General Inspectorate of the Ministry, supported by donor funding<sup>415</sup>. The assessment led to better understanding of the risks associated with individual positions, and firmer

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<sup>406</sup> <http://www.apik.ba/zakoni-i-drugi-akti/strategije/default.aspx?id=412&langTag=bs-BA>.

<sup>407</sup> Law on the ACA, Article 2.

<sup>408</sup> OECD (2015) *Baseline Measurement Report: Bosnia and Herzegovina*, OECD, Paris, OECD Publishing, Paris, p. 60, <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-BiH.pdf>.

<sup>409</sup> Official Gazette of the FBIH, No. 71/14.

<sup>410</sup> Interview with the main prosecutor of the Sarajevo Canton, <http://www.avaz.ba/clanak/214780/burzic-zakon-o-oduzimanju-nezakonito-stecene-imovine-u-fbih-je-neeefikasan?url=clanak/214780/burzic-zakon-o-oduzimanju-nezakonito-stecene-imovine-u-fbih-je-neeefikasan>.

<sup>411</sup> Interview with the Agency for the Prevention of Corruption and the Co-ordination of the Fight Against Corruption, March 2017.

<sup>412</sup> Ditto.

<sup>413</sup> Interview with the BIH Ministry of Defence in March 2017.

<sup>414</sup> Rulebook No. 05-03-32-1-28-16/16 3of 16 August 2016 (hard copy obtained during the interview).

<sup>415</sup> Norwegian Centre for Integrity Building in the Defence Sector.

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control is proposed for jobs where the sensitivity index is found to be high<sup>416</sup>.

The perception of corruption in 2016 is at the same level as in 2014 and 2015. According to the latest Corruption Perception Index for 2016<sup>417</sup>, BiH is ranked 83rd among 176 countries with a score of 39 (0 being “highly clean” and 100 “highly corrupt”). The State-level Criminal Code and the laws of the FBiH, the RS and the BD do not exempt public sector employees from liability in cases of abuse. However, there is no data available from any of the levels on the number of individuals prosecuted for abuse of authority.

Disciplinary sanctions and procedures are regulated in the legislation<sup>418</sup>, but there is no distinction between serious and minor violations at the levels of the State and the FBiH. Also, full information on implementation across the public service is not available. During 2016, at the State level, there were eight disciplinary procedures, of which in five cases complaints were adopted and three complaints were rejected (four with sanctions and four with no sanctions). At the FBiH level, there were 25 disciplinary procedures, of which 22 were finalised (15 with sanctions and 7 with no sanctions). In the RS, there were seven disciplinary proceedings, for which the outcome was not provided. In the BD no data was provided. This data shows only that the number of procedures is very low at all levels.

Given the above, the value for the indicator ‘Quality of disciplinary procedures for civil servants’ is 2. Considering that there are some anti-corruption measures in place only for the State-level institutions and that the perception of corruption is still high in the country, the value for the indicator ‘Integrity of public servants’ is 1.

| <b>Quality of disciplinary procedures for civil servants</b>   |   |   |   |   |   |   |
|--|---|---|---|---|---|---|
| This indicator measures the extent to which the legal framework and the organisation of disciplinary procedures support individual accountability, professionalism and integrity of civil servants and safeguard civil servants against unfair and arbitrary disciplinary cases. |   |   |   |   |   |   |
| Overall indicator value  | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators   | Points             |
|--|--------------------|
| <b>Legal framework and organisation of disciplinary system</b>   |                    |
| 1. The adequacy of civil service legislation to uphold basic principles related to disciplinary procedures | 0/4                |
| 2. Compliance between disciplinary procedures and essential procedural principles                          | 6/6                |
| 3. Time limits for the administration to initiate disciplinary action and/or punish misbehaviour           | 0.5/2              |
| 4. Legislative safeguards for suspension of civil servants from duty                                       | 2/2                |
| <b>Performance of the disciplinary procedures</b>  |                    |
| 5. Disciplinary decisions confirmed by the courts (%)  | 0/4 <sup>419</sup> |
| <b>Total<sup>420</sup></b>   | <b>8.5/18</b>      |

<sup>416</sup> The criteria used in the assessment process include: 1) level of authority; 2) access to information/resources; 3) degree of discretionary powers / unclear (non-existent) legal provisions; 4) availability of effective supervision and control; and 5) exposure to undue pressure.

<sup>417</sup> Transparency International, Corruption Perceptions Index 2016, [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/news/feature/corruption_perceptions_index_2016).

<sup>418</sup> OECD (2015), *Baseline Measurement Report: Bosnia and Herzegovina*, OECD Publishing, Paris, p. 60 <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-BiH.pdf>.

<sup>419</sup> No data provided.

<sup>420</sup> Point conversion ranges: 0-3=0, 4-6=1, 7-9=2, 10-12=3, 13-15=4, 16-18=5.

| <b>Integrity of public servants</b>   |   |          |   |   |   |   |
|---|---|----------|---|---|---|---|
| This indicator measures the extent to which legislation, policies and organisational structures promote public sector integrity, whether these measures are applied in practice and how the public perceives the level of corruption in the public service. |   |          |   |   |   |   |
| The indicator does not address the internal administrative proceedings related to integrity, as that is covered by a separate indicator on disciplinary procedures.   |   |          |   |   |   |   |
| Overall indicator value   | 0 | <b>1</b> | 2 | 3 | 4 | 5 |

| Sub-indicators   | Points             |
|--|--------------------|
| <b>Legal framework and organisation of the public sector integrity</b>         |                    |
| 1. Completeness of the legal framework for public sector integrity             | 0/5                |
| 2. Existence of a comprehensive public sector integrity policy and action plan | 0/4                |
| 3. Implementation of public sector integrity policy                            | 1/3                |
| <b>Public sector integrity in practice and public perceptions</b>              |                    |
| 4. Use of investigations in practice   | 0/4 <sup>421</sup> |
| 5. Perceived level of bribery in the public sector by businesses (%)           | 1/4                |
| 6. Bribery in the public sector by citizens (%)                                | 2/4                |
| <b>Total<sup>422</sup></b>   | <b>4/24</b>        |

**The ACA, although having the mandate to steer reform in promoting integrity and preventing corruption across BiH is active at the State level only, due to the legal framework where the integrity plans and anti-corruption action plans of individual administrative bodies are mostly adopted. However, the ACA has limited powers to enforce these plans. Disciplinary sanctions and procedures are regulated in the legislation, but the available data shows that are rarely used in practice.**

**Key recommendations**

**Short-term (1-2 years)**

- 1) The CoM, the Governments of the FBiH and the RS should propose new CSLs and secondary legislation to ensure merit-based recruitment of senior management and expert-level civil servants.
- 2) The Government of the FBiH should remedy the legal consequences of the annulled CSL amendments.
- 3) The responsible institutions at all levels should propose unified rules for the recognition of the entrance exams across all levels of the administration.
- 4) The CoM and the Governments of the FBiH, the RS and the BD should provide the necessary funding for the professional development and training of the civil service.

**Medium-term (3-5 years)**

- 5) The CoM and the Governments of the FBiH, the RS and the BD should amend the relevant regulations so as to make the process of submitting applications less formalistic and less expensive for prospective civil service candidates.

<sup>421</sup> No data provided.

<sup>422</sup> Point conversion ranges: 0-3=0, 4-7=1, 8-11=2, 12-15=3, 16-19=4, 20-24=5.

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- 6) The CoM and the Governments of the FBiH, the RS and the BD should assure the support and necessary resources for the overall analysis of job evaluation, with a view to ensure the fairness and coherence of salaries across the public service.
- 7) The CoM and the Governments of the FBiH, the RS and the BD should assure political support and resources for promoting integrity and preventing corruption across the public service.



## ACCOUNTABILITY

### 1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015 - JUNE 2017

#### 1.1. State of play

The typology of administrative bodies remains unclear, at the State level, in the Federation of BiH (FBiH) and in the Republika Srpska (RS). The Brčko District (BD) has no official typology due to its smaller size and population. There is no results-oriented management system for bodies subordinated to ministries. Internal management of ministries at all levels is hampered by the centralisation of decision making and lack of practice of delegation of powers from the level of ministers to senior civil servants.

Laws on access to public information remain seriously flawed. In the RS, the appeals procedure against refusals of access to public information is not fully effective, as refusals do not have to be issued in the form of an administrative decision. There are no provisions at any level for promoting proactive transparency, such as listing an extensive catalogue of information to be published on the websites of public institutions. Furthermore, there are no institutions collecting and analysing statistical data on requests for public information.

While the mandate of the Ombudsman Institution is broad, financial independence of the Institution from the executive is not fully ensured. The level of implementation of its recommendations is low.

The efficiency of courts dealing with administrative cases has increased, but the average time needed for handling cases remains long, especially in the cantonal courts of the FBiH. Administrative judges do not have sufficient access to training, and there are no effective remedies against excessive length of judicial administrative proceedings.

A comprehensive legal framework enabling citizens to seek compensation for unlawful acts or omissions of state administration bodies exists. However, there is no data regarding application of those guarantees.

#### 1.2. Main developments

The following section describes the key changes in public administration in one key requirement<sup>423</sup> and main developments, based on the indicators used in the 2015 SIGMA Baseline Measurement reports.

Since 2014, the main developments in the area of accountability have been in relation to the Ombudsman Institution and access to administrative justice. The Ombudsman Institution adopted its operational strategy for the period 2016-2021<sup>424</sup>, specifying priority areas of intervention and plans for strengthening the organisational and technical capacities of the Institution. At the State level, the Law on Free Legal Aid was adopted in 2016, providing extensive rights to various forms of legal aid (e.g. legal representation, legal advice) in all proceedings before State-level institutions, including the Court of BiH<sup>425</sup>.

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<sup>423</sup> OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, [http://www.sigmaweb.org/publications/Principles-of-Public-Administration\\_Edition-2017\\_ENG.pdf](http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf).

<sup>424</sup> The Institution of Human Rights Ombudsman of Bosnia and Herzegovina, *Operational Strategy of the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina for the period of 2016 to 2021*, February 2016.

<sup>425</sup> State Law on Free Legal Aid, Official Gazette of BiH No. 83/2016.

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

No progress has been achieved with regard to SIGMA’s recommendations in the 2015 Baseline Measurement Report<sup>426</sup>. A proposal for amendments to the Freedom of Access to Information Act at the State level was prepared by the Ministry of Justice, but it did not address major drawbacks of the current legislation. It also weakened the current guarantees of the right to access to information by waiving the mandatory public interest test preceding any decision refusing access to public information. Thus, the withdrawal of the proposal is welcomed.

The response to recommendations of the Ombudsman Institution is another area posing constant challenges. The level of implementation of the Ombudsman’s recommendations by government bodies remains low, and there has been no significant support from the Parliaments at all levels to ensure a higher level of implementation.

The main area of progress is the efficiency of courts in dealing with administrative cases. The total number of administrative cases unresolved in all courts of the country at the end of the period has been reduced by 30% within two years. This resulted partially from a decrease in the influx of cases, but also from improved performance of first-instance courts at all levels.

**Table 1. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

|                     | 2015 Baseline Measurement indicator   | 2015 value                   | 2017 value        |
|---------------------|---|------------------------------|-------------------|
| <b>Qualitative</b>  | Extent to which the overall structure of ministries and other bodies subordinated to central government is rational and coherent. | 1                            | 1                 |
|                     | Extent to which the right to access public information is enacted in legislation and applied in practice.                         | 2                            | 2                 |
|                     | Extent to which the mechanisms are in place to provide effective checks and balances, and controls over public organisations.     | 3                            | 3                 |
|                     | Extent to which public authorities assume liabilities and guarantee redress.  | 1                            | 4 <sup>427</sup>  |
| <b>Quantitative</b> | Number of bodies reporting to the council of ministers, to the prime minister or to the parliament.                               | 51 <sup>428</sup>            | 51 <sup>429</sup> |
|                     | Share of public information requests refused in a given year by the supervisory authority.  | Not available <sup>430</sup> | Not available     |

<sup>426</sup> OECD (2015), *Baseline Measurement Report: Bosnia and Herzegovina*, OECD Publishing, Paris, <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-BiH.pdf>.

<sup>427</sup> There were no changes in the legal framework regarding public liability. The modified value is based on revised analysis of the laws.

<sup>428</sup> Forty-one institutions report to the BiH Council of Ministers (CoM), 3 to the Chairman of the CoM, and 7 to the State Parliamentary Assembly (excluding constitutional bodies). This indicator is calculated at the State level only.

<sup>429</sup> Ditto.

<sup>430</sup> Here and hereafter, “Not available” means that the data requested by SIGMA was not provided by the administration.

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|  |   |                       |                      |
|--|---|-----------------------|----------------------|
|  | Share of oversight institutions' recommendations to state administrative bodies implemented within two years <sup>431</sup> . | 40.4% <sup>432</sup>  | 40.9% <sup>433</sup> |
|  | Number of complaints submitted to the administrative court in a given year.   | 11 751 <sup>434</sup> | 9 490 <sup>435</sup> |
|  | Percentage of cases changed or returned for verification by the higher court.   | 22% <sup>436</sup>    | Not available        |
|  | Backlog of administrative cases.  | 13 535 <sup>437</sup> | 9 531 <sup>438</sup> |

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<sup>431</sup> Relates to the BiH Ombudsman Institution only.

<sup>432</sup> Relates to the BiH Ombudsman Institution: 57 recommendations fully implemented out of 326 issued. Recommendations partially implemented and under co-operations were excluded. Co-operation is a method for handling a case by the Ombudsman Institution, where a recommendation is not issued but the Institution seeks resolution of the case via less formalized communication and agreement with the relevant public institution.

<sup>433</sup> Relates to the Ombudsman Institution: 84 recommendations fully implemented out of 267 issued. Recommendations partially implemented and under co-operations were excluded. Data provided in this table are different from the calculations in Figure 3 due to methodological modifications. In Figure 3, partially implemented recommendations are included in the calculations and classified as recommendations that were not fully implemented.

<sup>434</sup> High Judicial and Prosecutorial Council.

<sup>435</sup> Ditto.

<sup>436</sup> Of 1 193 cases resolved, 265 cases were returned or changed by second-instance courts.

<sup>437</sup> High Judicial and Prosecutorial Council.

<sup>438</sup> Ditto.

## 2. ANALYSIS

This analysis covers five Principles for the accountability area grouped under one key requirement. It includes a summary analysis of the indicator used to assess against each Principle, including sub-indicators<sup>439</sup>, and an assessment of the state of play for each Principle. For each key requirement short- and medium-term recommendations are presented.

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

The values of the indicators assessing Bosnia and Herzegovina's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



### ***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.***

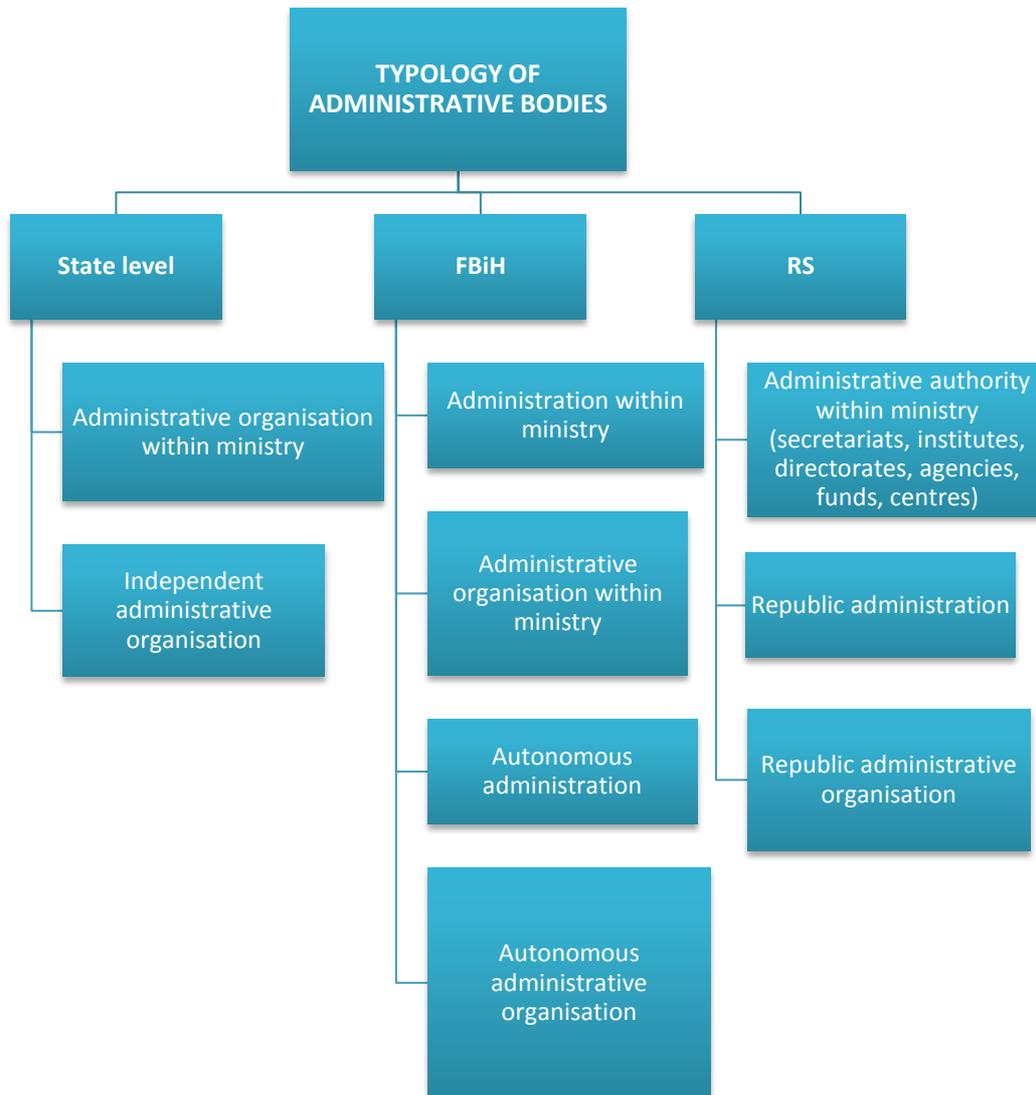
Although there are a separate legal frameworks for the organisation of the public administration at the State level and in the Entities, the institutional architecture of the governments follows a similar model (Figure 1). In all official typologies, two major types of non-ministerial administrative bodies are included: administrative bodies within ministries and autonomous (or independent) administrative bodies. While this pattern of organisation is widely disseminated in the Western Balkans, it lacks clarity in terms of functional criteria for differentiating between administrations within ministries and other administrative bodies. They all perform functions of the same nature: implementing laws and policies. There is no clear rationale stemming from the laws regulating organisation of the public administration for setting different accountability schemes for the two types of bodies.

In the case of the FBiH and the RS, the catalogue of organisational forms of government administration is more extensive, which is not due to the number of line ministries, but rather to subordinate bodies and

<sup>439</sup> OECD (2017), *Methodological Framework for the Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

their ways of establishment and functioning, although there are no fundamental differences in the nature of the functions performed by each type of institution. At the State level, the official typology of administrative bodies is simpler, due to the limited number of institutions existing at the State level, according to the constitutional distribution of competences. However, the Law on Ministries and Other Administrative Bodies of BiH establishing this typology explicitly allows for creation of administrative bodies of other types via special regulations.

**Figure 1. Typology of government bodies (excluding ministries) at the State level and in the Entities.**



Typology based on the following Laws:

**STATE LEVEL:** Law on Ministries and Other Administrative Bodies of BiH, Official Gazette of BiH Nos. 5/03, 2/03, 26/04, 42/04, 45/06, 88/07, 35/09, 59/09, 103/09, 87/12, 6/13 and 19/16.

**FBiH:** Law on Federal Ministries and Other Federal Administration Bodies, Official Gazette of the FBiH Nos. 58/02, 19/03, 38/05, 2/06, 8/06, 61/06, 61/06, 80/10 – Decision of the Constitutional Court, and 48/11.

**RS:** Law on Republic Administration, Official Gazette of the RS Nos. 118/08, 11/09, 74/10, 86/10, 24/12, 121/12, 15/16 and 57/16; Decree on Principles of Internal Organisation and Systematisation of Work Positions in Administrative Authorities of the RS, Official Gazette of the RS Nos. 18/09 and 105/11.

The organisation of the BD administration is simpler, due to the smaller size and population of the BD<sup>440</sup>.

<sup>440</sup>

The population of the BD was over 93 000 in 2013, and the total area is 448 km<sup>2</sup>.

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There is no typology of administrative bodies, but all non-departmental<sup>441</sup> institutions are listed in the Statute of the BD<sup>442</sup>. The Law on Public Administration of the BD specifies the scope of responsibility of each administrative body and provides for basic rules of their management<sup>443</sup>.

Comprehensive policies on the institutional development (planned organisational reforms) of public administration are lacking at all levels. The procedures for establishing, merging or abolishing administrative bodies at all levels contain no requirement for comprehensive *ex ante* analysis of the rationale and cost-effectiveness of planned changes in the government's structure according to predefined methodology.

Key mechanisms of bureaucratic accountability of administrative bodies are largely in place at all levels (especially in the RS), including the right of the relevant ministries to conduct inspections, request information or receive annual plans and reports of subordinated institutions. However, the regulation in this matter lacks clarity. At the State level, the governance scheme for administrative bodies is regulated by two laws of overlapping scope: the Law on Ministries and Other Administrative Bodies of BiH and the Law on Administration. Both Laws regulate the typology of administrative bodies and the procedure for establishing administrative organisations and confirmation of their managing bodies. Those aspects of government organisation are thus overregulated, but important elements of the governance scheme are missing. There is no comprehensive catalogue of powers assigned to ministries with regard to supervision and steering of non-ministerial administrative bodies.

Analysis of annual plans and reports of administrative bodies at all levels illustrates common problems due to the lack of a results-oriented management approach. Planning and reporting documents focus on detailed descriptions of activities, with no links to specific objectives, measurable performance indicators and targets. This practice also demonstrates ineffective steering of subordinated bodies by governments and ministries, as they do not set objectives for administrative bodies or hold them accountable for their performance.

Centralised management of ministries is another common feature of the administration at all levels, related to both the institutional architecture of governments and the internal management of ministries. The dominant form of administrative body is an administration (or authority) within a ministry with a very narrow scope of managerial autonomy. Legislation governing the internal organisation of ministries does not provide clear grounds for delegation of decision making to senior civil servants, so full responsibilities and powers relating to management of the institution are in the hands of the minister. Hence, the vast majority of decisions of a technical nature relating to human resource issues, financial management and public procurement are made by ministers themselves. This arrangement distracts ministers from focusing on policy-making functions and undermines the managerial autonomy of senior civil servants.

As a result of unclear typologies of administrative bodies, a lack of effective steering mechanisms for government institutions and limited access to data, the value for the indicator 'Accountability and organisation of central government' is 1.

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<sup>441</sup> In the BD, the term "department" is used, rather than "ministry".

<sup>442</sup> Statute of the Brčko District of Bosnia and Herzegovina, BiH Official Gazette No. 3/07.

<sup>443</sup> BD Law on Public Administration, Official Gazette of the BD No. 19/07 (amended Law: BD-BiH Official Gazette of the BD Nos. 2/08 and 43/08).

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| <b>Accountability and organisation of central government<sup>444</sup></b>   |   |          |   |   |   |   |
|--|---|----------|---|---|---|---|
| This indicator measures the extent to which the governance model of central government upholds lines of accountability and contributes to increasing the state's capacity, which is defined as the ability of the administrative apparatus of the state to implement policies, deliver services to citizens and support decision makers with policy advice. This includes assessing the legal and institutional framework for overall organisation of central government, as well as its implementation in practice. |   |          |   |   |   |   |
| Overall indicator value  | 0 | <b>1</b> | 2 | 3 | 4 | 5 |

| Sub-indicators   | Points             |
|--|--------------------|
| <b>Policy and legal framework for central government organisation</b>                        |                    |
| 1. Clarity and comprehensiveness of official typology of central government bodies           | 5/5                |
| 2. Adequacy of the policy and regulatory framework to manage central government institutions | 1/5                |
| 3. Strength of basic accountability mechanisms between ministries and subordinated bodies    | 3/5                |
| 4. Managerial accountability mechanisms in the regulatory and legislative framework          | 0/5                |
| <b>Central government's organisation and accountability mechanisms in practice</b>           |                    |
| 5. Consistency between practice and policy in government re-organisation                     | 0/4 <sup>445</sup> |
| 6. Number of public bodies subordinated to the parliament (%)                                | 0/4 <sup>446</sup> |
| 7. Accountability in reporting between central government bodies and parent ministry         | 0/4 <sup>447</sup> |
| 8. Effectiveness of basic managerial accountability mechanisms for central government bodies | 0/4                |
| 9. Delegation of decision-making authority within ministries                                 | 0/4                |
| <b>Total<sup>448</sup></b>   | <b>9/40</b>        |

**The official typologies of administrative bodies at the State level and in the Entities do not follow a rational concept for the institutional architecture of government. The distinction between the various types of institutions is not based on clear functional criteria. The effectiveness of management of government bodies at all levels is also hampered by centralisation and a lack of progress towards result-oriented management.**

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

There are separate laws regulating access to public information at the State level<sup>449</sup>, the FBiH<sup>450</sup> and the RS<sup>451</sup>. In the BD, the State-level legislation applies with some minor modifications (e.g. specifying fixed

<sup>444</sup> The notion of central government in the case of BiH is defined as the respective governments at the State, the FBiH, the RS and the BD levels.

<sup>445</sup> No data provided.

<sup>446</sup> Ditto.

<sup>447</sup> Ditto.

<sup>448</sup> Point conversion ranges: 0-6=0, 7-13=1, 14-20=2, 21-27=3, 28-34=4, 35-40=5.

<sup>449</sup> Freedom of Access to Information Act of BiH, Official Gazette of BiH Nos. 28/2000, 45/06, 102/09, 62/11 and 100/13).

<sup>450</sup> The FBiH Freedom of Access to Information Act, Official Gazette of the FBiH No. 32/200 (amended: Official Gazette of the FBiH No. 48/11).

<sup>451</sup> The RS Freedom of Access to Information Act, Official Gazette of the RS No. 20/2001.

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fees for copying documents) introduced by an administrative instruction adopted by the BD authorities<sup>452</sup>. The laws are harmonised to a large extent, but their quality and effective monitoring of implementation remain key challenges.

Definitions of public information in all laws are broad, and all natural and legal persons have the right to information, without discrimination based on nationality or other grounds. Applicants cannot be required to provide justification for their requests. Access to information can be refused on a limited number of grounds, but refusal must be preceded by a public interest test determining whether the need for protection of the values cited as grounds for refusal (e.g. defence, protection of public safety) surpasses the benefits for the public interest of disclosing the information requested.

However, in all acts governing access to public information, there are procedural flaws. The laws of the FBiH and the RS remain silent on appeal procedures against administrative silence or decisions refusing access to information. In the FBiH, the right to administrative appeal is guaranteed by the Law on Administrative Procedures (LGAP). In the RS, there is no adequate guarantee of the right to appeal, as responses to requests for public information are not provided in the form of a decision (or administrative act), but rather as a “notice”. As a result, there is no explicit guarantee of the right to appeal, although in court practice – at least in some cases – such a right has been recognised. State-level legislation (also applicable in the BD) explicitly guarantees the right to appeal decisions refusing access to information.

Effective mechanisms are not guaranteed for supervising implementation of the laws on access to public information. There is no institution aggregating statistical data on implementation of public information laws at any level. Information collected by the Ombudsman Institution is incomplete, as the majority of public bodies do not report on their implementation of these laws. In the FBiH and the RS, there are no institutions explicitly responsible for supervising implementation of the laws on access to public information, and there is no evidence of any supervision performed in this area. At the State level, the Administrative Inspectorate (AI) has been tasked with monitoring compliance in this matter. In 2016, the AI conducted over 20 inspections, but no sanctions have been imposed for violations of the State’s Freedom of Access to Information Act<sup>453</sup>.

Some functions relating to the monitoring of access to public information are assigned to the Ombudsman Institution. These include developing guidelines and recommendations, collecting statistical data and considering citizens’ complaints (but not appeals) regarding activities of public institutions with regard to public information requests. However, the Ombudsman Institution has no instruments to ensure compliance with its guidelines and recommendations or to ensure that all public bodies deliver statistics. Furthermore, its recommendations in response to citizens’ complaints are not binding on public institutions.

The lack of an effective legal and institutional framework results in a low level of transparency of public institutions. The number of complaints to the Ombudsman Institution about the practice of public institutions with regard to access to public information increased by over 30% in 2016. The largest share of complaints reveals problems with meeting statutory deadlines for reply to public information requests, providing complete information and performing the comprehensive public interest test to justify refusal of access to information<sup>454</sup>.

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<sup>452</sup> Instruction on implementation of the Freedom of Access to Information Act of BiH in Brčko District, Official Gazette of the BD No. 26/2004.

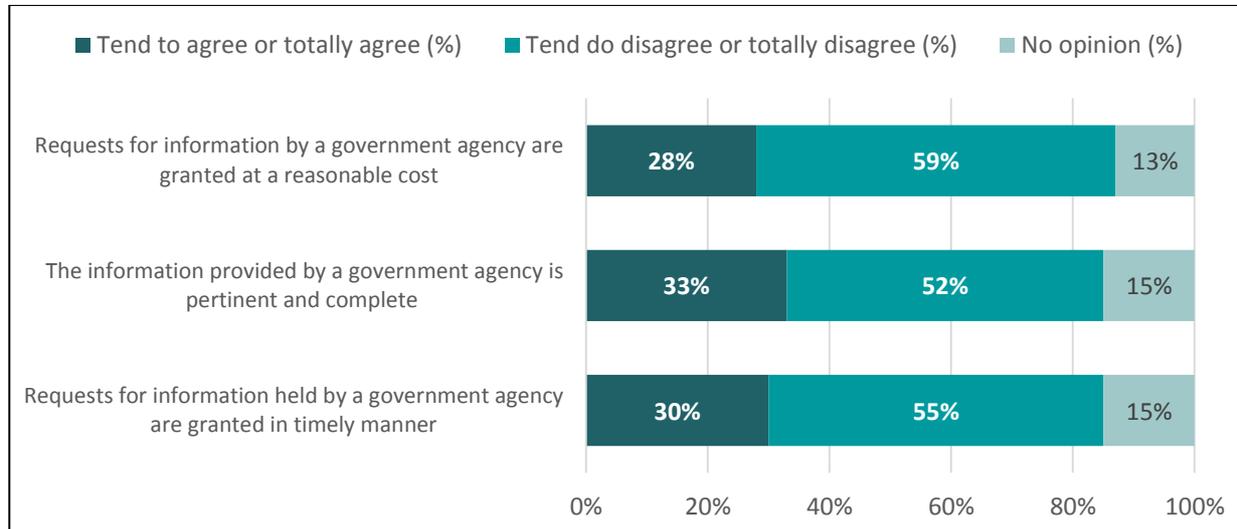
<sup>453</sup> Information provided by the AI.

<sup>454</sup> 2016 Annual Report on the Results of the Activities of the Institution of the Human Rights Ombudsman of BiH, [http://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2017032310003163eng.pdf](http://www.ombudsmen.gov.ba/documents/obmudsmen_doc2017032310003163eng.pdf).

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Moreover, the 2017 Balkan Barometer survey of the population in BiH shows that the majority of citizens are dissatisfied with the accessibility of public information and the quality of procedures in this area<sup>455</sup> (Figure 2).

**Figure 2. Perceived accessibility of public information by the population**



Source: 2017 Balkan Barometer survey, the Regional Cooperation Council.

In addition to obstacles in obtaining public information upon request, it should be also underlined that the legislation does not contain at any level a mandatory catalogue of information and documents to be released via government websites. This results in a low level of proactive transparency. A comprehensive review of the websites of government bodies at the State level, conducted by the non-governmental organisation Analitika in 2016, showed that 90% of the institutions failed to disclose budgetary data and over 60% of them did not publish their annual plans and work reports<sup>456</sup>. SIGMA's review of a sample of websites of public institutions at all levels provided similar results.

As a result of a lack of effective monitoring stimulating transparency of government institutions and low perceived accessibility of public information, the value for the indicator 'Accessibility of public information' is 2.

<sup>455</sup> Balkan Barometer, annual survey conducted by the Regional Cooperation Council (RCC), <http://www.rcc.int/seeds/results/2/balkan-opinion-barometer>

<sup>456</sup> Analitika (2016), *Proactive Transparency of Public Institutions in Bosnia and Herzegovina: From Principles to Practice*, <http://www.analitika.ba/publications/proactive-transparency-bosnia-and-herzegovina-principles-practice>, Analitika (September 2016), and Factsheet: "Proactive Transparency of Public Institutions in Bosnia and Herzegovina", <http://www.analitika.ba/publications/proactive-transparency-institutions-bosnia-and-herzegovina-good-practices>

| Accessibility of public information   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|
| This indicator measures the extent to which the legal and institutional framework regarding access to public information is established, promoting timely responses to public information requests free of charge or at a reasonable cost. It also covers the practical application of these legal requirements, with particular focus on proactive disclosure of public information and perceptions of availability of public information. |   |   |   |   |   |   |
| Overall indicator value   | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators  | Points       |
|---|--------------|
| <b>Legal and institutional framework for access to public information</b>                               |              |
| 1. Adequacy of legislation on access to public information  | 7/10         |
| 2. Comprehensiveness of monitoring on the implementation of legislation on access to public information | 0/5          |
| <b>Citizens' level of access to public information</b>  |              |
| 3. Proactivity in disclosure of information by state administration bodies on their websites (%)        | 2/5          |
| 4. Proactivity in disclosure of datasets by the central government (%)                                  | 2/5          |
| 5. Perceived accessibility of public information by the population (%)                                  | 0.5/2.5      |
| 6. Perceived accessibility of public information by businesses (%)                                      | 0.5/2.5      |
| <b>Total<sup>457</sup></b>  | <b>12/30</b> |

**The legal framework fails to promote proactive disclosure of public information at all levels. There are no mechanisms for monitoring and supervising implementation of the laws of free access to information. As a result, the transparency of public institutions across BiH is low.**

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

Among oversight bodies, only the Ombudsman Institution covers the whole country. The Ombudsman Institution comprises three Ombudsmen (ethnically-based nominations) acting independently, with a formula for rotating co-ordination of management of the Institution<sup>458</sup>. The mandate of the Ombudsman Institution has been formulated in line with international standards. No institutions of the executive branch are excluded from the oversight of the Ombudsman Institution, and the statutory mission of the Institution includes both protection and promotion of human rights.

However, the financial independence of the Institution remains a concern, as it must submit its budgetary proposals to the Ministry of Finance, rather than directly to the Parliamentary Assembly of BiH. This arrangement contravenes international standards requiring a lack of interference from the executive in the financial management of ombudsman institutions. A proposed new Law on Ombudsman for Human Rights of BiH, drafted by the Ministry of Human Rights and Refugees in 2015, envisaged a budgetary procedure fully compatible with these standards. However, the proposal failed to gain support in the Parliamentary Assembly of BiH, despite the positive opinion of the Venice Commission<sup>459</sup>.

The Ombudsmen can initiate cases upon request, but also *ex officio*. They enjoy extensive investigative

<sup>457</sup> Point conversion ranges: 0-5=0, 6-10=1, 11-15=2, 16-20=3, 21-25=4, 26-30=5.

<sup>458</sup> Law on Ombudsman of BiH, Official Gazette of BiH Nos. 32/00, 19/02, 35/04 and 32/06.

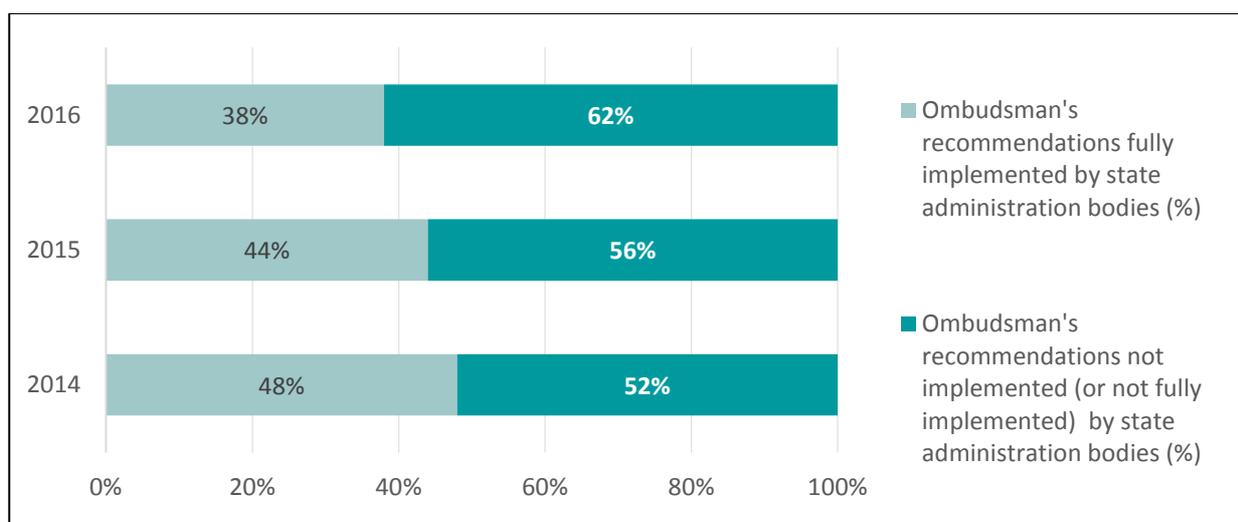
<sup>459</sup> Venice Commission (European Commission for Democracy through Law), Opinion on the Draft Law on Ombudsman for Human Rights of Bosnia and Herzegovina, adopted by the Venice Commission at its 104th Plenary Session (Venice, 23-24 October 2015), [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2015\)034-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)034-e).

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powers, including access to information, documents and premises of public authorities. It should be noted, however, that the Ombudsman Institution has no competence to take cases to the Constitutional Court for the purpose of testing the constitutionality of legislation.

Public institutions are required to respond to recommendations within the deadline set by the Ombudsman Institution. However, the share of recommendations fully implemented by the administration has been gradually decreasing in recent years, and it dropped below 38% in 2016 (Figure 3). Particularly concerning is the large number of recommendations to which the institutions addressed by the Ombudsman do not even respond. In 2016, of the 267 recommendations issued, 59 were ignored, despite the clear legal obligation to respond.

**Figure 3. Implementation of Ombudsman recommendations (2014-2016)**



Source: Annual Reports of the Ombudsman Institution (cases where a co-operation procedure was established are excluded).

There are separate court systems and state audit institutions (SAIs) at the State, the Entity and the BD levels. The SAIs lack the status of constitutional bodies at all levels. There are statutory safeguards against influence of the executive on financial and operational management of the institutions, however, neither the SAI laws nor any other laws regulate protection of the institutions by a Supreme Court against interference with their independence. They enjoy sufficient investigative powers, including access to documents.

With regard to the courts, there is a strong central institution, the High Judicial and Prosecutorial Council (HJPC), which is responsible for appointing judges, setting criteria for their performance evaluations, handling disciplinary cases and aggregating statistical data about judicial performance. The Law on the HJPC<sup>460</sup> and additional regulations issued by the HJPC<sup>461</sup> establish a uniform procedure for the selection of judges in all of the courts in BiH. Information on vacancies for judicial functions is publicly available, and selection procedures are based on a review of professional qualifications.

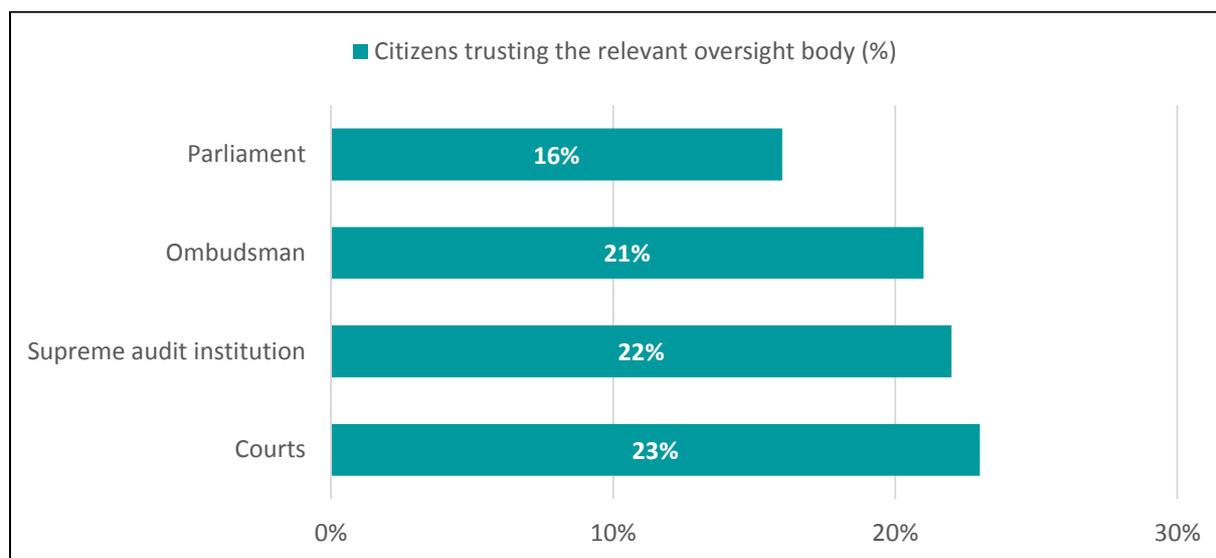
There is a low level of trust in all oversight institutions, including the Parliaments, SAIs and courts. Furthermore, only around 30% of the population believe that the Ombudsman Institution, the SAIs and judiciary are capable of effectively scrutinising the Governments' work. Citizens have greater trust (nearly 40%) in the capacity of civil society organisations to carry out such scrutiny.

<sup>460</sup> Law on High Judicial and Prosecutorial Council of BiH, Official Gazette of BiH No. 25/04.

<sup>461</sup> Rules on qualifying written test candidates for judicial functions in BiH, Official Gazette of BiH Nos. 78 /14, 45/15 and 48/16.

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**Figure 4. Citizens' trust in oversight institutions**



Source: 2017 Balkan Barometer survey, the Regional Cooperation Council

In view of the situation described above, the value for the indicator 'Effectiveness of scrutiny of public authorities by independent oversight institutions' is 2.

**Effectiveness of scrutiny of public authorities by independent oversight institutions**

This indicator measures the extent to which there is a functioning system of oversight institutions providing independent and effective supervision over all state administration bodies. The strength of the legislative framework is assessed, as well as the effectiveness of oversight institutions in changing practices in the state administration and building trust among the population.

Overall indicator value 0 1 **2** 3 4 5

| Sub-indicators   | Points       |
|--|--------------|
| <b>Legal and institutional framework for oversight institutions</b>  |              |
| 1. Legislative safeguards for the independence and adequate mandate of the ombudsman institution               | 8/10         |
| 2. Legislative safeguards for the independence and adequate mandate of the SAI                                 | 8/10         |
| 3. Legislative safeguards for the independence of courts and judges  | 9/10         |
| <b>Effectiveness of oversight institutions</b>   |              |
| 4. Implementation of ombudsman recommendations (%)   | 2/8          |
| 5. Implementation of SAI recommendations (%)   | 0/8          |
| 6. Perceived independence of oversight institutions by the population (%)                                      | 0/5          |
| 7. Trust in oversight institutions by the population (%)   | 0/5          |
| 8. Perceived ability of oversight institutions and citizens to effectively hold the government accountable (%) | 1/5          |
| <b>Total<sup>462</sup></b>   | <b>28/61</b> |

<sup>462</sup> Point conversion ranges: 0-10=0, 11-20=1, 21-30=2, 31-40=3, 41-50=4, 51-61=5.

**The Ombudsman Institution does not enjoy full financial independence from the executive, and the share of its recommendations that were fully implemented by the administration has decreased. Citizens have little trust in the Ombudsman Institution and other oversight institutions.**

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

The legal regime for judicial review of administrative acts is decentralised. Separate laws on administrative disputes have been adopted at the State<sup>463</sup>, the BD<sup>464</sup>, the FBiH<sup>465</sup> and the RS<sup>466</sup> levels. They are harmonised with regard to the key principles of judicial administrative proceedings. Extensive rights to challenge administrative acts and administrative silence are secured.

Lawsuits are handled by the courts of general jurisdictions, but judges are specialised in administrative cases. The court may repeal an administrative act and return the case for reconsideration by the relevant administrative body. In exceptional situations only, the court may assume full jurisdiction, for example when a case comes back to the court after an administrative body failed to follow the court's instructions in a previous judgement on the case. There are some instruments enhancing execution of court judgements. These include fines for institutions that fail to adopt a new administrative act (to replace one repealed by the court) within deadlines set by the law or guidelines set by the court.

The regulatory framework for legal aid and court fees is decentralised to an even larger extent, as separate laws were adopted not only at the State, the RS and the BD levels<sup>467</sup>, but also in every canton of the FBiH. The basic fee for filing an administrative case, harmonised across the country, is relatively high, representing 8% of the average monthly salary. However, there are exemptions from court fees based on the material situation of the applicant.

There are no effective remedies against excessive length of judicial administrative proceedings. Affected applicants may file a case against the final court ruling to the Constitutional Court, seeking compensation for violation of right to trial within a reasonable time, as guaranteed by the European Convention of Human Rights<sup>468</sup>. However, this instrument does not serve as an effective remedy, as it does not enable acceleration of the pending proceedings.

The efficiency of courts dealing with administrative cases differs across the country (Figure 5). The first-instance courts at the State, the BD and the RS levels manage to handle cases more quickly than the European average<sup>469</sup>. Compared to 2014, all first-instance courts in BiH have managed to reduce the calculated disposition time by more than 100 days.

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<sup>463</sup> State Law on Administrative Disputes (LAD), Official Gazette of BiH Nos. 19/02, 88/07, 83/08 and 74/10.

<sup>464</sup> RS LAD, Official Gazette of the RS Nos. 109/05 and 63/11.

<sup>465</sup> FBiH LAD, Official Gazette of the FBiH No. 11/05.

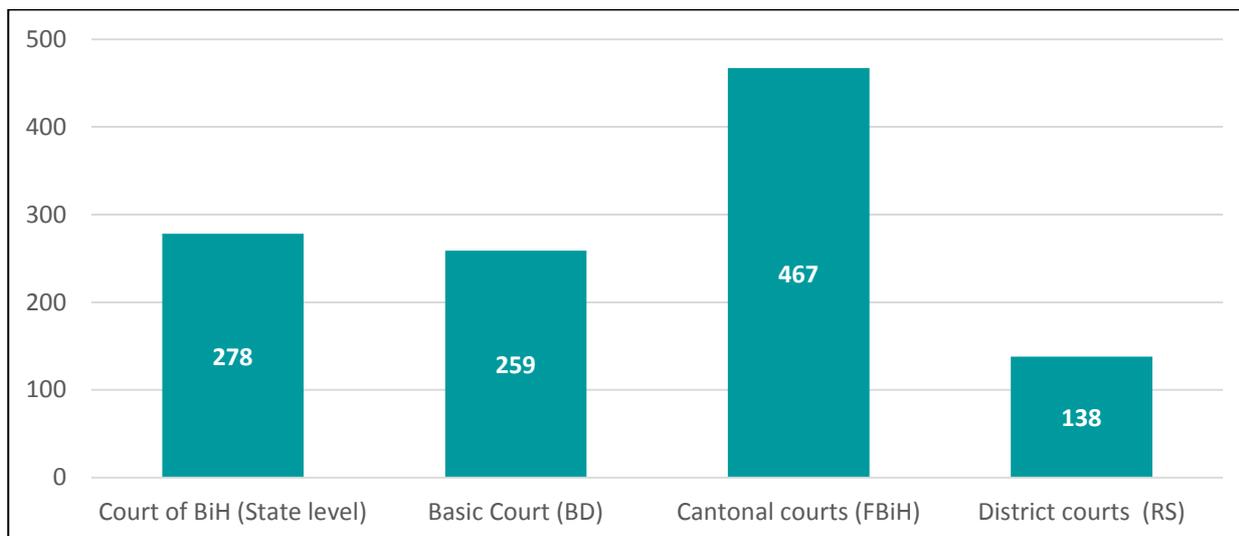
<sup>466</sup> BD LAD, Official Gazette of the BD No. 4/00.

<sup>467</sup> State Law on Free Legal Aid, Official Gazette of BiH No. 83/2016; RS Law on Free Legal Aid, Official Gazette of the RS Nos. 120/08, 89/13 and 63/14; BD Law on the Office of Free Legal Aid, Official Gazette of the BD No. 18/07.

<sup>468</sup> The European Convention on Human Rights applies directly to the legal system of BiH.

<sup>469</sup> The European Commission for the Efficiency of Justice – CEPEJ (2016), *European Judicial Systems – Efficiency and Quality of Justice*, CEPEJ Studies No. 23, Council of Europe, Strasbourg, France. In 2014, the average calculated disposition time in first-instance administrative courts in 45 European countries was 341 days.

**Figure 5. Calculated disposition time (in days) in first-instance courts dealing with administrative cases (2016)**



Source: Data provided by the High Judicial and Prosecutorial Council.

Obtaining a ruling in the cantonal courts of the FBiH still takes around 16 months, and over 20% of cases are pending for more than two years (Table 2). In other levels of BiH, first-instance courts handle the vast majority of administrative cases within a year.

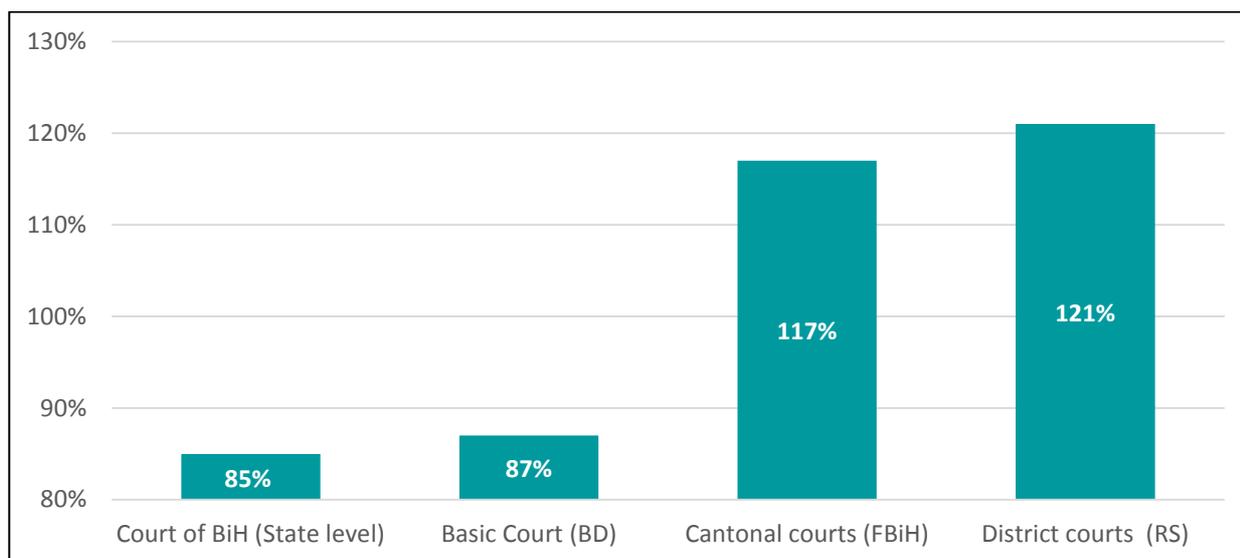
**Table 2. Share of administrative cases pending in first-instance courts (%)**

| Court                             | Cases pending for more than 1 year | Cases pending for more than 2 years | Cases pending for more than 3 years |
|-----------------------------------|------------------------------------|-------------------------------------|-------------------------------------|
| <b>Court of BiH [State level]</b> | 13%                                | 0%                                  | 0%                                  |
| <b>Basic Court [BD]</b>           | 7%                                 | 0%                                  | 0%                                  |
| <b>Cantonal courts [FBiH]</b>     | 57%                                | 22%                                 | 2%                                  |
| <b>District courts [RS]</b>       | 5%                                 | 0%                                  | 0%                                  |

Source: Data provided by the High Judicial and Prosecutorial Council.

It should be noted that in 2016 the cantonal courts in the FBiH (as well as the district courts in the RS) were successful at reducing their backlog (Figure ). They managed to achieve a positive clearance rate, paving the way for further shortening the average time needed for disposing of cases.

**Figure 6. Clearance rate in first-instance courts dealing with administrative cases (2016)**



Source: Data provided by the High Judicial and Prosecutorial Council.

The workload of judges and the courts is monitored on a real-time basis, thanks to an advanced case management system (CMS) functioning in all courts in the country. CMS makes it possible to electronically register cases and all events relating to them, digitalise documents, search files and decisions, and generate statistical reports about judicial performance. In addition, CMS provides a mechanism for random allocation of cases to judges, guaranteeing fair distribution of workload among judges and preventing arbitrary allocation by court presidents or other bodies<sup>470</sup>.

However, other technical aspects of judicial work remain a concern. Judges dealing with administrative cases do not have sufficient support of legal assistants. For example, no legal assistants are assigned to the administrative divisions of the Supreme Court of the FBiH and the Supreme Court of the RS. In other courts, the number of assistants is not proportional to the number of judges. Moreover, the access to continuous training for judges is limited. Training for judges in the FBiH and the RS is provided by the Entity Judicial and Prosecutorial Training Centres. However, the Court of BiH, is not covered by their training scheme nor any other.

Taking into account the discrepancies in the performance of the courts and the little trust that citizens have in the judiciary, the value for the indicator 'Fairness in handling of administrative judicial disputes' is 2.

<sup>470</sup> Information provided during interviews with representatives of the courts from the State level and Entities. See also Kmezić, M. (2016), *EU Rule of Law Promotion: Judiciary Reform in the Western Balkans*, Routledge, London.

### Fairness in handling of administrative judicial disputes

This indicator measures the extent to which the legal framework and the organisation of courts support fair treatment in administrative judicial disputes. It covers the main criteria for an effective judiciary in efficiency, quality (including accessibility) and independence. Outcomes, in terms of case flow and public perceptions of independence are also measured.

Overall indicator value 0 1 **2** 3 4 5

| Sub-indicators   | Points             |
|--|--------------------|
| <b>Legal framework and organisation of the judiciary</b>                                     |                    |
| 1. Adequacy of the legislative framework for administrative justice                          | 5/6                |
| 2. Accessibility of administrative justice   | 2/4                |
| 3. Effectiveness of remedies against excessive length of proceedings in administrative cases | 0/2                |
| 4. Use of an electronic case-management system   | 1/1                |
| 5. Public availability of court rulings  | 1/2                |
| 6. Organisation of judges handling administrative justice cases                              | 2/5                |
| <b>Performance of the administrative the justice system</b>                                  |                    |
| 7. Perceived independence of judicial system by the population (%)                           | 0/5                |
| 8. Calculated disposition time of first-instance administrative cases                        | 2/5                |
| 9. Clearance rate in first-instance administrative courts (%)                                | 3/5                |
| 10. Cases returned for retrial by a higher court (%)   | 0/5 <sup>471</sup> |
| <b>Total<sup>472</sup></b>   | <b>16/40</b>       |

**Efficiency in dealing with administrative cases has improved in all courts, but it remains uneven across the country, which hampers equality in access to justice. Judges do not have sufficient support from legal assistants, and the continuous training scheme does not cover all judges dealing with administrative cases.**

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

The right to seek compensation for damage caused by unlawful actions or omissions of administrative bodies is explicitly ensured in the legal system at the levels of the State, the Entities and the BD, where the 1978 Yugoslav Law on Obligations was recognised<sup>473</sup>. In addition, the State-level Law on Administration and the RS Law on Republic Administration enshrine the general principle of liability for damages caused by an administration body to a physical or legal person with its illegal actions<sup>474</sup>.

The Law on Obligations provides the most comprehensive legal framework for public liability, as it regulates detailed principles of liability and establishes the procedure for seeking compensation. With regard to public liability, the provision of the Law on Obligations that regulates the liability of a legal person for damage caused by its organs applies<sup>475</sup>. While this provision does not explicitly refer to the liability of public bodies, it is clear that it also covers damage caused by activities and omissions of the

<sup>471</sup> No data provided.

<sup>472</sup> Point conversion ranges: 0-6=0, 7-13=1, 14-20=2, 21-27=3, 28-34=4, 35-40=5.

<sup>473</sup> Official Gazette of the FBiH No. 29/03; Official Gazette of BiH No. 2/92; Official Gazette of the RS Nos. 17/93 and 74/04.

<sup>474</sup> Article 8 of the State Law on Administration and Article 10 of the RS Law on Republic Administration.

<sup>475</sup> Law on Obligations, Article 172.

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administration and private bodies performing public functions. The scope of compensation is broad, as it encompasses both direct loss and lost profits. A lawsuit can be submitted to the courts of general jurisdiction, in accordance with the procedure for civil cases. The time limit for submitting a case to a court handling such cases is three years.

There is no mechanism in place for monitoring public liability cases at any level. Consequently, no data is available to illustrate the implementation in practice of these legal guarantees of the right to compensation.

Due to the lack of information about the practical implementation of statutory guarantees of public liability, the value for the indicator 'Functionality of public liability regime' is 2.

| Functionality of public liability regime   |   |   |   |   |   |   |
|--|---|---|---|---|---|---|
| The indicator measures the extent to which there is a functioning system guaranteeing redress or compensation for unlawful acts and omissions of public authorities. It examines the strength of the legislative framework for public liability and whether it is applied in practice. Wrongful acts of the state against civil servants are excluded. |   |   |   |   |   |   |
| Overall indicator value  | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators  | Points      |
|---|-------------|
| <b>Legal framework for public liability</b>   |             |
| 1. Comprehensiveness of the scope of public liability                               | 1/1         |
| 2. Coverage of the public liability regime to all bodies executing public authority | 1/1         |
| 3. Non-discrimination in seeking the right to compensation                          | 1/1         |
| 4. Efficiency and fairness of the procedure for seeking compensation                | 3/3         |
| <b>Practical implementation of the right to seek compensation</b>                   |             |
| 5. Application of the public liability mechanism in the court in practice           | 0/3         |
| 6. Proportion of entitled applicants receiving payments                             | 0/3         |
| <b>Total<sup>476</sup></b>  | <b>6/12</b> |

**The legal framework for public liability is in place at all levels, but the lack of data on its practical implementation makes it impossible to assess its functioning in practice.**

**Key recommendations**

**Short-term (1-2 years)**

- 1) The official typologies of administrative bodies at all levels should be simplified and clarified to ensure that all bodies subordinated to the Governments are subject to a uniform and comprehensive accountability scheme in terms of planning (including financial planning), reporting and supervision.
- 2) The internal management of the ministries at all levels should be decentralised, by providing clear legal grounds for delegation of decision-making from the level of minister to senior civil servants.
- 3) The Law on the Ombudsman should be amended to eliminate direct impact of the executive on the budget of the Ombudsman Institution.
- 4) In co-operation with authorities at the levels of the State and the FBiH, the High Judicial and Prosecutorial Council should develop a plan to reduce the backlog of administrative cases, including

<sup>476</sup> Point conversion ranges: 0-2=0, 3-4=1, 5-6=2, 7-8=3, 9-10=4, 11-12=5.

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the temporary or permanent appointment of new judges and the provision of adequate support from legal assistants.

**Medium-term (3-5 years)**

- 5) A result-oriented management culture should be introduced among administrative bodies at all levels, with procedures and practices to ensure that administrative bodies are assigned responsibility for delivering measurable outputs and outcomes and that progress towards them is measured through performance indicators and targets.
- 6) A comprehensive strategy for promoting transparency among public institutions should be developed at all levels. At a minimum it should include: a) an extensive catalogue of information to be provided on the websites of public institutions; b) effective supervision of compliance with laws on access to public information, including sanctions; and c) aggregated statistical data on public information requests.
- 7) The Governments at all levels should introduce mechanisms to monitor court cases that result in the liability of the respective Governments, 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: MAY 2015 – JUNE 2017

#### 1.1. State of play

A common service-delivery strategy is in place at all levels of the administration in Bosnia and Herzegovina (BiH). The Public Administration Reform (PAR) Strategy was adopted ten years ago together with its Action Plan, followed by a Revised Action Plan 1 (RAP1). Even though the two action plans have formally expired, activities on administrative simplification and electronic government (e-government) continue to be implemented in the institutions of the State, the Federation of BiH (FBiH), the Republika Srpska (RS) and the Brčko District (BD).

However, complex territorial organisation and administration, as well as politics, have prevented the Governments from making noticeable progress in citizen-oriented service delivery. The latest implementation report of late 2016 suggests that progress in administrative simplification and e-government has been made at implementation levels of 68% and 49% respectively, which is in stark contrast to the almost total absence of any tangible improvements or impacts in these areas. Delays in the receipt of personal documents have been diminished as a result of a modern, countrywide infrastructure. Business registration has undergone major simplification in the RS. Overall, however, improvements in the delivery of services to citizens have been modest.

Service delivery and administrative behaviour are inconsistent due to the parallel legal frameworks for administrative procedures. Different Laws on General Administrative Procedures (LGAPs) are being implemented at the levels of the State, both Entities and the BD. The LGAPs provide general safeguards against maladministration, but they lack strong provisions on electronic communication and on the “once only” provision of information. A major challenge is the harmonisation of specialised legislation with the LGAPs as, across all levels, the resources dedicated to harmonisation are too few to effectively reduce and avoid the administrative burdens entailed by specialised legislation. Harmonisation is further complicated in the FBiH as a result of cantonal jurisdiction in many areas of administrative service delivery, e.g. personal documents or business registration. The harmonisation of administrative procedures across all levels is very unlikely in the short- or medium-term, as it is not considered to be a political priority.

No real progress has been made in the deployment of critical tools that enable better service delivery. No central standards for service delivery have been established, and no effective monitoring of service-delivery performance has been carried out. A common approach to quality management is slowly developing at the State level, but is otherwise absent. User engagement to improve service delivery is rare at all levels. Modern enablers, such as digital signature and interoperability, have been at a standstill for ten years and four years respectively, despite good preconditions such as the national ID card with an integrated electronic chip. Current developments could lead to a breakthrough with regard to the digital signature. This issue is politically charged, however, which increases the risk of further stalemates and fragmented solutions.

The territorial and administrative set-up means that procedures and requirements vary considerably, not only between the Entities and the BD, but even across individual cantons in the case of the FBiH. The only one-stop shop has been set up in the RS for business registration. Otherwise, no single window or one-stop shop exists in BiH for either businesses or citizens. The digitisation of services has not been used effectively to facilitate access to public services or improve their quality. Electronic data exchanges between institutions, for example, are set up to serve policy objectives, such as the fight against money laundering rather than to reduce burdens on citizens and businesses (e.g. by removing or simplifying information obligations).

Policies to facilitate access to public services for people with disabilities are negatively affected by the lack of co-ordination between different levels of the administration. The absence of shared fundamental definitions in legislation and in statistical methodologies makes it almost impossible to monitor service-delivery arrangements for people with disabilities, despite the numerous disabilities resulting from the last war.

## 1.2. Main developments

The following section describes key changes in the public administration for each key requirement<sup>477</sup> and main developments, based on the indicators used in the SIGMA 2015 Baseline Measurement Reports.

Few developments have taken place in the area of service delivery. The implementation of activities is still based on the 2006 PAR Strategy and the RAP1, covering the 2011-2014 period. Amendments to the LGAPs in the FBiH and the RS are planned, but for the moment no detailed time frames have been set and no intentions to adopt a harmonised approach have been stated.

In 2017, the BiH Council of Ministers (CoM) mandated BiH institutions to implement the Common Assessment Framework (CAF) for quality management<sup>478</sup>. The Public Administration Reform Co-ordinator's Office (PARCO) has been designated to assist in this process and to monitor implementation.

Overall, however, an almost total standstill has been observed on important topics such as the measurement of user satisfaction, monitoring of service-delivery performance, development of interoperability and electronic-data exchanges between institutions, and creation of a national digital-signature framework. The lack of progress in these critical areas relates to all levels, as does the lack of co-ordination across the levels.

**Table 1. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**<sup>479</sup>

|                            | 2015 Baseline Measurement indicator   | 2015 value | 2017 value       |
|----------------------------|---|------------|------------------|
| Qualitative <sup>480</sup> | Extent to which citizen-oriented policy for service delivery is in place and applied.       | 2          | 2                |
|                            | Extent to which policy and administrative preconditions for e-service delivery are applied. | 1          | 2                |
|                            | Extent to which the legal framework for good administration is in place and applied.        | 2          | 4 <sup>481</sup> |

<sup>477</sup> OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, [http://www.sigmaweb.org/publications/Principles-of-Public-Administration\\_Edition-2017\\_ENG.pdf](http://www.sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf)

<sup>478</sup> BiH CoM Conclusion (2017), No. 05-07-1-310-11/17.

<sup>479</sup> OECD (2015), *Baseline Measurement Report: Bosnia and Herzegovina*, OECD, Paris, <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-BiH.pdf>.

<sup>480</sup> Qualitative indicators are calculated based on the assessment of the State level only, excluding both Entities and the BD.

<sup>481</sup> There were no changes in the legal framework. The modified value is based on revised analysis of the laws.

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|                                    |   |                      |                    |
|------------------------------------|---|----------------------|--------------------|
| <b>Quantitative</b> <sup>482</sup> | Expenditure on general public services as a share of gross domestic product <sup>483</sup> .  | 5.4% <sup>484</sup>  | 1% <sup>485</sup>  |
|                                    | Proportion of institutions using quality assurance tools and techniques (e.g. European Foundation for Quality Management, Common Assessment Framework and other international standards) <sup>486</sup> . | 11.5% <sup>487</sup> | 13% <sup>488</sup> |

<sup>482</sup> Quantitative indicators are calculated based on the assessment of the State level only with exception of areas which are in exclusive competence of the Entities and the BD (passports, ID card, setting up business, corporate and personal income taxes). In accordance with the laws and regulations of BiH, personal documents (e.g. passports and ID cards) are issued by the competent Ministries of Interior (Mols) at the levels of the State and the RS, the Cantonal Mols of the FBiH, and the Public Register in the BD. (Law on the Identity Card of Citizens of Bosnia and Herzegovina, "Official Gazette of BiH", Nos. 32/01, 16/02, 32/07, 53/07 and 56/08).

<sup>483</sup> Data is available for the levels of the State, the FBiH and the RS and for the entire country.

<sup>484</sup> 2015 NERP was used to calculate the baseline value. However, the identified values for 2015 during this assessment are not consistent with the values indicated in SIGMA's 2015 Baseline Measurement assessment. According to the new BiH (2017) "Economic Reform Programme 2017-2019" in 2015 the value was 1% for State level only and 11.4% for the entire country.

<sup>485</sup> This percentage applies only to the State level. The share for the entire country is 11.3%, BiH (2017), "Economic Reform Programme 2017-2019".

<sup>486</sup> Only at the State level. For the FBiH and the RS the value would be 0%.

<sup>487</sup> Three out of 26 institutions were surveyed, according to information obtained from PARCO.

<sup>488</sup> At the State level, three institutions have introduced CAF: the PARCO, the Civil Service Agency, and the National Statistical Office (out of a total of 9 ministries and 14 government agencies).

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|  |  |                              |                              |
|--|--|------------------------------|------------------------------|
|  | Average time needed to acquire a personal identification document (passport or ID card) after submitting the application.              |                              |                              |
|  | A. Passport  | 8 <sup>489</sup>             | Not available <sup>490</sup> |
|  | B. ID <sup>491</sup>   | 8 <sup>492</sup>             | 15 <sup>493</sup>            |
|  | Share of institutions where customer satisfaction surveys are conducted on a regular basis (at least every two years) <sup>494</sup> . | Not available <sup>495</sup> | 0% <sup>496</sup>            |
|  | Average number of days needed to set up a business <sup>497</sup> .  | 37                           | 65                           |
|  | Average cost of setting up a business <sup>498</sup> .   | 14.6%                        | 13.5%                        |
|  | Share of citizens who submitted paperless/electronic/digital income tax statements last year <sup>499</sup> .                          | 0% <sup>500</sup>            | 0% <sup>501</sup>            |

<sup>489</sup> [www.iddeea.gov.ba/index.php?option=com\\_content&view=article&id=715%3Aautomatske-provjere-podataka-u-matinim-uredima-u-federaciji-bih-duplo-ubrzone-izdavanje-linij-doku&catid=34%3Acat-news&Itemid=172&lang=bs](http://www.iddeea.gov.ba/index.php?option=com_content&view=article&id=715%3Aautomatske-provjere-podataka-u-matinim-uredima-u-federaciji-bih-duplo-ubrzone-izdavanje-linij-doku&catid=34%3Acat-news&Itemid=172&lang=bs). The average of eight days indicated in the 2015 SIGMA Baseline Measurement Report is based on the Agency for Identification of Documents, Registers and Data Exchange (IDDEEA) information for cases when electronic exchange of data needed is possible.

<sup>490</sup> No data provided. According to information provided during SIGMA interviews, the legally defined and maximum deadline for issuance of passports of 30 days as of the date of filing a request is respected. Law on Travel Documents of BiH, Official Gazette of BiH Nos. 4/97, 1/99, 9/99, 27/00, 32/00, 19/01, 19/01, 47/04, 53/07, 15/08, 33/08, 39/08 and 60/13.

<sup>491</sup> In accordance with the laws and regulations of BiH, personal documents (ID cards) are issued by the competent MoIs at the levels of the State and the RS, the cantonal MoIs in the FBiH, and the BD Public Register.

<sup>492</sup> [www.iddeea.gov.ba/index.php?option=com\\_content&view=article&id=715%3Aautomatske-provjere-podataka-u-matinim-uredima-u-federaciji-bih-duplo-ubrzone-izdavanje-linij-doku&catid=34%3Acat-news&Itemid=172&lang=bs](http://www.iddeea.gov.ba/index.php?option=com_content&view=article&id=715%3Aautomatske-provjere-podataka-u-matinim-uredima-u-federaciji-bih-duplo-ubrzone-izdavanje-linij-doku&catid=34%3Acat-news&Itemid=172&lang=bs). The average of 8 days indicated in the 2015 SIGMA Baseline Measurement Report, was based on information provided by the IDDEEA for cases where the electronic exchange of the required data was possible; it now needs to be corrected to indicate an average of 15 days during 2015, according to the new calculations of the IDDEEA.

<sup>493</sup> The issuance of ID cards In accordance with the laws and regulations of BiH, personal documents are issued by the competent MoIs at the levels of the State and the RS, the Cantonal MoIs in the FBiH and the BD Public Register. The latest data available, provided by the IDDEEA, indicates an average of 15 days in 2015 (representing an average of the number of days in the FBiH, the RS and the BD).

<sup>494</sup> Only the State level has been considered. The RS and the FBiH data is available, but it would also be 0% or very low.

<sup>495</sup> Data for the whole of BiH was not provided.

<sup>496</sup> At the State level, no institutions conduct customer-satisfaction surveys.

<sup>497</sup> Business registration is under the jurisdiction of the Entities and the BD. The data used here was provided by the World Bank's "Doing Business" report, which evaluates only the capital, Sarajevo.

<sup>498</sup> Business registration is under the jurisdiction of the Entities and the BD. The percentage indicated here was provided by the World Bank's "Doing Business" report, which evaluates only the capital, Sarajevo.

<sup>499</sup> Personal income tax is under the jurisdiction of the Entities and the BD.

<sup>500</sup> In 2015, declarations could not be submitted electronically in the FBiH, the RS or the BD.

<sup>501</sup> Declarations cannot be submitted electronically in the FBiH, the RS or the BD.

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|  |   |                   |                   |
|--|---|-------------------|-------------------|
|  | Share of companies that sent their tax declarations using the Internet <sup>502</sup> . | 0% <sup>503</sup> | 0% <sup>504</sup> |
|--|---|-------------------|-------------------|

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<sup>502</sup> Corporate income tax is under the jurisdiction of the Entities and the BD.

<sup>503</sup> In 2015, declarations could not be submitted electronically in either the FBiH, the RS, or the BD.

<sup>504</sup> Declarations could not be submitted electronically in either the FBiH, the RS or the BD in 2016. Since 2017, they are mandatory online in the RS.

## 2. ANALYSIS

This analysis covers four Principles for the service delivery area grouped under one key requirement. It includes a summary analysis of the indicator used to assess against each Principle, including sub-indicators<sup>505</sup>, and an assessment of the state of play for each Principle. For each key requirement short- and medium-term recommendations are presented.

**Key requirement: The public administration is citizen-oriented; the quality and accessibility of public services is ensured.**

The values of the indicators assessing Bosnia and Herzegovina’s performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



### **Analysis of Principles**

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

A clear policy framework for citizen-oriented service delivery has been established with the BIH PAR Strategy adopted in 2006, together with an Action Plan for 2006-2010. A revised plan, RAP1, was then elaborated for 2011-2014. Despite the fact that the two Action Plans have formally expired, their activities continue to be implemented at the levels of the State, the Entities and the BD. The latest implementation report was published in July 2016<sup>506</sup>. The new PAR strategic framework has not been agreed yet.

The PAR Strategy and RAP1 (especially Parts 4 and 6) include critical activities for service delivery, such as the revision of legislation to detect administrative obstacles, promotion of regulatory impact assessments (RIAs) to avoid new administrative burdens, development of one-stop shops and digital signature, and promotion of interoperability and automated data exchanges at all levels of the administration.

Progress in implementation has unfortunately not led to tangible results for citizens or businesses. The implementation report of July 2016 indicates progress made at the rate of 68% and 49% in “administrative services” and “e-government” respectively. These figures are in stark contrast to the

<sup>505</sup> OECD (2017), *Methodological Framework for the Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

<sup>506</sup> BiH CoM – PARCO (July 2016), “Semi-annual Progress Report, January-June 2016”, Sarajevo.

scarce actual improvements for citizens or businesses (and to the very modest progress with regard to critical enablers – see Principle 3).

Administrative procedures at all levels remain largely paper-based and are filled with requirements to submit paper-based proofs of information, including information that the administration already has at hand, e.g. birth certificates. The only notable improvement in this respect has been the renewal of ID cards, as a result of a countrywide infrastructure for the delivery of personal documents and a central citizenship register (both operated by the State-level Agency for Identification of Documents, Registers and Data Exchange (IDDEEA) – and efforts at the Entity level to consolidate municipal birth records into single, digital registers (operated by the Entities). If certain conditions are met<sup>507</sup>, individuals no longer need to provide birth or citizenship certificates when renewing their ID cards. Aside from this service, however, the infrastructure has not been widely used, which means that citizens themselves are still obliged in almost all cases to obtain and submit birth, marriage, residence and other certificates.

The administrative set-up entails many complexities for people living or working across the territory. These problems arise because the vast majority of administrative services to citizens and businesses are under the jurisdiction of the Entities. Even though the State-level agency IDDEEA *delivers* ID cards and passports, the actual jurisdiction to *issue* ID cards lies exclusively with the Entities and the BD. In accordance with the laws and regulations of BiH, issuing of personal documents is under the jurisdiction of the competent Ministries of Interior (MoIs): the RS MoI, the cantonal MoIs in the FBiH (within the FBiH, the jurisdiction lies with the individual cantons) and the Public Register in the BD. As a result, differences are found in service quality and delivery performance across the Entities (and even within the Entities<sup>508</sup>).

This set-up also leads to major inconveniences for citizens who live, work or do business across the Entities and BD. When a citizen wishes to renew personal documents in an Entity or the BD other than his/her birthplace, the administration will not be able to obtain proof of birth *ex officio*. The burden is therefore placed back on the citizen to submit the paper-based certificate. The results of the 2017 Balkan Barometer survey<sup>509</sup> confirmed the low level of citizens' satisfaction with administrative services.

Businesses and business creators also suffer from these territorial discrepancies in the delivery of administrative services. The 2017 Balkan Barometer survey<sup>510</sup> confirmed the heavy burdens perceived by businesses and the low perception of the quality of public services, which is among the lowest in the region. Two examples illustrate this situation:

- Whereas it is relatively simple to register a business in the RS (5 procedures taking 5 days in Banja Luka)<sup>511</sup>, the same kind of registration in the FBiH is more burdensome and more complicated today than it was in 2015 (12 procedures taking 65 days in Sarajevo in 2017, compared to 37 days in 2015)<sup>512</sup>. Within the FBiH, some notable differences between cantons are found<sup>513</sup>.

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<sup>507</sup> These conditions concern Individual requirements to: a) hold an ID card issued after 2013 (biometric and electronic chip), which implies having a record in the IDDEEA's citizenship register; b) have a consistent record (e.g. name spelled identically) in both the IDDEEA's citizenship register and the municipal birth register; and c) renew the ID card within the same Entity in which he/she was born.

<sup>508</sup> When applying for a new ID card, some cantons in the FBiH require, in addition to birth and citizenship certificates, a proof of residence (Tuzla Canton, Zenica-Doboj Canton). Zenica-Doboj Canton further imposes that birth and citizenship certificates must not be older than six months at the time of submission.

<sup>509</sup> Balkan Barometer, annual survey conducted by the Regional Cooperation Council (RCC), <http://www.rcc.int/seeds/results/2/balkan-opinion-barometer>

<sup>510</sup> Balkan Barometer, annual survey conducted by the Regional Cooperation Council (RCC), <http://www.rcc.int/seeds/results/3/balkan-business-barometer>.

<sup>511</sup> These figures were based on an internal analysis by the RS Ministry of Economic Affairs and Regional Cooperation, using the World Bank "Doing Business" methodology.

<sup>512</sup> World Bank (2017), "Doing Business", World Bank, Washington, D.C.

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- Businesses need to declare and pay value-added tax (VAT) at the State level and corporate income tax at the Entity and BD levels. The tax administrations exchange data in order to fight money laundering but not for the purpose of simplifying services such as the registration of a business (two separate procedures must be followed to receive a VAT number at the State level and a corporate income tax number at the Entity level).

At the State level, only a few administrative services are delivered to businesses, while no services at all are provided to citizens. VAT collection is an example of a State-level jurisdiction. The process is very time-consuming for businesses<sup>514</sup>. The responsible authority aims to pilot an electronic declaration in order to improve service efficiency, but progress in this area requires critical enablers, such as digital signature and interoperability (see Principle 3).

No systematic reduction of administrative burdens has been achieved. The RS conducted its last regulatory guillotine during the 2005-2006 period. It reduced some bureaucracy facing businesses, but no follow-up guillotine has been conducted since. In the FBiH, a Strategy for regulatory reform was implemented between 2013 and 2016, which did not result in any major simplifications of administrative burdens for businesses<sup>515</sup>.

Part of the problem is the absence of an accurate inventory of administrative burdens that would enable systematic analysis and simplification. In the FBiH, a register of procedures exists<sup>516</sup>, but it contains only procedures at the FBiH level. Cantons are not included, even though they have ample jurisdiction in the FBiH over administrative procedures, e.g. issuance of personal documents and registration of businesses. In the RS, a register of only business-related procedures exists<sup>517</sup>. The development of the respective inventories has not been co-ordinated. No inventory of special procedures exists in the BD.

RIAs are conducted at the State and the Entity levels, but not in the BD, and they include an obligation to assess administrative burdens. However, RIAs were introduced recently and are still too inconsistent in their application and quality to effectively detect administrative burdens in all new legislation:

- At the State level, RIA was introduced in 2014, with the vague provision that an assessment of administrative burdens should take place “only if necessary” (Government Rules of Procedure [RoP], Article 65). Compliance levels and the quality of RIA reports are unsatisfactory<sup>518</sup>. Amendments to the RoP are planned in order to provide the Legislation Office and the General Secretariat with a stronger mandate for checking RIA compliance and quality. *Ex post* impact assessments are formally foreseen (Article 67 of the RoPs), but they are rarely carried out.
- At the FBiH level, RIA was introduced in 2014, along with the provision of general guidance manuals. Both primary legislation and secondary legislation are subject to an RIA. The General Secretariat checks formal RIA compliance, i.e. whether impact assessments have been carried out, but it does not verify their content or quality. *Ex post* impact assessments are not practised.
- At the RS level, RIA has been piloted since 2007; it was fully introduced in 2013, and the process was revised in 2015. Detailed guidance promotes the use of the Standard Cost Model, but it has

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[www.doingbusiness.org/data/exploreeconomies/bosnia-and-herzegovina](http://www.doingbusiness.org/data/exploreeconomies/bosnia-and-herzegovina)

<sup>513</sup> In the FBiH, the amount of fees can range from KM 100 (approximately EUR 51) in Gorazde Canton to KM 400 (approximately EUR 205) in West Herzegovina Canton.

<sup>514</sup> World Bank (2017), “Doing Business”, World Bank, Washington, D.C.

[www.doingbusiness.org/data/exploreeconomies/bosnia-and-herzegovina#paying-taxes](http://www.doingbusiness.org/data/exploreeconomies/bosnia-and-herzegovina#paying-taxes)

<sup>515</sup> See SIGMA’s indicator points for business-oriented services on the next page. This information was confirmed during SIGMA interviews with business community representatives.

<sup>516</sup> <http://eregistri.vladafbih.gov.ba/rup>

<sup>517</sup> <http://www.regodobrenja.net>

<sup>518</sup> According to an internal analysis carried out by the State Ministry of Justice (MoJ), which was presented to SIGMA during the interviews. See also the RAP1 implementation report of July 2016.

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not yet been widely used due to capacity shortages. A “short” RIA is mandatory for all laws and secondary legislation; an extended RIA is mandatory for selected laws. The Ministry of Economic Relations and Regional Cooperation verifies the compliance and quality of RIA reports. *Ex post* impact assessments are not practised.

The value for the indicator ‘Citizen-oriented service delivery’ is 1.

| Citizen-oriented service delivery   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|
| This indicator measures the extent to which citizen-oriented service delivery is defined as a policy objective in legislation or official government plans and strategies. It furthermore measures the progress of implementation and evaluates the results achieved, focusing on citizens and businesses in the design and delivery of public services. Implementation and results are evaluated using a combination of quantitative and perception-based metrics. |   |   |   |   |   |   |
| Overall indicator value   | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators   | Points       |
|--|--------------|
| <b>Policy framework for citizen-oriented service delivery</b>                            |              |
| 1. Existence and extent of application of policy for service delivery                    | 8/8          |
| 2. Existence and extent of application of policy for digital service delivery            | 6/8          |
| 3. Existence of central co-ordination for digital government projects                    | 0/4          |
| 4. Established policy for administrative simplification                                  | 4/12         |
| <b>Performance of citizen-oriented service delivery</b>                                  |              |
| 5. Perceived quality of public service delivery by citizens                              | 0/6          |
| 6. Renewing personal ID document   | 1.5/6        |
| 7. Registering a personal vehicle  | 3/6          |
| 8. Declaring and paying personal income taxes  | 0/6          |
| 9. Perceived quality of public service delivery and administrative burdens by businesses | 1.5/6        |
| 10. Starting a business  | 0/6          |
| 11. Obtaining a commercial construction permit   | 2/6          |
| 12. Declaring and pay corporate income taxes   | 1/6          |
| 13. Declaring and pay value added taxes  | 0/6          |
| <b>Total<sup>519</sup></b>   | <b>27/86</b> |

**A common service-delivery strategy is in place at all levels of the administration, i.e. the State, both Entities and the BD. The strategy is clear and provides good directions. Implementation is behind schedule and many activities are ongoing. The major problem is that activities carried out so far have led to few tangible results. Politics and the complex territorial administration set-up have resulted in modest service-delivery improvements at best. Citizens and businesses suffer from incoherent service-delivery arrangements across the BIH. Regulatory policies and impact assessments are not used effectively to identify, reduce or avoid administrative burdens.**

<sup>519</sup> Point conversion ranges: 0-14=0, 15-28=1, 29-42=2, 43-56=3, 57-70=4, 71-86=5.

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

Separate LGAPs exist at the State level<sup>520</sup> as well as in both Entities (the FBiH<sup>521</sup> and the RS<sup>522</sup>) and in the BD<sup>523</sup>. The conventional principles of good administrative behaviour are embedded in all LGAPs, such as the principle of legality, the right to be heard, and the form of administrative acts. The LGAPs are largely harmonised with each other due to a common origin, which was the former Yugoslav legislation on general administrative procedures. The LGAPs further foresee legal remedies such as appeal, reinstatement, and annulment of procedures.<sup>524</sup>

The LGAPs at all levels lack modern features compared with the more advanced LGAPs of other countries. The LGAP at the State level includes formal provisions on electronic communication (e-communication) and the “once-only” principle, but these provisions have had little practical relevance so far due to the lack of capacities and infrastructure required. At the level of the Entities, the LGAPs have not been revised recently. The last significant revision of the FBiH LGAP took place in 1999; the RS LGAP was last revised in 2010 and the BD LGAP in 2011. The provisions for e-communication and for the “once-only” delivery of information to the administration are relatively weak and lack any binding obligations regarding time frames or sanctions. To date, none of the provisions has been applied in practice, largely due to the absence of critical enablers, such as the digital signature and interoperability (see Principle 3).

Amendments to the LGAPs are planned for the end of 2017 in both the FBiH and the RS. However, no co-ordination between the Entities on the content of these amendments has been established, which means that the individual LGAPs may evolve autonomously and that limited co-ordination or harmonisation will occur between the two Entities.

The harmonisation of special procedures with the LGAPs constitutes a major challenge, beginning with the review of existing procedures:

- At the State level, neither a comprehensive catalogue of specialised procedures nor any regulation is in place to systematically check the compatibility of these procedures with the LGAP. Sector-level initiatives have been set up, e.g. in the MoE, but they relate to business regulation only.
- At the FBiH level, a catalogue of specialised procedures was initially created for the purpose of harmonisation with the LGAP<sup>525</sup>. However, technical problems have arisen with the regular maintenance of these procedures, and the catalogue does not cover the large body of specialised procedures introduced at the level of the cantons. It cannot currently be used as a basis for harmonisation with the LGAP.
- At the RS level, a catalogue details administrative procedures, fees and information obligations for businesses only<sup>526</sup>. The fact that the catalogue is limited to business procedures means that it cannot be used as a basis for the harmonisation of all sectoral legislation with the LGAP.
- No such catalogue exists in the BD.

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<sup>520</sup> Official Gazette of BiH Nos. 29/2002, 12/2004, 88/2007, 93/2009, 41/2013 and 53/2016.

<sup>521</sup> The FBiH Official Gazette Nos. 2/1998 and 48/1999.

<sup>522</sup> The RS Official Gazette Nos. 13/2002, 87/2007 and 50/2010.

<sup>523</sup> The BD Official Gazette No. 48/2011.

<sup>524</sup> Regional School of Public Administration – ReSPA (2016), *Legal Remedies in Administrative Procedures in the Western Balkans*, ReSPA, Danilovgrad, Montenegro.

<sup>525</sup> <http://eregistri.vladafbih.gov.ba/rup>

<sup>526</sup> <http://www.regodobrenja.net>

As a result of the above, resources and clear priorities for harmonisation with the LGAPs are lacking. E-communication, for example, is foreseen in all LGAPs, but the existing procedures defined in laws and regulations typically require the submission of paper-based proof. The lack of a supporting infrastructure to implement these provisions is one issue (see Principle 3), but another issue is the lack of clear priorities and adequate resources in this area.

The harmonisation of specialised procedures across the Entities and the BD is extremely unlikely in the medium-term. Due to the complex administrative structure, citizens and businesses continue to be subject to procedures that from one Entity to another are not harmonised and to heavy burdens if their activities span the two Entities. In the FBiH, harmonisation is further complicated by the strong autonomy of the cantons.

The value for the indicator 'Fairness and efficiency of administrative procedures' is 3.

| Fairness and efficiency of administrative procedures   |   |   |   |          |   |   |
|--|---|---|---|----------|---|---|
| The indicator measures the extent to which the regulation of administrative procedure is compatible with international standards of good administration and good administrative behaviour. This includes both the legal framework for administrative procedure and its practical applications. |   |   |   |          |   |   |
| Overall indicator value  | 0 | 1 | 2 | <b>3</b> | 4 | 5 |

| Sub-indicators   | Points             |
|--|--------------------|
| <b>Legal framework for administrative procedure</b>  |                    |
| 1. Existence of legislation on administrative procedures of general application                      | 3/3                |
| 2. Adequacy of law(s) on administrative procedures to ensure good administration                     | 7/7                |
| <b>Fairness and efficiency of administrative procedures</b>  |                    |
| 3. Perceived efficiency of administrative procedures in public institutions by citizens (%)          | 1/4 <sup>527</sup> |
| 4. Repeals of or changes to decisions of administrative bodies made by the administrative courts (%) | 0/4 <sup>528</sup> |
| <b>Total</b> <sup>529</sup>  | <b>11/18</b>       |

Separate LGAPs co-exist at the levels of the State, both Entities and the BD. They provide general safeguards against maladministration, but they lack effective provisions for e-communication or "once-only" provision of information. While the LGAPs share many similarities, the recent developments and amendment plans are not being co-ordinated across different levels of the administration. This bears a great risk of amplifying the existing discrepancies in administrative procedures across the country. Harmonisation between administrative levels is not considered as a political priority, and only slow progress has been made on internal harmonisation of special procedures with the respective LGAPs.

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

No systematic monitoring of service-delivery performance or user satisfaction is carried out at any level. The RAP1 envisaged the launch of harmonised user-satisfaction surveys and data collection on the

<sup>527</sup> This percentage is based on the 2017 Balkan Barometer survey. Balkan Barometer, annual survey conducted by the Regional Cooperation Council (RCC), <http://www.rcc.int/seeds/results/2/balkan-opinion-barometer>.

<sup>528</sup> No data provided.

<sup>529</sup> Point conversion ranges: 0-3=0, 4-6=1, 7-9=2, 10-12=3, 13-15=4, 16-18=5.

performance of individual services, for example response times. None of these surveys has been implemented to date.

Within the two Entities, individual ministries have considerable autonomy to decide whether to monitor service quality. In the RS, complaints systems are in place in some individual ministries and in the General Secretariat. However, none of the complaints data gathered through this system is either centrally pooled or analysed to detect systematic service-delivery problems.

Quality management is being introduced at the State level. The PARCO is the designated institution to develop and promote the application of the CAF and the ISO 9001 quality management system<sup>530</sup>. The PARCO, the Civil Service Agency and the National Statistical Agency have implemented the CAF at the State level.

The RS Government is the only one in BiH to formally review the business case of governmental IT projects. Since 2014, RS ministries and agencies are obliged to submit a standardised request for approval to the RS Agency for Information Society (AIDRS) before they can execute digital investments<sup>531</sup>. The opinion of the AIDRS on the project is a mandatory requirement for obtaining funding.

No digital signature is available to citizens and businesses, despite relatively good starting conditions. An Electronic Signature Law (ESL)<sup>532</sup>, introduced at the State level in 2006, established the equivalence of the digital signature with the handwritten signature; new national ID cards, available since 2013, are equipped with an electronic chip; and the IDDEEA operates an electronic register of national ID cards. Due to political disagreement, however, the issuance of personal documents is under the jurisdiction of the Entities. In accordance with the laws and regulations of BiH, the issuance of personal documents is under the jurisdiction of the competent MoIs at the levels of the State and the RS, the cantonal MoIs in the FBiH, and the BD Public Register – no countrywide authority has yet been established to issue qualified digital-signature certificates.

The ESL at the State level dates from 2006 and therefore does not include features that would make it compatible with EU regulations on electronic identification and with trust services for electronic transactions on the internal market (eIDAS) (e.g. assurance levels, electronic seals, documents and delivery).

Given the absence of countrywide progress, the Entities have made solitary advances. The RS Government adopted its own ESL in 2015<sup>533</sup> and established two certificate authorities with exclusive competence for the RS: a) AIDRS provides qualified digital-signature certificates to the staff of administrative authorities in the RS (for internal administrative use only); b) the Tax Administration provides non-qualified digital-signature certificates to companies for use in online reporting of financial information.

In the FBiH, a draft ESL is being considered by the Parliament. In the BD, the ESL was adopted in 2010<sup>534</sup>, but the BD Assembly repealed the Law in 2015<sup>535</sup>.

The situation is similarly problematic and fragmented with regard to the operation of registers and their interoperability. The only registers that operate on a single infrastructure countrywide are those concerning citizenship (personal documents of BiH nationals, vehicles and drivers), which are all operated by the IDDEEA. However, the underlying data and therefore the related services are entirely

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<sup>530</sup> BiH CoM Conclusion No. 05-07-1-310-11/17, 2017.

<sup>531</sup> [www.aidrs.org/sr/legislativa-i-standardizacija/standardizacija/smjernice-za-davanje-misljenja-na-ikt-projekte](http://www.aidrs.org/sr/legislativa-i-standardizacija/standardizacija/smjernice-za-davanje-misljenja-na-ikt-projekte).

<sup>532</sup> Official Gazette of BiH No. 91/2006.

<sup>533</sup> Official Gazette of the RS No. 106/2015.

<sup>534</sup> Official Gazette of the BD Nos. 39/2010, 61/2010, 14/2011, 56/2011 and 01/2013.

<sup>535</sup> The BD Assembly Decision No. 01-02-407/2015.

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under the jurisdiction of the Entities (and the cantons in the FBiH). As the issuance of personal documents is under the jurisdiction of the competent MoIs at the State and RS levels, the Cantonal MoIs in FBiH, and the BD Public Register, most registers are under the jurisdiction of the Entities and therefore operate in parallel, such as registers regarding businesses, land, and civil status (births, marriages and deaths).

The registers concerning citizenship, vehicles and drivers are used by various law enforcement agencies. These agencies can access data electronically and in real time, in accordance with the 2009 Regulation on Access to Registers and Data and its later amendments<sup>536</sup>. This access is provided through a sector-specific framework on interoperability and a data-exchange infrastructure that is used exclusively for law-enforcement purposes.

No general interoperability framework or data-exchange infrastructure has been established for all levels of the administration. As early as 2012, the PARCO developed the National Interoperability Framework (NIF), based at the time on the European Interoperability Framework (EIF). The RS and the FBiH Governments adopted the NIF, but the CoM has not yet adopted it.

Overall, the co-ordination between the Entities and the BD to develop interoperable information systems and automated data exchanges is limited. A project supported by the World Bank aims to instigate progress with regard to interoperability between all levels. A pilot project is underway to allow data exchanges between administrative inspections, but no tangible outputs or results have been reported so far<sup>537</sup>.

Each Entity and the BD have taken separate steps to digitise registers and to advance with interoperability within their own jurisdiction :

- Civil-status registration is under the jurisdiction of municipalities, but the FBiH MoI and the RS Ministry of Administration and Local Self-Governance operate centralised digital registers for civil-status information. If a number of conditions are met<sup>538</sup>, these systems allow citizens to renew their ID cards without having to obtain and submit printed certificates of birth and citizenship. No other citizen services have been simplified for the use of those registers.
- Business registration is under the jurisdiction of municipal courts in the FBiH, the RS and the BD. In the RS, the Agency for Intermediate and Financial Services (APIF) operates a centralised, digital business register, and register extracts may be consulted online<sup>539</sup>. In the FBiH, the Ministry of Justice (MoJ) operates a centralised, digital business register. In the BD, the municipal court maintains a central register. Extracts from the FBiH and the BD registers may be consulted through a countrywide, business-register portal, which is in the pilot stage<sup>540</sup>. None of the centralised registers described in this report has an authoritative nature. The official proof of a company's existence or other information provided to the administration is still required in a paper copy issued by the respective municipal court. No automated exchange of business-register data takes place between the Entities (the RS business-register data is not included in the countrywide business register).

Electronic payments or direct payments at the point of service are not available. Virtually all of the payments due to the administration oblige the citizen to carry out a separate procedure – payment by

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<sup>536</sup> Official Gazette of BiH No. 35/2009.

<sup>537</sup> The World Bank pilot project, "Improving Quality Infrastructure and Investment Climate (ICIS)".  
<http://projects.worldbank.org/P128212/improving-quality-infrastructure-investment-climate?lang=en&tab=overview>.

<sup>538</sup> These conditions concern requirements to: a) hold an ID card issued after 2013 (biometric and electronic chip), which implies having a record in the IDDEEA electronic registers; b) have a consistent record (e.g. name spelled identically) in both the IDDEEA electronic registers and the municipal birth register; and c) renew the ID card within the same Entity in which he/she was born.

<sup>539</sup> <http://bizreg.esrpska.com>.

<sup>540</sup> <http://bizreg.pravosudje.ba>.

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means of a bank or postal order, followed by the submission of the paper-based proof of payment. Some institutions increase the convenience of payment by having a separate window, which is operated by the post office within the same building as the postal services. This arrangement nevertheless obliges the citizen to queue at separate counters and to manually transfer the proof of payment between those counters. Administrative procedures requiring any sort of payment therefore entail at least two additional procedures for the citizen (making the payment at a separate counter and submitting the proof of payment at the original counter), and one additional paper record for the administration. This situation is the same across all levels of the administration.

The value for the indicator 'Existence of enablers for public service delivery' is 0.

| Existence of enablers for public service delivery   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|
| This indicator measures the extent to which citizen-oriented service delivery is being facilitated by the existence and implementation of enabling tools and technologies, such as public service inventories, interoperability frameworks, digital signatures and user feedback mechanisms. It evaluates how effective the central government is in establishing and using those tools and technologies to improve the design and delivery of public services. |   |   |   |   |   |   |
| Overall indicator value   | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators  | Points      |
|---|-------------|
| <b>Central and shared mechanisms to better enable public service provision</b>  |             |
| 1. Central monitoring of service delivery performance                           | 0/3         |
| 2. Interoperability infrastructure in place                                     | 0.5/3       |
| 3. Existence of common standards for public service delivery                    | 0/3         |
| 4. Legal recognition and affordability of electronic signatures                 | 0/3         |
| <b>Performance of central and shared mechanisms for public service delivery</b> |             |
| 5. Use of quality management tools and techniques                               | 0/4         |
| 6. Adoption of user engagement tools and techniques                             | 0/4         |
| 7. Interoperability of basic registers  | 2.5/4       |
| <b>Total<sup>541</sup></b>  | <b>3/24</b> |

**Little progress has been made in the use and deployment of tools to enable better service delivery. No common standards exist to establish quality criteria for public services. Use of satisfaction surveys or other tools to monitor service quality is extremely limited. Quality management is being piloted at the State level but is otherwise missing. Modern enablers, such as the digital signature and interoperability, suffer from years of standstill due to political difficulties. This has prevented the administration from developing more user-friendly and digital services. As the payment of administrative fees is never possible at the original point of service, citizens are required to undergo an additional procedure.**

**Principle 4: The accessibility of public services is ensured.**

Consistency of service-delivery arrangements across the BiH is a major problem. The country's complex administrative set-up with the division of competencies among the different administrative levels means that procedures and requirements vary considerably between equivalent service areas and providers in the FBiH, the RS and the BD. Moreover, they can vary across cantons within the FBiH, as described above.

<sup>541</sup> Point conversion ranges: 0-4=0, 5-8=1, 9-12=2, 13-16=3, 17-20=4, 21-24=5.

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Overall, no one-stop shops have been created to facilitate access to administrative services. Service users are generally required to deal with institutions in person and one service at a time in order to collect and submit the various required documents and proofs.

The only notable exception is the RS one-stop shop for business registration. In 2013, a single window for business registration was created at the APIF. The agency's electronic workflow includes court registration, issuance of tax identification numbers by the RS Tax Administration, and statistical classification of business activities. The number of procedures for business registration in Banja Luka was reduced from 10 to 5 and the time needed to complete these procedures was reduced from 21 days to 5<sup>542</sup>. The application for a VAT identification number remains a separate procedure, as the electronic workflow does not include the BiH Indirect Taxation Authority. This problem illustrates the challenges faced when creating one-stop shops that require co-operation between the Entities, the BD and the State level.

The RS has an online services portal<sup>543</sup>, which provides standardised information for administrative services but does not offer any transactional services. No online service portals exist at the State and the FBiH levels. Plans are underway to launch separate portals in 2017, but due to the absence of digital transactional services, the portals can only be expected to provide information.

The problem is that few end-to-end online services exist, largely due to the missing enablers, as discussed above under Principle 3. One result of this problem is the following: in the RS, companies can electronically submit financial statements to the APIF. The absence of a qualified digital signature, however, limits the legal validity of electronic submissions, and companies are therefore obliged to submit paper-based financial statements in parallel.

The Entities' tax administrations are relatively advanced, although tax declarations cannot be submitted online yet by individuals (personal income tax). Only companies in the RS have been able to declare corporate income tax online since 2017, it is mandatory for them to do so. The FBiH Tax Administration allows employers to submit information online concerning staff salaries and tax payment deductions, and this online process is in fact mandatory for companies employing more than five people. Both tax administrations issue a non-qualified digital-signature certificate, which businesses use to authenticate the information submitted.

The provision of information on governmental websites has been harmonised, but not across the different levels of government. At the State level, the websites of the CoM use a common template and guidelines, follow the same visual design, and have a similar content structure. The websites display well on mobile devices. The RS Government's websites (except for the MoI) use a common template and design recommendations for visual design and content structure. The websites display well on mobile devices. In the FBiH, no common guidelines have been provided, and individual ministries use their own visual styles and standards for content presentation. The websites of the FBiH Government and of several ministries (e.g. the MoJ) do not display well on mobile devices. A few FBiH ministries have introduced a common style, which displays well on mobile devices<sup>544</sup>. This action was carried out at the ministries' discretion and without central co-ordination. No common guidelines exist in the BD.

Government websites are relatively well accessible to people with disabilities. The State-level institutions have the lowest number of average access barriers – 9 errors on average; the RS institutions have 14 errors on average; and the FBiH institutions have 24 errors on average (see Figure 1 below). The higher number of accessibility issues on the FBiH websites may be due to the high level of autonomy individual ministries have in designing and developing their online presence.

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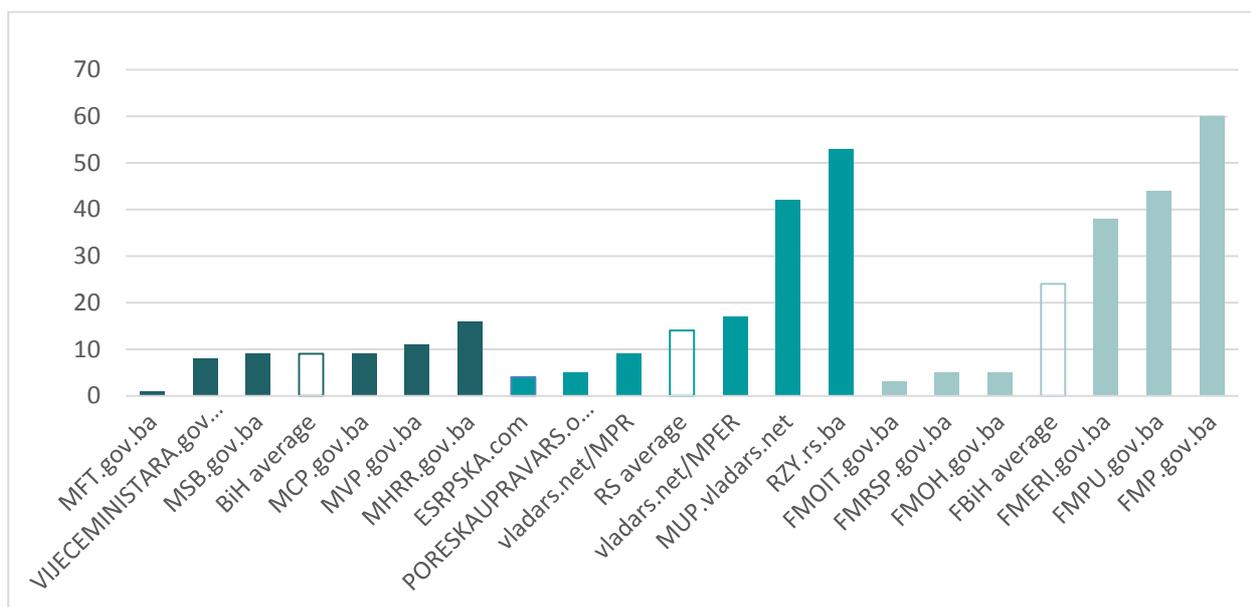
<sup>542</sup> This information was based on an internal analysis by the RS Ministry of Economic Affairs and Regional Co-operation, using the World Bank's "Doing Business" methodology.

<sup>543</sup> <http://esrpska.com>

<sup>544</sup> The MoI, the MoF and the Ministry of Displaced Persons and Refugees.

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**Figure 1. Number of content-accessibility problems on selected government websites, 2017**



Note: Only the State, the RS and the FBiH levels are indicated. For each level, the figure is limited to the three best-performing and the three worst-performing websites, plus the average level.

Source: SIGMA test of compliance with Web Content Accessibility Guidelines, February 2017.

Overall, limited accessibility of services (online and offline) for people with disabilities is a major problem. BiH signed in 2009 and ratified in 2010 the Convention on the Rights of People with Disabilities (CRPD) and its Optional Protocol. However, the legal framework and institutional setting are fragmented, and implementation suffers from the absence of clear and common definitions of disability-based discrimination<sup>545</sup>. No integrated strategy has been elaborated to deal with the problem of accessibility in premises that deliver public services<sup>546</sup>. No systematic system has been established to report incidents of discrimination. At the State-level, the Ministry of Human Rights and Refugees is developing a reporting system, but this project has been delayed by political disagreements and the lack of a harmonised methodology on data collection and reporting<sup>547</sup>.

The above issues result in a situation where the accessibility of service delivery cannot be monitored and analysed by using reliable data. This situation is further complicated by the high political sensitivity concerning disabilities that are the consequence of the last war and their differential treatment compared with the treatment of other disabilities<sup>548</sup>.

The value for the indicator 'Accessibility of public services' is 0.

<sup>545</sup> United Nations (UN) Committee on the Rights of Persons with Disabilities – CRPD (2017), "Concluding Observations on the Initial Report of Bosnia and Herzegovina", CRPD/C/BIH/CO/1; and MyRight (2016), "The Alternative Report on Implementation in Bosnia and Herzegovina of the United Nations Convention on the Rights of Persons with Disabilities".

<sup>546</sup> Ditto.

<sup>547</sup> <http://www.analitika.ba/en/publications/anti-discrimination-measures-without-measurement-collecting-data-discrimination-bh>

<sup>548</sup> UN Committee on the Rights of Persons with Disabilities – CRPD (2017), "Concluding Observations on the Initial Report of Bosnia and Herzegovina", CRPD/C/BIH/CO/1; and MyRight (2016), "The Alternative Report on Implementation in Bosnia and Herzegovina of the United Nations Convention on the Rights of Persons with Disabilities".

| Accessibility of public services  |   |   |   |   |   |   |
|---|---|---|---|---|---|---|
| This indicator measures the extent to which the access to public services is promoted in policy formulation and implementation. It evaluates whether this policy framework leads to measurably easier access for citizens, measures citizen perceptions of accessibility to public services and tests the actual accessibility of government websites. Dimensions covered are territorial access, access for people with disabilities and access to digital services. |   |   |   |   |   |   |
| Overall indicator value   | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators  | Points             |
|---|--------------------|
| <b>Policy framework for accessibility</b>   |                    |
| 1. Existence of policy for the accessibility of public services                       | 0/3                |
| 2. Availability of statistical data on accessibility to public services               | 0/3                |
| 3. Adequacy of policy framework for public service users with special needs           | 0/4                |
| 4. Existence of common guidelines for government websites                             | 0/2                |
| <b>Government performance on accessibility</b>  |                    |
| 5. Compliance of government websites with Web Content Accessibility Guidelines (WCAG) | 1/3                |
| 6. Perceived satisfaction with public services across the territory by population (%) | 0/3 <sup>549</sup> |
| 7. Perceived accessibility of digital public services by population (%)               | 1/3 <sup>550</sup> |
| 8. Perceived time and cost of accessing public services by citizens (%)               | 1/3 <sup>551</sup> |
| <b>Total</b> <sup>552</sup>   | <b>3/24</b>        |

**Accessibility of public services suffers from high variation in arrangements across the BiH. This is due to differences not only between the Entities and the BD, but also between individual cantons within the FBiH. Except for business registration in the RS, no one-stop shop exists for either citizens or businesses. No transactional digital services are in place. Government websites present information well, including for people with disabilities. On the other hand, people with disabilities face a highly-fragmented framework of strategies, laws and institutions without any systematic monitoring, nor analysis. The issue is politically charged due to the consequences of the last war.**

### **Key recommendations**

#### **Short-term (1-2 years)**

- 1) The administration should continue to implement the existing Strategy for Public Service Delivery and Digitisation (part of PAR Strategy). The objectives and activities defined therein still provide good directions for service-delivery reforms. There is no need at this point in time to use scarce resources to draft a new strategy. Those resources should rather be used to ensure genuine progress in defining service-quality standards, monitoring service quality, engaging users through feedback mechanisms, digitising registers, and enabling electronic data exchanges across the administration.

<sup>549</sup> Balkan Barometer, annual survey conducted by the Regional Cooperation Council (RCC), <http://www.rcc.int/seeds/results/2/balkan-opinion-barometer>.

<sup>550</sup> Ditto.

<sup>551</sup> Ditto.

<sup>552</sup> Point conversion ranges: 0-4=0, 5-8=1, 9-12=2, 13-16=3, 17-20=4, 21-24=5.

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- 2) The different LGAPs are developing autonomously from each other, which will lead to further discrepancies in public service delivery across the territory. The administration should try to de-politicise the issue and co-ordinate ongoing and future amendments to the LGAPs to ensure better and more coherent administrative services for citizens and businesses in the entire BiH.
- 3) Progress on digital signature is critical and also depends on the capacity of each administrative level of BiH to de-politicise the issue. It is important to explore alternative identification and authentication options to the one currently foreseen (national electronic ID). This can include use of trusted identification providers outside the administration, e.g. banks and telecommunications operators. Another possibility is the mutual recognition of existing identification mechanisms (e.g. the one provided by the RS Tax Administration) for other institutions' services.<sup>553</sup>

**Medium-term (3-5 years)**

- 4) Individual administrations within BiH, as an utmost priority, should search for ways of depoliticising and defragmenting service-delivery reforms. In recent years, in almost all of the areas analysed here, politics have seized control of pragmatic decision making and hindered progress. Quasi-autonomous developments of the State, the Entities and the BD have led to a situation where citizens and businesses face major inconveniences in living, working and operating across the levels of BiH. If possible, defragmentation of the administrative set-up in the FBiH should be envisaged so as to simplify and harmonise administrative procedures across cantons.

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<sup>553</sup> France Connect demonstrates good international practice in the mutual recognition of different electronic identification schemes across the public administration.  
<https://franceconnect.gouv.fr>.

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## Public Financial Management

## PUBLIC FINANCIAL MANAGEMENT

### 1. STATE OF PLAY AND MAIN DEVELOPMENTS: MAY 2015 – JUNE 2017

#### 1. State of play

Bosnia and Herzegovina (BiH) has a unique and complex public finance system. It comprises the State, the two Entities – the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS) – and the Brčko District (BD). In terms of funding, direct taxes are collected and distributed within the FBiH, the RS and the BD, while indirect taxes are determined at the State level and the revenue is then divided between the State, the Entities and the BD. Given this structure, there is no single framework for public finance management (PFM). Rather, four different PFM systems exist, and there is no centralised domestic organisation that publishes centralised consolidated public-finance data.

In September 2016, the International Monetary Fund (IMF) approved a three-year extended loan facility of EUR 553 million (euros). While EUR 79.2 million was distributed to the FBiH and the RS, the second instalment is being held back until a number of reforms (related to the excise tax and a new banking law) are enacted.

The budget deficit is estimated at -0.3% of gross domestic product (GDP) for 2016 and is projected to remain at -0.3% of GDP for 2017<sup>554</sup>. The debt-to-GDP ratio was an estimated 40.5% of GDP at the end of 2016 and is projected to stand at 40.3% at the end of 2017<sup>555</sup>. Real GDP growth was estimated at 3.1% in 2016, with an expected growth rate of 3.4% for 2017<sup>556</sup>. The growth forecast was based on improved regional economic developments, as well as the assumption that the IMF loan to support higher capital investment would continue. Since the loan has been delayed, the growth forecast may be adversely affected; an alternative scenario in the Economic Reform Programme (ERP) estimates that if baseline assumptions, including the IMF loan, fail to materialise, expected GDP growth could be reduced to 3% in 2017<sup>557</sup>. This will have consequential effects on the public finances.

The share of public administration organisations that meet the legal requirements for establishing and maintaining minimum staffing of internal audit (IA) units is still low.

While the adoption and entry into force of the new Public Procurement Law (PPL) in 2014 represented a critical leap forward on the path of approximation of the legislation of BiH with the European Union (EU) *acquis*, the process of further alignment, namely with the 2014 Directives<sup>558</sup>, much emphasised by the European Commission (EC) in its 2016 Progress Report<sup>559</sup>, has not yet begun. The new Strategy and Action Plan for the development of the public procurement system in BiH for the period 2016-2020 foresees a gradual harmonisation with the new EU Directives. However, the adoption of the scheduled measures is already significantly delayed.

Most of the secondary legislation required under the PPL has been adopted, with the exception of the draft Rulebook on the Training of Public Procurement Officers. The adoption of the Rulebook is crucial in

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<sup>554</sup> ERP 2017-2019, p. 18.

<sup>555</sup> Calculated by SIGMA, using GDP data from the ERP 2017-2019 (p. 4) and debt data from the ERP 2017-2019 (p. 41).

<sup>556</sup> ERP 2017-2019, p. 4.

<sup>557</sup> ERP 2017-2019, p. 15.

<sup>558</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC; Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC; Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

<sup>559</sup> [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_bosnia\\_and\\_herzegovina.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_bosnia_and_herzegovina.pdf)

order to enable the Public Procurement Agency (PPA) to start delivering public procurement training for contracting authorities and economic operators, thus bringing to an end its current inability to comply with its statutory task of holding such trainings. Currently, professional development in the field of public procurement is mainly provided by private entities, is fragmented and irregular.

The institutional set-up remains broadly unchanged compared to SIGMA's 2015 Baseline Measurement Report<sup>560</sup>. Shortage of staff in both the PPA and the Procurement Review Body (PRB) is hampering the effectiveness of these two institutions. Poor transparency of the decision making by the PRB remains unresolved: the publication of the PRB's decisions is limited to the period after 2015 and has experienced interruptions in 2016.

The regulatory and institutional framework for the award of concessions and public-private partnerships (PPPs) remains highly fragmented. The transposition of the new EU Directive on Concessions<sup>561</sup> has not even begun at a conceptual level.

Electronic procurement (e-procurement) is one of the most dynamically evolving areas of the public procurement system. The continuing expansion of the centralised, online public procurement portal administered by the PPA<sup>562</sup> brings about increased transparency, greater availability of information, and easier handling of public procurement procedures for all parties involved.

The development of the Supreme Audit Institutions (SAIs) is progressing. The SAIs publish high-quality reports covering financial, compliance and performance audits. However, they are not well-anchored in the respective constitutions, and the Governments' level of implementing their recommendations is low. Trust in the SAIs as institutions that can effectively scrutinise the Governments and hold them accountable to citizens is low.

## 1.2. Main developments

The following section describes key changes in the public administration for each key requirement<sup>563</sup> and main developments, based on the indicators used in the SIGMA 2015 Baseline Measurement Reports.

In December 2016, the Council of Ministers (CoM) of BiH adopted a new PFM Reform Strategy for BiH. In June 2017, the FBiH and the BD adopted their own PFM Reform Strategies. The RS has not yet adopted its PFM Reform Strategy; until this is adopted, an overall strategy for the country cannot be developed.

In October 2015, the RS adopted a Law on Fiscal Responsibility<sup>564</sup>, which has improved some budgetary procedures and provided for the establishment of a Fiscal Council (although this has not happened yet). In December 2015, the RS also enacted a law to bring the Pension and Disability Fund into the Budget process<sup>565</sup>.

The FBiH enacted a new Law on the Treasury in June 2016<sup>566</sup>. The Law, which applies to social funds and cantonal and municipal bodies, replaces and consolidates previous legislation on the operation of the FBiH Treasury.

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<sup>560</sup> OECD (2015), *Baseline Measurement Report: Bosnia and Herzegovina*, OECD Publishing, Paris, <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-BiH.pdf>.

<sup>561</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

<sup>562</sup> <https://www.ejn.gov.ba/>.

<sup>563</sup> OECD (2017), *The Principles of Public Administration*, OECD Publishing, Paris, <http://www.sigmaweb.org/publications/Principles-of-Public-Administration-Edition-2017-ENG.pdf>.

<sup>564</sup> The RS Law on Fiscal Responsibility, the RS Official Gazette No. 94/15.

<sup>565</sup> The RS Law Amending the Budget System Law, Official Gazette No. 103/15.

<sup>566</sup> The FBiH Law on the Treasury, Official Gazette Nos. 58/02, 19/03, 79/07 and 26/16.

On 13 October 2016, the CoM adopted the Strategy and its Action Plan for the development of the public procurement system in BiH for the period 2016-2020<sup>567</sup>. The Strategy identifies the main objectives and areas for improvement, and contains a detailed Action Plan covering the years 2016 and 2017 which sets out the planned activities, their timeframe and source of financing, as well as the responsible institutions.

In 2015-2016, a number of implementing regulations (Rulebooks, Instructions and Decisions) required under the PPL were adopted covering a wide scope of issues related to public procurement procedures, such as e-procurement (Rulebook on Terms and Conditions for the Use of e-auction<sup>568</sup>), centralised procurement (Rulebook on Joint Procurement and the Central Purchasing Body<sup>569</sup>), the setting up of public procurement commissions within contracting authorities (Rulebook on the Establishment and Operation of the Procurement Commission<sup>570</sup>), training (Rulebook on the Training of Authorised Trainers<sup>571</sup>), and publication (Instructions on the Publication of Basic Contract Elements and Amendments to the Contract<sup>572</sup>). The adoption of the Rulebook on Monitoring of Public Procurement Procedures<sup>573</sup> adds a new monitoring tool to the competencies of the PPA.

The system of e-procurement has been expanding. During 2015, two new functionalities were introduced, namely the facility (only to registered users) for uploading and downloading tender documents and the publication of clarification requests and answers about tender documents on the online public procurement portal. In late 2016, the e-auction module was introduced.

At the institutional level, after a long delay, the two branch offices of the PRB (in Mostar and Banja Luka), responsible for the review of complaints involving lower-value contracts in their respective regions, became operational in December 2015, filling a serious gap in the system of legal protection and remedies. Moreover, considerable efforts have been made to address the issue of poor transparency of the decision making of the PRB. As of 2015 the PRB's decisions became publicly accessible through publication on the online public procurement portal, which is a step towards strengthening transparency and legal certainty in the system of legal review and remedies. However, the publication is limited to the PRB's decisions issued after 2015 and was temporarily interrupted in 2016.

**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 the ratio of debt to gross domestic product are on a sustainable path.**

There has been no significant improvement in the State, the Entities or the BD in the areas of Principles 1 and 2 since 2015. The weaknesses highlighted in the 2015 Baseline Measurement Report remain.

The medium-term budgetary frameworks (MTBFs) still serve as indicative spending targets only in relation to the forthcoming annual Budget. The budget instructions do not require the previous year's Budget Framework Papers (BFPs) to act as the starting point for budget-user demands. Extra-budgetary funds (EBFs) in the RS, the FBiH and the BD are still not covered by the MTBF or the annual Budget and, as such, are a major issue that needs to be addressed. While the RS has brought the Pension and Disability Fund into the Budget process, this is only a first step; other EBFs (such as the Health Insurance Fund) need to be included as well.

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<sup>567</sup> [https://www.javnenabavke.gov.ba/vijesti/2016/Strategija\\_2016-2020\\_en.pdf](https://www.javnenabavke.gov.ba/vijesti/2016/Strategija_2016-2020_en.pdf)

<sup>568</sup> Official Gazette of BiH No. 66/16, 15 September 2016.

<sup>569</sup> *Idem*, No. 55/15, 14 July 2015.

<sup>570</sup> *Idem*, No. 103/14, 12 February 2015.

<sup>571</sup> *Idem*, No. 62/15, 18 August 2015.

<sup>572</sup> *Idem*, No. 56/15, 17 August 2015.

<sup>573</sup> *Idem*, No. 72/16, 5 October 2016.

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With regard to the strength of the fiscal rules, there is no independent body to offer external advice on the draft Budget at any level. While the RS has enacted legislation to provide for such a body, it is not yet operational. Although the debt-to-GDP ratio remains stable, there is no regard for the overall debt ratio or budget deficit when setting objectives, and no *ex-post* corrective actions are defined to ensure compliance with fiscal limits.

The information provided to the State Parliamentary Assembly, the FBiH Parliament, the RS National Assembly and the BD Assembly when submitting the Budgets is not comprehensive: each Budget lacks accompanying information, such as an estimate of the current year's outturn and Instrument for Pre-accession Assistance (IPA) total funding (as opposed to just the domestic element of IPA funding). The time allotted for each legislature to consider and assess the annual Budget is still too limited and falls short of best practice. Capital expenditure planning in the FBiH and the RS is included in a separate process and is still not fully integrated in the Budget, even though it can only be agreed in the context of the Budget.

It should be noted that a performance audit carried out by the SAI in the RS in July 2016<sup>574</sup> issued criticisms about a number of issues, including overly optimistic revenue projections and underestimation of expenditure, and a divergence between the MTBF and the actual Budgets in a number of years. It also noted the lack of transparency in the Budget information. While this audit relates to the RS, the same can be said about the Budget processes in the State, the FBiH and the BD.

While the 2015 Baseline Measurement featured a number of short-term recommendations, no progress has been made and none have been implemented.

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[http://www.gsr-rs.org/front/article/66/?left\\_mi=None&up\\_mi=&add=None](http://www.gsr-rs.org/front/article/66/?left_mi=None&up_mi=&add=None).

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**Table 1. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports<sup>575</sup>**

|              | 2015 Baseline Measurement Indicator  | 2015 value                   | 2017 value                   |
|--------------|--|------------------------------|------------------------------|
| Qualitative  | MTBF strength index.   | 2                            | 2                            |
|              | Fiscal rules strength index.   | 1                            | 1                            |
|              | Extent to which the annual budget proposal includes full information at the time of presentation to the parliament.  | 2                            | 2                            |
| Quantitative | Percentage differences between the planned budget revenue in the MTBF (as approved two years before the latest available year) and the outturn of the latest available year.     | Not available <sup>576</sup> | Not Available <sup>577</sup> |
|              | 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. | Not available <sup>578</sup> | Not Available <sup>579</sup> |
|              | General government budget balance.   | -1.8% <sup>580</sup>         | -0.3% <sup>581</sup>         |
|              | Percentage differences between the planned budget revenue (as approved in the budget) compared to the outturn of the latest available year.                                      | -6% <sup>582</sup>           | Not available <sup>583</sup> |
|              | Percentage differences between the planned budget expenditure (as approved in the budget) compared to the outturn of the latest available year.                                  | -5% <sup>584</sup>           | Not available <sup>585</sup> |

<sup>575</sup> OECD (2015), *Baseline Measurement Report: Bosnia and Herzegovina*, OECD Publishing, Paris, <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-BiH.pdf>.

<sup>576</sup> The 2014 data is not available.

<sup>577</sup> The 2016 data is not available.

<sup>578</sup> The 2014 data is not available.

<sup>579</sup> The 2016 data is not available.

<sup>580</sup> ERP 2015-2017, p. 99, Table 6.

<sup>581</sup> Calculated by SIGMA, using GDP data from the ERP 2017-2019 (p.4) and debt data from the ERP 2017-2019 (p.41).

<sup>582</sup> The 2014 data is not available. This indicator has been calculated by adding the 2013 figures for the State, the FBiH, the RS and the BD. The figures are not consolidated, meaning there is no adjustment to exclude transactions between the State and the Entities or the BD.

<sup>583</sup> The 2016 data is not available for the State and the RS.

<sup>584</sup> The 2014 data is not available. This indicator has been calculated by adding the 2013 figures for the State, the FBiH, the RS and the BD. The figures are not consolidated, meaning there is no adjustment to exclude transactions between the State and the Entities or the BD.

<sup>585</sup> The 2016 data is not available for the State and the RS.

**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.**

Little change has occurred in the area of in-year monitoring or debt management since the 2015 Baseline Measurement Report. There has been no move to publish monthly reports on the evolution of the budgetary aggregates. Regularly published reviews showing not only the evolution of revenue and expenditure, but also explaining variations, are lacking. In addition, local authority quarterly reports are still not published in the RS or the FBiH, which was a recommendation in the 2015 Baseline Measurement Report.

There has been no significant change with regard to annual financial reporting. The reports for the State, the FBiH, the RS and the BD are at the central government level only. They do not explain the variations in planned expenditure; contain no information on financial assets and liabilities, State guarantees and contingent liabilities (with the exception of the State level annual financial report); and do not provide non-financial performance information. The process for their consideration by the respective legislatures is weak although they are submitted in accordance with the legislative requirements.

Debt levels are not high by international standards and are relatively stable as a percentage of GDP. In 2014, the RS altered the components to be counted in the debt figures because of the exceptional flood crisis that year; this reduced the debt-to-GDP figure by about 0.5% in 2015. Although this was only temporary and was reversed in 2016, it would be preferable to ensure that debt is counted as comprehensively as possible to show the full picture; reporting on a European System of Accounts (ESA) basis for all financial figures is therefore all the more urgent. Since 2015, the State and the two Entities have published their first debt management strategies<sup>586</sup>. The BD does not publish a debt management strategy, but it is included in the State debt management strategy, which is a consolidation of the debt management strategies of the State, the Entities and the BD.

**Table 2. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

|              | 2015 Baseline Measurement indicator  | 2015 value                   | 2017 value                   |
|--------------|--|------------------------------|------------------------------|
| Qualitative  | Extent to which in-year financial reporting provides full information and is made publically available.                | 0                            | 0                            |
|              | Extent to which the annual financial report includes full information and is made available in time to the parliament. | 2                            | 2                            |
| Quantitative | Average percentage differences between cash flow projections and actual cash balance on a monthly basis.               | Not available <sup>587</sup> | Not available <sup>588</sup> |

<sup>586</sup> The State Medium-term Debt Management Strategy, April 2016, [http://mft.gov.ba/bos/images/stories/javni\\_dug/2015/Srednjorocna%20strategija%20upravljanja%20dugom%20BiH%20-%20BOS%20za%20web.pdf](http://mft.gov.ba/bos/images/stories/javni_dug/2015/Srednjorocna%20strategija%20upravljanja%20dugom%20BiH%20-%20BOS%20za%20web.pdf);  
The RS Debt Management Strategy 2016-2019, December 2016, <http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mf/Documents/RS%20MTDS%202016-2019.pdf>); for  
The FBiH Debt Management Strategy 2017-2019, February 2017, [http://www.fmf.gov.ba/v2/userfiles/userfiles/file/2017/2017\\_JN/Strategija%20upravljanja%20dugom%20u%20FBiH%202017-2019.pdf](http://www.fmf.gov.ba/v2/userfiles/userfiles/file/2017/2017_JN/Strategija%20upravljanja%20dugom%20u%20FBiH%202017-2019.pdf).

<sup>587</sup> Monthly data is not prepared.

<sup>588</sup> Ditto.

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|  |  |                              |                              |
|--|--|------------------------------|------------------------------|
|  | Accumulated arrears for central government measured as a percentage of total expenditure at the end of the latest available calendar year. | Not available <sup>589</sup> | Not available <sup>590</sup> |
|  | Public-sector debt servicing costs as a share of gross domestic product.   | 2.5% <sup>591</sup>          | 2.4% <sup>592</sup>          |
|  | Difference of public-sector debt level outturn from target.  | -4.3%                        | -1.2% <sup>593</sup>         |

**Key requirement: National internal control policy is in line with the requirements of Chapter 32 of European Union accession negotiations and is systematically implemented throughout the public sector.**

Additional elements of the overall framework for financial management and control (FMC) have been put in place since 2015. At the time of the 2015 Baseline Assessment, FMC legislation for the FBiH and the RS, as well as a strategy for the FBiH, were in draft form. Each of these elements has now been approved and is in place. In addition, a strategy for the State has been drafted, revised after review by the Directorate-General for Budget of the EC, and adopted. PFM Reform Programmes have been adopted at the levels of the State, the FBiH and the BD, meaning that their plans to develop FMC are linked to the planned reforms and changes to budget management, and that these reforms include measures under the responsibility of institutions other than the respective Ministries of Finance (MoFs).

Furthermore, secondary legislation and guidance have also been added to the FMC framework: the State has issued risk-management guidelines<sup>594</sup>, and the FBiH has introduced FMC regulations<sup>595</sup>. The RS has not added any material yet; the primary legislation was approved in November 2016.

This legal and operational framework for FMC across the State and both Entities benefitted from the support of IPA-funded projects, the most recent of which ended in July 2015. Since then, the State has been supported by a twinning project<sup>596</sup>, which is helping to implement FMC at pilot institutions by defining business processes, describing procedures and identifying risks. Furthermore, in 2016 the Central Harmonisation Unit (CHU) at the State level ran a training programme for 100 civil servants from 65 institutions on the implementation of FMC in two pilot institutions, the State Indirect Tax Authority and the State Food Safety Authority.

CHU staffing has improved in the FBiH, with additional staff recruited in 2015 and 2016.

<sup>589</sup> As data for the FBiH was not provided, this could not be calculated. For 2013, at the State level, arrears were 13% of total expenditure; in the RS, arrears were 14% of total expenditure; in the BD, arrears were 30% of total expenditure. The 2014 data was not available, because the Budget execution reports had not been published.

<sup>590</sup> As data for the State, the FBiH and the RS was not provided, this cannot be calculated. For 2015, arrears in the BD were 3.6% of total expenditure. The 2016 data is not available, because the Budget execution reports have not been published.

<sup>591</sup> The State Ministry of Finance and Treasury. This is interest on external debt only. Details of interest on domestic debt are not available. External debt was 69% of total debt in 2014; this suggests that the total debt servicing cost in 2014 was significantly higher.

<sup>592</sup> The State Debt Report 2016, p. 25, Table 16\_ This is interest on external debt only. Details of interest on domestic debt are not available. External debt was 71% of total debt in 2016, which suggests that the total debt servicing cost in 2016 was significantly higher.

<sup>593</sup> The 2016 forecast in the ERP 2016-2018 was 41.7%; the estimated outturn for 2016 in the ERP 2017-2019 was 40.5%.

<sup>594</sup> The State Risk Management Guidelines, March 2015.

<sup>595</sup> The FBiH Regulations on the Implementation of Financial Management and Control, Official Gazette of the FBiH No. 92/17, January 2017.

<sup>596</sup> Memorandum of Understanding on Technical Co-operation for the period 2016-2019 between the State MoFT and the Netherlands, signed in September 2016.

The FBiH secured assistance from a World Bank-funded project that assessed the effectiveness of existing financial controls in preventing risks and providing a risk response in budget planning and execution and accounting in pilot institutions. The study concluded with an action plan detailing measures to improve risk management and internal control over transfers and subsidies between the various government levels of the FBiH. These measures were based on pilot work in key ministries, and also led to additional training to allow more institutions to learn from the work.

Progress at the institutional level can only be assessed for the State, which has an annual monitoring process since it has a longer-established legal framework. The questionnaire for the 2016 monitoring covered more issues than in 2015. Of the 93 comparable questions, however, 88 are designed to show progress in the number of institutions taking action. With regard to the institutions, significant developments have taken place in the following areas:

- appointment of a person responsible for FMC (increased from 43% to 71%)
- appointment of a person responsible for collecting information on risks (increased from 11% to 41%)
- programme managers producing a report on the implementation of objectives, programmes and projects (decreased from 78% to 63%)
- evaluation and assessment of the impact of employees (decreased from 87% to 62%).

The last two areas especially have an important impact on the development of managerial accountability.

**Table 3. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

|                     | 2015 Baseline Measurement indicator  | 2015 value                   | 2017 value                   |
|---------------------|--|------------------------------|------------------------------|
| <b>Qualitative</b>  | Extent to which the operational framework for FMC is complete, in place and applied.                               | 1                            | 2                            |
| <b>Quantitative</b> | Share of first-level budget organisations where the budget structure is aligned with the organisational structure. | Not available <sup>597</sup> | Not available <sup>598</sup> |

**Key requirement: The internal audit function is established throughout the public sector and internal audit work is carried out according to international standards.**

The extent to which the operational framework for IA is in place has decreased in value compared with 2015. Less than 90% of the IA units are established according to legal requirements. Periodic meetings of the CHUs with the heads of IA units have not taken place since the most recent IPA-funded project<sup>599</sup> ended. Certification programmes are in place at the State level, and in the FBiH, the RS and the BD, but are not yet operational. Progress is only measured with regard to the operational framework, not the quality of the audit work. As a result, the 2017 value has decreased to 2.

Assessing the quality of audit reports using the methodology in the 2015 assessment requires the study of a substantial number of audit reports; in 2017 as in 2015, these were not available.

<sup>597</sup> The data was provided for the BD only, and not for the State level or the Entities.

<sup>598</sup> The data was provided for the State only, and not for the Entities or the BD.

<sup>599</sup> Strengthening Public Financial Management in BiH.

No information is available about the number of certified internal auditors working in public sector institutions although the State Annual Consolidated Report on Internal Audit for 2016<sup>600</sup> refers to 30 internal auditors being trained in that year.

There has been some progress regarding the short-term recommendations in the 2015 Baseline Measurement Report about developing internal auditors and reducing the single-person IA function. As well as the certification programmes now in place at the State level, and in the FBiH, the RS and the BD, a Continuous Professional Development (CPD) programme has been established, although only at the State level. At the State level and in the FBiH, measures have been taken to abolish the single-person IA function.

The other short-term recommendation, to establish a CHU in the BD, has not yet resulted in action.

**Table 4. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

|              | 2015 Baseline Measurement Indicator   | 2015 value                   | 2017 value                   |
|--------------|---|------------------------------|------------------------------|
| Qualitative  | Extent to which the operational framework for internal audit is designed and in place.  | 3                            | 2                            |
|              | Quality of internal audit reports.  | Not available <sup>601</sup> | Not available <sup>602</sup> |
| Quantitative | Share of public administration organisations meeting national legal requirements for establishing and minimum staffing of internal audit units. | 19%                          | 20%                          |
|              | Share of internal auditors with a national or international internal audit certificate.   | 78%                          | Not available <sup>603</sup> |

**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.**

Some progress has been achieved since the 2015 assessment with regard to the policy and legislative framework of public procurement.

First, in October 2016, the CoM of BiH adopted a new public procurement Strategy for 2016-2020. The Strategy is accompanied by a detailed Action Plan and represents a clear commitment to further develop and align the legislative and institutional framework with the *acquis*. The Strategy provides a thorough analysis of the state of play and main priorities, as well as expected reforms in the areas of procurement legislation, monitoring, training and education, access to legal review and remedies, and e-procurement. Furthermore, the accompanying Action Plan sets out in detail the measures required for the implementation of each of the goals of the Strategy, and contains clear indications as to the distribution

<sup>600</sup> Annual Consolidated Report on internal Audit for 2016, [http://mft.gov.ba/bos/images/stories/chj/izvjestaji/2017/nsolidovani%20izvjestaj%20IR%20za%202016%20\(bos\).pdf](http://mft.gov.ba/bos/images/stories/chj/izvjestaji/2017/nsolidovani%20izvjestaj%20IR%20za%202016%20(bos).pdf).

<sup>601</sup> Only 7 out of a total of 22 reports requested were received, which is too small a sample to assess the quality of internal reports for the country as a whole.

<sup>602</sup> Only 6 out of a total of 20 reports requested were received, which is too small a sample to assess the quality of internal reports for the country as a whole.

<sup>603</sup> The data was provided for the FBiH only, and not for the State or the RS; there is no IA in the BD.

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of responsibilities between competent institutions and the allocation of funds necessary for the purposes of implementation.

Second, the adoption of the secondary legislation necessary for the implementation of the PPL has made steady progress. Overall, since June 2015, 11 pieces of implementing regulations (Decisions, Rulebooks, and Instructions) have been adopted and entered into force, covering a wide range of issues such as joint procurement, the training of authorised trainers and the use of e-auction<sup>604</sup>. There has been no progress in the area of concessions and PPPs since the 2015 assessment. No measures have been taken to harmonise the PPP/concessions Law with the EU requirements or to increase the level of co-ordination among the authorities concerned as recommended by SIGMA.

**Table 5. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

|                    | 2015 Baseline Measurement Indicator   | 2015 value | 2017 value |
|--------------------|---|------------|------------|
| <b>Qualitative</b> | Extent to which public procurement legislation is complete and enforced.  | 3          | 3          |
|                    | Nature and extent of public consultations during the process of developing regulations for public procurement and monitoring their use and appropriateness.                                       | 4          | 4          |
|                    | Extent to which policy framework for public procurement is developed and implemented.   | 3          | 3          |
|                    | Extent of coverage by dedicated institutions of the central procurement functions mentioned and of regulations defining their roles, responsibilities, working practices, staffing and resources. | 2          | 2          |
|                    | Comprehensiveness of systems for monitoring and reporting on public procurement proceedings and practices.  | 2          | 2          |
|                    | Clarity, timeliness, comprehensiveness and accessibility of information available to contracting authorities and entities, economic operators and other stakeholders.                             | 2          | 2          |

<sup>604</sup> Decision on the Use of Common Procurement Vocabulary (Official Gazette of BiH No. 54/15, 15 July 2015); Decision on Obligatory Application of Domestic Preferences (Official Gazette of BiH No. 83/16, 11 November 2016); Rulebook on the Establishment and Operation of Procurement Commissions (Official Gazette of BiH No. 103/14, 12 February 2015); Rulebook on Joint Procurement and Central Purchasing Body (Official Gazette of BiH No. 55/15, 14 July 2015); Rulebook on Training of Authorised Trainers (Official Gazette of BiH No. 62/15, 18 August 2015); Rulebook with a List of Categories of Contracting Authorities Obligated to Apply the PPL (Official Gazette of BiH No. 21/15, 18 August 2015); Rulebook on Contract Award Procedure in the Field of Defence and Security (Official Gazette of BiH No. 60/15, 19 August 2015); Rulebook on Terms and Conditions for the Use of e-Auction (Official Gazette of BiH No. 66/16, 15 September 2016); Rulebook on Service Contract Award Referred to in Annex II, Part B of the PPL (Official Gazette of BiH No. 66/16, 15 September 2016); Rulebook on Monitoring of Public Procurement Procedures (Official Gazette of BiH No. 72/16, 5 October 2016); Instructions on the Establishment and Management of the Qualification System (Official Gazette of BiH No. 96/14, 12 February 2015).

**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.**

The legal review and remedies system was marked by two important developments.

First, considerable progress has been achieved in raising the transparency of the decision making of the PRB. Launched in 2015 and having experienced some interruptions in 2016, the publication of the PRB's decisions on the public procurement portal has resumed. The system allows browsing of the decisions of the PRB (though only decisions issued after 2015) on the basis of numerous criteria, such as the name of the contracting authority or the bidder involved, the procedure number or the date. While the benefits of this search engine are still limited (in the sense that more search options could be added such as searches by the subject matter of the complaint, by the outcome of the review procedure or by key words), its introduction is a major contribution to increased transparency and legal certainty of the legal review and remedies system of BiH.

Second, important adjustments took place at the institutional level. As foreseen in the PPL, the two branch offices of the PRB – in Mostar and Banja Luka – became operational at the end of 2015. The branch offices have the competence to handle complaints involving lower-value contracts, awarded by institutions in the FBiH (office in Mostar) and the RS (office in Banja Luka). Thus, the institutional set-up in the field of legal review and remedies has now come into line with what is required in the PPL and is expected to bring about swifter handling and resolution of complaints. Communication to ensure coherence in the decision making of the institution as a whole is, however, limited to informal channels and meetings between the three PRB offices.

No progress has been achieved in the field of concessions and PPPs.

**Table 6. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

|              | 2015 Baseline Measurement indicator  | 2015 value         | 2017 value       |
|--------------|--|--------------------|------------------|
| Qualitative  | 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. | 1                  | 2                |
|              | Presence of a user-friendly procurement review website including timely publication of decisions and statistics, with adequate search functions.   | 2                  | 2                |
| Quantitative | Actual processing time of complaints related to procurement compared with maximum legal requirements.  | 50% <sup>605</sup> | No data provided |
|              | Number of cases in which the procurement review body exceeded the legal maximum processing time in relation to the total number of complaints.   | 0%                 | 0%               |
|              | Number of complaints in relations to the number of   | 10.8%              | No data          |

<sup>605</sup> 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.

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|  |  |      |                  |
|--|--|------|------------------|
|  | tender notices published.  |      | provided         |
|  | Share of complaints in procurement that are challenged to the next judicial level. | 0.4% | No data provided |

**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.**

The e-procurement system has been undergoing steady development. In addition to the publication of notices and submission of reports on procurement procedures on the public procurement portal, two new facilities were introduced in 2015, namely the uploading and downloading of tender documents and the publication of clarification requests and answers about tender documents. Moreover, in 2016, an e-auction module was introduced, accompanied by the entry into force of the relevant secondary legislation.

**Table 7. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports**

|                     | 2015 Baseline Measurement indicator   | 2015 value                   | 2017 value    |
|---------------------|---|------------------------------|---------------|
| <b>Qualitative</b>  | Extent of use of modern procurement techniques and methods.   | 2                            | 3             |
|                     | Nature and extent of clear, user-friendly guidelines and instructions, standard documents and other tools available to contracting authorities and procurement officials. | 2                            | 2             |
| <b>Quantitative</b> | Share of contracts already announced in published procurement plans or indicative notices.  | Not available <sup>606</sup> | Not available |
|                     | Share of contracts awarded by competitive procedures.   | 50.4%                        | 32.4%         |
|                     | Share of contracts awarded based on acquisition price only.   | 72.2%                        | 86.6%         |
|                     | Share of contracts amended after award.   | Not available                | Not available |
|                     | Average number of tenders submitted per goods contract to be procured.  | Not available                | 2.28          |
|                     | Average number of tenders submitted per works contract to be procured.  | Not available                | 3.03          |
|                     | Average number of tenders submitted per services contract to be procured.   | Not available                | 2.93          |

<sup>606</sup> Here and hereafter, "Not available" means that no official 2014 data was available.

**Key requirement: The constitutional and legal frameworks guarantee 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.**

The SAI Laws of the State, the FBiH, the RS and the BD<sup>607</sup> are in accordance with international standards. The value of the independence indicator, unchanged since 2015, is 4.

All SAIs have developed and adopted a Strategic Development Plan (SDP), the SAI BiH and the SAI RS for 2014-2020 and the SAI FBiH for 2017-2020, which are based on the SDP for 2013-2019 adopted by the Co-ordination Board (CB). The implementation of the plans has so far not been reviewed annually<sup>608</sup>, and while the SAIs do not report explicitly on implementation progress in their annual activity reports, the activities that they report about are mainly planned for in the SDPs. However, from this approach it is not clear which of the planned activities have not been implemented. The value for the indicator measuring the extent to which the SAI management ensures the institution's development has remained at 4 since 2015.

Implemented recommendations at the end of 2016 are not known for all of the SAIs. For the audit year 2015 the SAIs started to develop registers for recommendations in order to be able to represent systematically in one place information on all recommendations made and their implementation by audited institutions. This complements the annual review of implemented recommendations in the annual financial audits and the monitoring of implementation of performance audit recommendations.

The SAIs have followed up on one key recommendation of the 2015 Baseline Measurement Report. They have developed a formal training needs assessment to support the continuous training of staff, and the CB has developed and adopted a strategic plan for the training of SAI auditors for 2016-2019.

Short-term key recommendations on organising awareness-raising events to improve auditees' implementation rates of audit recommendations and the drafting of audit quality control reports with recommendations for improvements have not yet led to actions.

**Table 8. Comparison with the values of the relevant indicators used in the 2015 Baseline Measurement Reports<sup>609</sup>**

|              | 2015 Baseline Measurement Indicator  | 2015 value | 2017 value |
|--------------|--|------------|------------|
| Qualitative  | Extent to which the fundamental requirement for SAI independence, mandate and organisation is established and protected by the constitutional and legal framework. | 4          | 4          |
|              | Extent to which the SAI management ensures the development of the institution.   | 4          | 4          |
| Quantitative | Share of SAI budget in the state budget.   | 0.11%      | 0.17%      |
|              | Proportion of audit reports published on the SAI website compared with audit reports adopted.  | 100%       | 100%       |

<sup>607</sup> Except for the financial independence of the BD SAI, whose budget has to be approved by the BD Government Finance Directorate.

<sup>608</sup> Monitoring paragraphs of the Strategic Development Plans of the SAIs of BiH, the FBiH and the RS.

<sup>609</sup> OECD (2015), *Baseline Measurement Report: Bosnia and Herzegovina*, OECD Publishing, Paris, [www.sigmaweb.org/publications/Baseline-Measurement-2015-BiH.pdf](http://www.sigmaweb.org/publications/Baseline-Measurement-2015-BiH.pdf).

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|  |  |                    |                              |
|--|--|--------------------|------------------------------|
|  | Share of audit recommendations accepted and implemented by auditees. | 32% <sup>610</sup> | Not Available <sup>611</sup> |
|--|--|--------------------|------------------------------|

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<sup>610</sup> Data provided by the BiH SAI, the FBiH SAI and the RS SAI; data for the BD SAI is not available. The 32% figure is for the total of the State and the two Entities.

<sup>611</sup> Insufficient data available to calculate an average for all the SAIs.

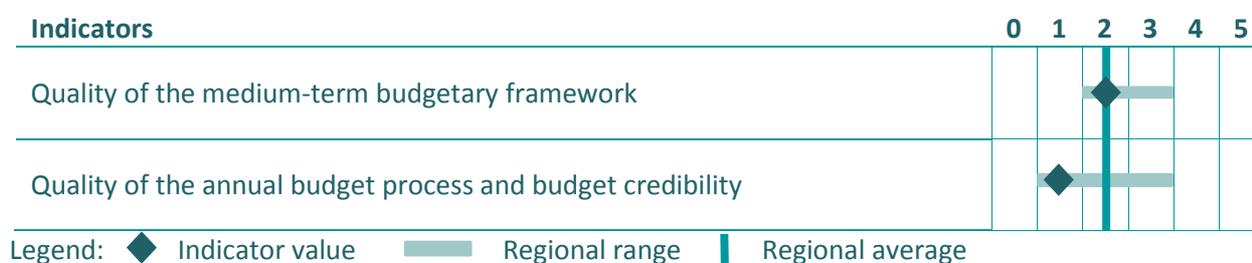
## 2. ANALYSIS

This analysis covers 16 Principles for the public financial management area grouped under 8 key requirements. It includes a summary analysis of the indicator(s) used to assess against each Principle, including sub-indicators<sup>612</sup>, and an assessment of the state of play for each Principle. For each key requirement short- and medium-term recommendations are presented.

### Budget management

**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 the ratio of debt to gross domestic product are on a sustainable path.**

The values of the indicators assessing Bosnia and Herzegovina's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



### 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 period of three years; all budget organisations operate within it.**

Each of the Entities and the State prepares multi-annual BFPs under their respective legal provisions<sup>613</sup>. The timetables and procedures are broadly common across the State, the Entities and the BD, and envisage a mid-year submission of the BFPs to their respective Governments for approval. The macroeconomic projections underlying the BFPs are based on the Global Framework on Fiscal Balance and Policies (GFFBP). An advisory group of officials from the State Ministry of Finance and Treasury (MoFT), the FBiH MoF, the RS MoF and the BD Finance Directorate (FD) prepares and submits a draft GFFBP to the Fiscal Council, consisting of the Chair of the CoM of BiH and the Prime Ministers and Ministers of Finance of the State, the RS and the FBiH, with the Governor of the Central Bank and Mayor of the BD acting as observers<sup>614</sup>. The main aim of the GFFBP are to: set the macroeconomic forecasts underpinning the BFPs and the Budgets of the State, the Entities and the BD; determine the income from indirect taxes, and its allocation to the State, each Entity and the BD; and set the overall debt level.

<sup>612</sup> OECD (2017), *Methodological Framework for the Principles of Public Administration*, OECD Publishing, Paris, <http://sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-November-2017.pdf>. This methodology is a further developed detailed specification of indicators used to measure the state of play against the Principles of Public Administration.

<sup>613</sup> Law on the Financing of the BiH Institutions, Official Gazette of BiH Nos. 61/04, 49/09 and 42/12; Law on the Budget of the FBiH, Official Gazette of the FBiH Nos. 102/13, 9/14, 13/14, 8/15, 91/15 and 102/15; Law on the Budget System of the RS, Official Gazette of the RS Nos. 121/12, 52/14 and 103/15; Law on the Budget of the BD, Official Gazette of the BD No. 17/08.

<sup>614</sup> The Fiscal Council is not an independent watchdog, as is the case in some EU member countries. It is a co-ordinating body that establishes the basis for the State, the FBiH, the RS and the BD to frame their individual Budgets.

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The 2015 Baseline Measurement Report noted that the GFFBP was not finalised until July 2014, i.e. after the adoption of the three-year BFPs for the Entities, which are supposed to be informed by the GFFBP. There has been an improvement, however, in that the GFFBP was adopted both in May 2015 and May 2016, in keeping with its mission of guiding individual BFPs.

The GFFBP can show overly optimistic projections; for example, the GFFBP 2015-2017, estimated real GDP growth at 1.8% for 2014, 3.2% for 2015 and 4.6% for 2016. In the latest GFFBP 2017-2019<sup>615</sup> the actual figures were 0.4% in 2014, 2.6% in 2015 and 3.2% in 2016. While GDP forecasting is generally an imprecise activity, overly optimistic economic forecasts have a knock-on impact on fiscal forecasts, such as deficit and debt targets. However, the BiH Reform Strategy (adopted in December 2016<sup>616</sup>), the FBiH PFM Reform Strategy (adopted in June 2017<sup>617</sup>) and the BD PFM Reform Strategy (adopted in June 2017<sup>618</sup>) all target improved economic forecasting as a key reform.

One of the main outputs of the GFFBP is indirect tax forecast, which is a function of the State. In 2015, the revenue from indirect taxes amounted to BAM 5.26 million (Bosnian mark); it is estimated at BAM 5.53 million for 2016. Given the importance of this revenue stream, the fact that the indirect tax forecasting unit employs only two people is a cause for concern.

The State, the Entities and the BD draw up three-year BFPs, in line with the macro forecasts and revenue forecasts contained in the GFFBP. The figures contained in the BFPs are not based on ESA standards. Therefore, the BFPs cannot be said to base their targets on general government norms – especially for the debt and deficit targets, which are central to fiscal planning. In the BD, the official revenue figure still includes borrowing; in the FBiH and the RS, many of the EBFs are excluded from the medium-term and annual Budget figures. As a result, the figures cannot be considered comprehensive.

The BFPs do not set spending ceilings for the three-year periods covered by the MTBFs. Rather, the Year 1 projection informs that year's Budget, and subsequent years are revised in the following three-year BFP. The BFPs are not sent for approval by any of the respective legislatures in the State, the Entities or the BD.

The MTBF documents do not include IPA funding. While some strategic plans exist at the ministerial and sectoral level, these are not always fully costed. Furthermore, the plans do not lead the investment strategy; rather, projects are prioritised according to the availability of funding, generally from foreign donors. The link between the ministerial/sectoral strategies and the BFPs is weak.

The Entities have their own established fiscal rules. In the RS, the fiscal rule<sup>619</sup> specifies that the total debt cannot exceed 60% of GDP, and public debt cannot exceed 55% of GDP; it also specifies that the Budget deficit cannot exceed 3% of GDP, and that where the deficit stands at 2.5% of GDP or higher – or the debt exceeds 50% – the Budget for the following year must target a surplus. Total debt in the RS currently stands at 56.7%, and public debt at 45.6%<sup>620</sup> – both within the legal limits. The deficit target for 2017 is 1.2%, with a target budget surplus of 1.7% in 2018 and 2.3% in 2019<sup>621</sup>. In the FBiH, the current account of the Budget must be balanced and if a deficit on the current account occurs, a surplus must be

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<sup>615</sup> [http://mft.gov.ba/bos/images/stories/budzet/gfo/GO%20BiH%202017-2019\\_korigovano\\_230516%20bos%20tb.pdf](http://mft.gov.ba/bos/images/stories/budzet/gfo/GO%20BiH%202017-2019_korigovano_230516%20bos%20tb.pdf)

<sup>616</sup> <http://mft.gov.ba/bos/images/stories/ministarstvo/registar%20propisa/prijedlozi/Strategija%20reforme%20upravljanja%20javnim%20financijama%20u%20institucijama%20Bosne%20i%20Hercegovine%202017-2020.pdf>

<sup>617</sup> <http://www.fmf.gov.ba/v2/stranica.php?idstranica=147&idmeni=15>.

<sup>618</sup> Not yet published.

<sup>619</sup> The RS Law on Fiscal Responsibility, Official Gazette of the RS No. 94/15, Articles 6 and 7.

<sup>620</sup> ERP 2017-2019, p. 52.

<sup>621</sup> *Idem*, p. 19.

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planned for the following five years. There are also specified limits on debt servicing costs (limited to 18% of current revenues)<sup>622</sup>. The State and the BD have no fiscal rules.

In terms of fiscal discipline at the State level, the FBiH and the BD, there is no independent body to monitor compliance with the fiscal rules, the MTBF or the annual Budget. The RS has a provision<sup>623</sup> to establish a body, but this has not yet been accomplished.

On the basis of the available evidence, the value for the indicator ‘Quality of the medium-term budgetary framework’ is 2.

| Quality of the medium-term budgetary framework   |   |   |   |   |   |   |
|--|---|---|---|---|---|---|
| This indicator measures how well the medium-term budgetary framework (MTBF) is established as a fiscal plan of the government, focusing on the process of budget preparation and four areas that influence the quality of the budget documents. A good MTBF should increase transparency in budget planning, contribute more credible forecasts and ultimately lead to a better general government budget balance. |   |   |   |   |   |   |
| Overall indicator value  | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators                                      | Points             |
|---|--------------------|
| 1. Strength of the medium-term budgetary framework  | 7/12               |
| 2. Strength of the fiscal rules                     | 2/5                |
| 3. Credibility of medium-term revenue plans (%)     | 0/4 <sup>624</sup> |
| 4. Credibility of medium-term expenditure plans (%) | 0/4 <sup>625</sup> |
| <b>Total<sup>626</sup></b>                          | <b>9/25</b>        |

The GFFBP sets the overall framework for the individual BFPs, but its forecasts can be overly optimistic. Moreover, the BFPs are really a first draft of the annual Budget for that year; the BFP targets for future years are subject to change in subsequent years. The exclusion of EBFs from the BFP of the FBiH is a weakness.

***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 frameworks and are observed.***

The procedures for the annual Budgets of the State, the Entities and the BD are set in the relevant organic budget law<sup>627</sup>. In general, they follow the same pattern: based on BFPs approved by the respective Governments, each of the MoFs send a Budget Instruction to the relevant budget users in the middle of the year (July); then they engage in discussions with the budget users regarding their budget

<sup>622</sup> Law on the Budget of the FBiH, Official Gazette of the FBiH Nos. 102/13, 9/14, 13/14, 8/15, 91/15 and 102/15, Article 43; the FBiH Law on Debt Borrowing and Guarantees, Official Gazette of the FBiH Nos. 86/07, 24/09, 44/10 and 30/16, Article 7.

<sup>623</sup> The RS Law on Fiscal Responsibility, Official Gazette of the RS No. 94/15, Article 14.

<sup>624</sup> This value is due to insufficient data.

<sup>625</sup> Ditto.

<sup>626</sup> Point conversion ranges: 0-3=0, 4-8=1, 9-13=2, 14-18=3, 19-22=4, 23-25=5.

<sup>627</sup> The State Law on the Financing of the BiH Institutions, Official Gazette of BiH Nos. 61/04, 49/09 and 42/12; the FBiH Law on the Budget, Official Gazette of the FBiH Nos. 102/13, 9/14, 13/14, 8/15, 91/15 and 102/15; the RS Law on the Budget System Official Gazette of the RS Nos. 121/12, 52/14 and 103/15; the BD Budget Law, Official Gazette of the BD No. 17/08.

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requests; based on these interactions, the MoFs forward draft Budgets to the respective Government for approval, after which they submit them to the legislatures. It should be noted that in all cases, the legislatures have very limited time to consider and approve the annual Budget before the year's end. The 2015 Baseline Measurement Report noted that deadlines for submission of the 2015 Budgets to the legislatures had been missed. This continues to be the case: in 2016, the submission deadlines were breached by the State, the Entities and the BD.

**Table 9. Dates for parliamentary approval**

| Budget 2017                               | BiH         | FBiH        | RS          | BD           |
|---|-------------|-------------|-------------|--------------|
| Legally prescribed submission date (2016) | 1 November  | 5 November  | 5 November  | 1 October    |
| Actual date submitted                     | 30 November | 12 December | 14 December | 2 March 2017 |

Sources: The State Ministry of Finance and Treasury, the FBiH Ministry of Finance, the RS Ministry of Finance, and the BD Finance Directorate.

It should also be noted that even if the timetables were respected, they still would not allow sufficient time for parliamentary debate on the draft Budgets, and are therefore not in line with best international practice<sup>628</sup>.

In addition to the late submissions and shortage of time for parliamentary debate, other aspects of parliamentary scrutiny are weak: the legislatures do not consider the MTBFs before the budget submissions, even though these are published well in advance<sup>629</sup>; moreover, the sectoral committees of the Legislatures have no input to the budget proposals before they are considered in the plenary session.

There is operational alignment between the MTBF and the annual Budget process at each level of the administration. The first-level organisations provide input to both the MTBF and the annual budget proposal, and the annual Budgets respect the ceilings established in the MTBFs.

The legislative prescriptions concerning the elements to be included in the Budget differ among the State, the Entities and the BD. While the laws in the FBiH and the State define the documentation that should accompany the Budget – for example, the macroeconomic forecasts, as well as the revenue and expenditure outturns for the previous year, and the first six months of the current year – the RS Budget Law does not specify the explanatory material that should accompany the Budget<sup>630</sup>. In the FBiH, a major concern is that EBFs are not integrated into the Budget but are subject to separate procedures and approval by the National Assembly<sup>631</sup>. In the RS, while the Pension and Disability Fund has been integrated into the Budget<sup>632</sup>, the other EBFs are excluded, although work is ongoing to integrate the Health Fund. The EBFs that are not included in the Budget are approved at the Government level, although not in the RS National Assembly.

The Budgets of the State, the FBiH, the RS and the BD include capital expenditures, but budget rules do not set any requirement for assessing capital expenditure proposals under appropriate investment analysis rules (except at the State level, although this is not always done)<sup>633</sup>. Furthermore, the set

<sup>628</sup> OECD (2002), *OECD Best Practices for Budget Transparency*, OECD Publishing, Paris, Article 1.1, <http://dx.doi.org/10.1787/budget-v1-art14-en>.

<sup>629</sup> BFP 2017-2019 is published on 28 July for the State, on 4 July for the FBiH, and on 1 July for the RS; BFP 2017-2019 remains unpublished for the BD.

<sup>630</sup> Law on the Budget of the FBiH, Official Gazette of the FBiH Nos. 102/13, 9/14, 13/14, 8/15, 91/15 and 102/15, Article 26; Law on the Financing of the BiH Institutions, Official Gazette of BiH Nos. 61/04, 49/09 and 42/12, Article 8.

<sup>631</sup> Law on the Budget of the FBiH, Official Gazette of the FBiH Nos. 102/13, 9/14, 13/14, 8/15, 91/15 and 102/15, Article 27.

<sup>632</sup> The RS Law Amending the Law on the Budget System of the RS, Official Gazette of the RS No. 103/15.

<sup>633</sup> Law on the Financing of the BiH Institutions, Official Gazette of BiH Nos. 61/04, 49/09 and 42/12, Article 7.

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priorities do not take into account appraisal assessments, and there is no evidence of the MoFs in the FBiH or the RS applying rigorous capital appraisal to the projects under consideration. In general, the onus is on the proposing body to provide a cost-benefit analysis; where this happens, however, the MoF does not review the analysis or provide standardised guidelines. In recent years, attempts have been made to improve the quality of capital expenditure through the respective Public Investment Programmes (PIPs)<sup>634</sup>, although these are only subject to Government (rather than parliamentary) approval. In the RS, the National Assembly does have a role in approving project loans from external sources but – as in the FBiH – has no role in approving the overall capital programme.

The Budgets for the State, the FBiH, the RS and the BD include the underpinning macroeconomic and fiscal assumptions, as well as information on new policy initiatives. However, the Budget documentation does not include estimates of final outturn for the current year, a list of contingent liabilities, or a breakdown of the costs of existing and new policies. They also do not feature long-term (greater than five-year) projections for large-item expenditures or a description of fiscal risks. As is the case with the MTBF documents, the Budgets do not include IPA funds, and only show the domestic co-financing element. Finally, none of the Budgets are linked to policy objectives.

In all cases, the transparency and predictability of the procedures for in-year budget adjustments are weak. There are no rules restricting in year budget adjustments between individual budget lines to no more than 5%, although the existing rules are respected. Furthermore, although the State made 0 adjustments, the FBiH made 1 and the RS made 14 (for which the variations were explained in the case of the RS<sup>635</sup>), these adjustments were compared each time to the rebalanced Budget, rather than the original Budget for the year. As a result, the number of adjustments compared to the original Budget was probably higher. This practice also explains why actual revenues and expenditures for 2016 in the State and the RS were shown as being close to the planned amounts in the Budgets – although the variations between the planned and actual amounts were greater in the FBiH.

On the basis of the available evidence, the value for the indicator ‘Quality of the annual budget process and budget credibility’ is 1.

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<sup>634</sup> Law on the Budget System of the RS, Official Gazette of the RS Nos. 121/12, 52/14 and 103/15, Article 17; Law on the Budget of the FBiH, Official Gazette of the FBiH Nos. 102/13, 9/14, 13/14, 8/15, 91/15 and 102/15, Article 30.

<sup>635</sup> However, there is no evidence to show the level of detail of these explanations.

### Quality of the annual budget process and budget credibility

This indicator analyses the process of budget preparation and the level of transparency and quality of the budget documents. Quality parameters include the link between the multi-annual and annual budget, the budget preparation process, selection of priorities for new expenditures, comprehensiveness and transparency of budget documentation, scrutiny and oversight of the budget proposal and rules for in-year budget adjustment.

Overall indicator value 0 **1** 2 3 4 5

| Sub-indicators  | Points             |
|---|--------------------|
| 1. Operational alignment between the MTBF and the annual budget process         | 2/4                |
| 2. Reliability of the budget calendar   | 2/4                |
| 3. Transparency of the budget proposal before its adoption in parliament        | 2/8                |
| 4. Quality in the budgeting of capital investment projects                      | 1/5                |
| 5. Parliamentary scrutiny of the annual budget                                  | 0/5                |
| 6. Transparency and predictability of procedures for in-year budget adjustments | 2/4                |
| 7. Credibility of revenue plans in the annual budget (%)                        | 0/4 <sup>636</sup> |
| 8. Credibility of expenditure plans in the annual budget (%)                    | 0/4 <sup>637</sup> |
| <b>Total</b> <sup>638</sup>   | <b>9/38</b>        |

The organic budget laws specify the budget procedures, timetable and content. However, the level of information provided to the legislatures with the budget proposals is not comprehensive. In addition, the explanatory information supplied to the public on the draft and final budget is negligible. The exclusion of EBFs from the budgets of the Entities and the BD is a major flaw. In all cases, the actual time the respective legislatures have to discuss and approve the annual budget is too short.

#### Key recommendations

##### Short-term (1-2 years)

- 1) The MoFT of the State, the MoF of the FBiH, the MoF of the RS and the FD of the BD should draft proposals for amending the respective organic budget laws to provide greater time for parliamentary consideration of the budget. The budget timetables should be observed.
- 2) The MoFT of the State, the MoF of the FBiH, the MoF of the RS and the FD of the BD should provide an estimate of the end-of-year outturn for revenue and expenditure to their respective legislatures at the time of the budget.
- 3) The MoFT of the State, the MoF of the FBiH, the MoF of the RS and the FD of the BD should work together to improve the collection of economic data and economic forecasting.
- 4) The MoFT and the MoF in the FBiH should ask the Government to establish an independent budget-monitoring body; in the RS, the body already legislated for in 2015 should be established.

<sup>636</sup> Insufficient data provided to enable assessment.

<sup>637</sup> Ditto.

<sup>638</sup> Point conversion ranges: 0-6 = 0, 7-13 = 1, 14-20 = 2, 21-26 = 3, 27-32 = 4, 33-38 = 5.

### Medium-term (3-5 years)

- 5) The MoF of the FBiH, the MoF of the RS, and the FD of the BD should propose legislative changes to their respective Government to bring all EBFs and all proposed capital expenditure fully into the budget process.
- 6) At the State level, the Fiscal Council, in co-operation with the Entities and the BD, should consolidate the year-end reports of their respective budgets into an annual report based on ESA standards and present it for consideration to the Parliamentary Assembly.

**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.**

The values of the indicators assessing Bosnia and Herzegovina's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



### 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.**

The State currently numbers 75 budget users, the FBiH has 52, and the RS has 118. A Treasury Single Account (TSA) is established in the State, the Entities and the BD under their respective laws<sup>639</sup>. The MoFT at the State level, the MoFs in the RS and the FBiH, and the FD in the BD are the Treasury management agencies. All public revenues are required to be paid into the TSAs. This facilitates the consolidation of bank accounts and these are consolidated daily. The FBiH introduced a new Treasury Law in 2016<sup>640</sup>, which consolidates and updates the treasury functions of the FBiH. The Law covers not only the FBiH at the central government level, but also the cantons and EBFs, as well as 80 local self-governments. The Law is still being implemented; secondary legislation is currently being implemented or formulated to enhance its effect.

Under each of the four respective Laws<sup>641</sup>, the Treasury can prescribe the accounting procedures for the

<sup>639</sup> Law on the Financing of the BiH Institutions, Official Gazette of BiH Nos. 61/04, 49/09 and 42/12, Article 27; the FBiH Law on the Treasury, Official Gazette of the FBiH Nos. 58/02, 19/03, 79/07 and 26/16, Article 18; the RS Law on the Treasury, Official Gazette of the RS Nos. 16/05, 92/09 and 28/13, Article 4; the BD Law on the Budget, Official Gazette of the BD No. 17/08, Article 23.

<sup>640</sup> The FBiH Law on the Treasury, Official Gazette of the FBiH Nos. 58/02, 19/03, 79/07 and 26/16.

<sup>641</sup> The FBiH Law on the Treasury, Official Gazette of the FBiH Nos. 58/02, 19/03, 79/07 and 26/16, Articles 9 and 20; the RS Law on the Treasury, Official Gazette of the RS Nos. 16/05, 92/09 and 28/13, Articles 9 and 15; the BD Law on the Budget, Official Gazette of the BD No. 17/08, Articles 23 and 32; Law on Financing the Institutions of BiH, Official Gazette No. 61/04, Articles 19 and 26.

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budget users and the rules regarding the use of bank accounts for any investment purposes where there is surplus cash. Opening of bank accounts is also regulated and must follow the public procurement rules<sup>642</sup>. The Treasuries are the only institutions that can open bank accounts, and there are daily reconciliations between the bank account and the Treasury information system<sup>643</sup>. However, the RS Consolidated Report on Budget Execution for the first nine months of 2016 consolidates the budgets of several institutions, which suggests that other institutions have bank accounts<sup>644</sup>.

In keeping with their respective Budget Laws, the Treasury agencies are required to perform cash-flow projections and make payments based on the necessary procedures. However, monthly cash-flow estimates based on expected budget users' demands are not composed at the beginning of each year. Similar provisions generally apply across the State, the Entities and the BD: based on information in the Treasury system and the budget allocation for the budget user (with some input from the budget users<sup>645</sup>), the Treasury prepares and issues quarterly estimates of cash requirements to the budget user. Although the State provides monthly updates of the forecasts, neither the Entities nor the BD provide such updates. In many ways, these are not true cash-flow forecasts; rather, they represent a cash-limiting approach. Problems with cash flow have arisen in the past, resulting in arrears. In the absence of the actual outturn data for 2016, it is not possible to judge the accuracy of the forecasts.

The State MoFT, the MoFs in the Entities and the BD FD have ongoing consultation with international agencies (i.e. the IMF and the World Bank) to measure the extent of arrears at all levels of government. The State does not have any major issue with arrears, having been awarded an "A" rating in the most recent Public Expenditure and Financial Accountability Assessment<sup>646</sup>. Nevertheless, data on arrears is not published by the State, the Entities or the BD. Furthermore, data for the wider government sectors is generally not recorded at the central level; this includes data for the EBFs and state-owned enterprises (SOEs) in the RS, and the cantons, EBFs and SOEs in the FBiH. Since there is no central recording of arrears by the FBiH, the RS and the BD, there is clearly no active monitoring.

All stages of coding in the State, the FBiH and the RS are based on administrative, economic (at least "Group" level of the Government Finance Statistics standards), and functional (but not sub-functional) classifications, using Classifications of the Functions of Government (COFOG) standards or a classification that can produce consistent documentation comparable with COFOG standards.

On the basis of the available evidence, the value for the indicator 'Reliability of budget execution and accounting practices' is 2.

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<sup>642</sup> Law on the Financing of the BiH Institutions, Official Gazette of BiH Nos. 61/04, 49/09 and 42/12, Article 27; the RS Law on the Treasury, Official Gazette of the RS Nos. 16/05, 92/09 and 28/13, Article 4; the FBiH Law on the Treasury, Official Gazette of the FBiH Nos. 58/02, 19/03, 79/07 and 26/16, Article 18; the BD Law on the Treasury, Official Gazette of the BD No. 3/07, Article 30.

<sup>643</sup> The RS Law on the Treasury, Official Gazette Nos. 16/05, 92/09 and 28/13, Article 4; the FBiH Law on the Treasury, Official Gazette of the FBiH Nos. 58/02, 19/03, 79/07 and 26/16, Article 20; Law on the Financing of the BiH Institutions, Official Gazette of BiH Nos. 61/04, 49/09 and 42/12, Article 25.

<sup>644</sup> [http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mf/Documents/Консолидовани%20извјештај%20о%20извршењу%20буџета%20за%20период%2001.01.-30.09.2016.%20године\\_488563912.pdf](http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mf/Documents/Консолидовани%20извјештај%20о%20извршењу%20буџета%20за%20период%2001.01.-30.09.2016.%20године_488563912.pdf).

<sup>645</sup> The RS Law on the Treasury, Official Gazette of the RS Nos. 16/05, 92/09 and 28/13, Articles 11 and 12; Law on the Budget of the FBiH, Official Gazette of the FBiH Nos. 102/13, 9/14, 13/14, 8/15, 91/15 and 102/15, Article 63; Law on the Financing of the BiH Institutions, Official Gazette of BiH Nos. 61/04, 49/09 and 42/12, Article 28.

<sup>646</sup> World Bank (2014), *Bosnia and Herzegovina Public Expenditure and Financial Accountability Assessment (PEFA)*, "Strengthening Accountability and the Fiduciary Environment (SAFE)", World Bank, Washington, D.C., p. 54.

### Reliability of budget execution and accounting practices

This indicator measures the quality of cash and commitment management, controls in budget execution and accounting practices. These aspects ensure reliable information on government spending and thus a foundation for management decisions on government funds.

Effective cash flow and planning, monitoring, and management of commitments by the treasury facilitate predictability of the availability of funds for budgetary units. Reliable accounting practices that include constant checking and verification of the recording practices of accountants are important to ensure good information for management.

Overall indicator value 0 1 **2** 3 4 5

| Sub-indicators   | Points             |
|--|--------------------|
| 1. Presence of a treasury single account (TSA)   | 2/2                |
| 2. Frequency of revenue transfer to the TSA  | 1/1                |
| 3. Frequency of cash consolidation   | 1/1                |
| 4. Credibility of cash-flow planning   | 0.5/2              |
| 5. Budget classification and chart of accounts   | 1/2                |
| 6. Frequency of bank-account reconciliation (for all central government bank accounts) | 0/2 <sup>647</sup> |
| 7. Availability of data on the stock of expenditure arrears                            | 0/2 <sup>648</sup> |
| 8. Expenditure arrears (%)   | 0/3 <sup>649</sup> |
| <b>Total<sup>650</sup></b>   | <b>5.5/15</b>      |

**A TSA system is established at the State level, in the Entities and the BD. Cash-flow projections are made on a quarterly basis only and are generated at the central level, with little input from budget users. The measurement of arrears and reporting, in particular for the wider public sector, remain unresolved issues, with little data available.**

**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.**

Because of its particular constitutional structure, the debt management function for the country as a whole is not assigned to a specific institution. The responsibility for foreign debt management is assigned to the MoFT at the State level<sup>651</sup>, while domestic debt is the responsibility of the MoFs in the Entities and the FD in the BD<sup>652</sup>. However, the cantons and SOEs can – and do – also incur debt, which may be guaranteed by the State under the BiH Law on Debt<sup>653</sup>. Furthermore, although internal debt is primarily the responsibility of the Entities, the MoFT at the State level is also authorised to collect and record

<sup>647</sup> Insufficient data received to enable assessment.

<sup>648</sup> Ditto.

<sup>649</sup> Ditto.

<sup>650</sup> Point conversion ranges: 0-1=0, 2-4=1, 5-7=2, 8-10=3, 11-13=4, 14-15=5.

<sup>651</sup> BiH Law on Debt, Borrowing and Guarantees, Official Gazette of BiH Nos. 52/05 and 103/09, Article 4.

<sup>652</sup> The FBiH Law on the Budget, Official Gazette of the FBiH Nos. 102/13, 9/14, 13/14, 8/15, 91/15 and 102/15, Article 67, and the FBiH Law on Debt Borrowing and Guarantees, Official Gazette of the FBiH Nos. 86/07, 24/09, 44/10 and 30/16; the RS Law on the Budget System, Official Gazette of the RS Nos. 121/12, 52/14 and 103/15, Article 50, and the RS Law on Debt, Borrowing and Guarantees, Official Gazette of the RS Nos. 30/07, 29/10, 71/12 and 52/14; and the BD Law on Internal Debt, Official Gazette of the BD Nos. 27/04 and 19/07, Article 5.

<sup>653</sup> BiH Law on Debt, Borrowing and Guarantees, Official Gazette of BiH Nos. 52/05 and 103/09, Article 53.

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details of debt and guarantees in the Entities and the BD, including in the municipalities and cantons, on a quarterly basis<sup>654</sup>.

An advisory committee, which comprises two representatives from the CoM of BiH, one representative from the Central Bank, two each (including the Minister of Finance) from the FBiH and the RS, and one from the BD, co-ordinates foreign debt in the State. The Central Bank acts as the agent for the MoFT. The committee's role is to advise on debt servicing and the criteria for issuing guarantees and for borrowing, as well as to help develop debt management strategies.

The State, the Entities and the BD actively manage their debt. The State, the FBiH and the RS each publish a debt management strategy<sup>655</sup> that is updated annually, although in no case is the report published within three months of the year's end<sup>656</sup>. The BD does not publish a separate debt management strategy, but it is included in the State debt management strategy, which is a consolidation of the debt management strategies of the State, the Entities and the BD. In addition, the BD reports on the debt incurred each year in the Annual Report on the Execution of the Budget. At the end of 2016, debt in the BD only amounted to BAM 70 million, out of a total debt burden of BAM 12 261 million for the country as a whole<sup>657</sup>. None of the reports explain the deviations from the original debt target. Also, the evidence provided by the authorities indicates that risk mitigation in the stock of public debt is very weak. However, it should be noted that the RS has introduced a rule stipulating that a budget surplus must be returned in the fiscal year following a year where the debt-to-GDP ratio reaches 55%<sup>658</sup>.

At the end of 2016, the total debt for the country as a whole was estimated to be BAM 12.1 billion<sup>659</sup>, or 39.2%<sup>660</sup> of GDP; this is a similar percentage as in 2015 (40.3%<sup>661</sup>) and the forecast for 2017 (40.3%<sup>662</sup>). Total debt is forecast to decline slightly to 37.6% of GDP by the end of 2019. In 2016, foreign debt was BAM 8.7 billion (71% of the total), and domestic debt amounted to BAM 3.5 billion (29% of the total)<sup>663</sup>. Foreign debt is almost wholly owed to multilateral organisations, i.e. the World Bank (32%), the IMF (12.5%), the European Investment Bank (19.9%) and the European Bank for Reconstruction and Development (7.7%)<sup>664</sup>. In addition, historic debts are owed to the Paris Club and the London Club (8.9%)<sup>665</sup>.

The ERP 2017-2019, features a breakdown of the 2016 total debt-to-GDP ratio showing that the State, the FBiH, the RS and the BD each stood at below 60% of GDP. In the RS, the debt-to-GDP ratio is calculated at 59.6% at the end of 2016 and is projected to be 59.5% at the end of 2017<sup>666</sup>; in the FBiH,

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<sup>654</sup> BiH Law on Debt, Borrowing and Guarantees, Official Gazette of BiH Nos. 52/05 and 103/09, Article 22.

<sup>655</sup> The State Medium-term Debt Management Strategy, April 2016, [http://mft.gov.ba/bos/images/stories/javni\\_dug/2015/Srednjorocna%20strategija%20upravljanja%20dugom%20BiH%20-%20BOS%20za%20web.pdf](http://mft.gov.ba/bos/images/stories/javni_dug/2015/Srednjorocna%20strategija%20upravljanja%20dugom%20BiH%20-%20BOS%20za%20web.pdf);

The RS Debt Management Strategy 2016-2019, December 2016, <http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mf/Documents/RS%20MTDS%202016-2019.pdf>); Debt

The FBiH Management Strategy 2017-2019, February 2017, [http://www.fmf.gov.ba/v2/userfiles/userfiles/file/2017/2017\\_JN/Strategija%20upravljanja%20dugom%20u%20FBiH%202017-2019.pdf](http://www.fmf.gov.ba/v2/userfiles/userfiles/file/2017/2017_JN/Strategija%20upravljanja%20dugom%20u%20FBiH%202017-2019.pdf).

<sup>656</sup> For 2015, the reports for the State, the FBiH and the RS were published in May 2016, May 2016 and June 2016 respectively.

<sup>657</sup> ERP 2017-2019, p. 41.

<sup>658</sup> The RS Law on Fiscal Responsibility, Official Gazette of the RS No. 94/15, Article 7.

<sup>659</sup> State MoFT.

<sup>660</sup> Ditto.

<sup>661</sup> Ditto.

<sup>662</sup> Calculated by SIGMA, using GDP data from the ERP 2017-2019, p. 4, and debt data from the ERP 2017-2019, p. 41.

<sup>663</sup> ERP 2017-2019, p. 41.

<sup>664</sup> *Idem*, p. 42.

<sup>665</sup> *Ibid.*

<sup>666</sup> Calculated by using GDP data from the ERP 2017-2019, p. 19, and debt data from the ERP 2017-2019, p. 41.

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the debt-to-GDP ratio is calculated at 33.3% at the end of 2016 and projected to be 33.1% at the end of 2017<sup>667</sup>. However, in no case does the definition of public debt provided comply with ESA 2010 definitions.

The total debt figure does not include guarantees issued by the State and the Entities but on 30 September 2016, these guarantees totalled BAM 345 million<sup>668</sup>, or only about 1% of GDP. While the respective laws generally feature specific provisions covering guarantees, the implicit guarantee enjoyed by all SOEs creates a possible exposure for the State and the Entities, with no evidence of active consideration and contingency planning for any adverse outcome in this area. For example, while the Debt Law<sup>669</sup> in the FBiH specifies that the debts incurred by cantons, other local authorities and SOEs are the specific responsibility of the bodies themselves, the FBiH recognises that there may be a contingent liability in this area<sup>670</sup>. Nevertheless, these contingent liabilities are neither included in the statistics on guarantees nor listed anywhere. The FBiH has also revised the laws on foreign debt borrowing by SOEs, which are now required to obtain prior parliamentary approval<sup>671</sup>. The RS does not include borrowing by SOEs within the public debt, as the legal definition of public debt does not mention SOEs<sup>672</sup>.

Prior permission for local governments to undertake borrowing is not regulated directly by the MoFs in either Entity (the State and the BD have no local government). In the RS, local government borrowing is limited to 18% of local government prior-year revenue, effectively restricting borrowing at that level. The guarantees issued by local authorities are also limited in this fashion. EBFs are similarly constrained in terms of borrowing, but cannot issue guarantees. Similar provisions apply in the FBiH, where limits on borrowing by local authority units (i.e. cantons and municipalities) are set as a percentage of revenue (e.g. cantons are limited to borrowing no more than 10% of prior-year revenue). Borrowing by the FBiH is also limited, and cannot exceed 18% of the combined revenues of the Federation and cantons in the previous year. The Debt Management Strategies for the FBiH and the RS include information on debt developments at local government level and in the EBFs<sup>673</sup>.

The debt management functions in the State, the Entities and the BD are subject to auditing by the SAIs. It is notable that a SAI report on the debt management in the RS pointed to a number of flaws in the system, including a weakness in debt sustainability analysis, as well as a lack of clear planning for domestic borrowing, a clear strategy and a debt database<sup>674</sup>. No similar SAI reports exist for the State, the FBiH or the BD.

On the basis of the available evidence, the value for the indicator 'Quality of public debt management' is 2.

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<sup>667</sup> Calculated by using GDP data from the ERP 2017-2019, p. 18, and debt data from the ERP 2017-2019, p. 41.

<sup>668</sup> ERP 2017-2019, p. 44.

<sup>669</sup> *Ibid.*

<sup>670</sup> The FBiH Debt Management Strategy 2016-2018, p.14.

<sup>671</sup> The FBiH Law on Amending the Law on Debt Borrowing and Guarantees, Official Gazette of the FBiH No. 30/16.

<sup>672</sup> The FBiH Law on Fiscal Responsibility, Official Gazette of the FBiH No. 94/15, Article 3.21.

<sup>673</sup> For the FBiH, information on other levels of government and other borrowers can be found on pp. 15-18; for the RS, information can be found on pp. 4, 6, 7, 14, 20 and 21.

<sup>674</sup> SAI Report on Debt Management in the RS, 8 August 2016, [http://www.gsr-rs.org/front/article/65/?up\\_mi=2](http://www.gsr-rs.org/front/article/65/?up_mi=2).

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| Quality of public debt management   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|
| This indicator measures the procedures and organisation established for the management of public debt and the outcomes achieved, in terms of debt risk mitigation practices, the share of public debt to GDP, and the difference between public sector debt outturn and target. |   |   |   |   |   |   |
| Overall indicator value   | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators  | Points       |
|---|--------------|
| 1. Existence of requirements and limitations for borrowing in the legal framework | 2/3          |
| 2. Existence and minimum content of a public debt management strategy             | 3/4          |
| 3. Clarity of reporting on public debt  | 1/4          |
| 4. Risk mitigation in the stock of public debt                                    | 1/6          |
| 5. Difference between public sector debt outturn from target (%)                  | 3/3          |
| 6. Public debt as a share of GDP (%)  | 2/2          |
| <b>Total<sup>675</sup></b>  | <b>12/22</b> |

**Overall, debt is actively managed at the level of the State and the Entities. Debt levels are stable and within general international norms. Although the Debt Management Strategies are not comprehensive and risk mitigation is weak, work is underway to improve their format and usefulness.**

***Principle 5: Transparent budget reporting and scrutiny are ensured.***

No consolidated monthly reports of Government revenue, spending and borrowing are published at any level of the administration.

While the MoFT is required to publish State-level quarterly data within 20 days of the end of the quarter this is not the case in practice. The report for the first quarter of 2017<sup>676</sup> was published in May on the MoFT website. The quarterly reports note variations, but only provide partial explanations for the variations. The reports do, however, mention future commitments.

The RS MoF also publishes quarterly reports, but not within one month of the end of the quarter. While the reports note variations between planned and actual spending, they do not explain the variations, although they do note future commitments. In addition, while the MoF is required to provide a semi-annual update to the RS National Assembly, this is not done promptly; the June update is only required to be presented at the end of September – a full 90 days later. This report is not published on the MoF website.

In the FBiH, the MoF compiles reports for the Government on a quarterly basis, which it publishes within one month of the end of the quarter<sup>677</sup>. The FBiH reports note, but do not explain, variations between the planned spending and the actual spending; they do not mention future commitments.

The BD does not publish in-year budget reports.

While the in-year reports of the RS and the State provide detailed information about the individual budget users, this is not the case in the FBiH or the BD. The FBiH consolidates the information, while the BD publishes no such information.

<sup>675</sup> Point conversion ranges: 0-2=0, 3-7=1, 8-12=2, 13-16=3, 17-19=4, 20-22=5.

<sup>676</sup> [http://mft.gov.ba/bos/index.php?option=com\\_content&view=article&id=145&Itemid=95](http://mft.gov.ba/bos/index.php?option=com_content&view=article&id=145&Itemid=95)

<sup>677</sup> <http://www.fmf.gov.ba/v2/stranica.php?idstranica=147&idmeni=15>.

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The FBiH and the RS require local authorities to submit quarterly data to the central authority, but these are not published. The FBiH does not audit all the local authorities every year, and no consolidated report is prepared for the local authorities. The State has no local administration.

Neither the State, the FBiH, the RS nor the BD report on fiscal risk. The MoFs do not regularly publish financial information on the SOEs. In the RS, the SOEs are required to submit financial information to the appropriate line ministry but no such requirement exists in the FBiH.

The MoFs do not publish monthly reports of the EBFs; as with the multi-annual and annual budget proposals, this makes it more difficult to understand the evolution of the financial picture during the year. In the FBiH, EBFs provide quarterly or annual reports to the MoF<sup>678</sup>; in the RS, on the other hand, some EBFs (such as the Health Fund) remain outside of the budget system, and do not provide quarterly or annual reports.

The annual financial statement is published and audited by the SAI at the State level and in the Entities. However, the publication dates vary widely. In the FBiH, the 2016 report is available as of June 2017; in the RS and at the State level, the 2016 reports were not published within six months of the year's end. The BD, for its part, last published a statement in 2012.

At the State level and in the FBiH, the annual financial statements mirror the Budget presentation, but with some variations. In the RS and the BD, the annual reports present the information in a different format to the Budget. Neither the State level, the Entities nor the BD provide non-financial information. The annual financial statements of the RS and the State contain some analysis of government assets and liabilities, including guarantees and other contingent liabilities; this however is not the case in the FBiH and the BD.

The annual financial statement of the RS provides some explanation of variations between the Budget outturn and the Budget forecast, but compares the outturn to the rebalanced budget, rather than the original Budget forecast. This is similar to the practice in the FBiH, although in this case the report does not explain the variance. Similarly, at the State level, variations are noted, but not explained.

At the State level and in the BD, the annual financial statement is considered by a parliamentary committee and by a plenary session of the Parliamentary Assembly in the State and the Assembly in the BD<sup>679</sup>. In the RS, it is discussed in the National Assembly, as required by the Law<sup>680</sup>. In the FBiH, the Government is required to present the report on budget execution to the Parliament within six months of the end of the financial year<sup>681</sup>; there is no evidence indicating whether the reports are discussed by a committee or indicating the level of debate in the full plenary session.

At the State level, the Budget Law only specifies the use of modified accrual accounting; however, there is no requirement that this is compatible with international standards<sup>682</sup>. In the BD, the Budget Law does not specify any standard of accounting and although the Law on Accounting and Auditing prescribes that International Public Sector Accounting Standards (IPSAS) shall apply in the District, it is not clear how this applies in the budget users<sup>683</sup>. In the FBiH, the Treasury Law specifies IPSAS as the accounting standard<sup>684</sup>. In the RS, the Budget Law requires issuing a rulebook specifying the accounting standards to

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<sup>678</sup> Law on the Budget of the FBiH, Official Gazette Nos. 102/13, 9/14, 13/14, 8/15, 91/15 and 102/15, Articles 92 and 93.

<sup>679</sup> The State Law on the Financing of BiH, Official Gazette of BiH Nos. 61/04, 49/09 and 42/12, Article 22; the BD Budget Law, Official Gazette of the BD No. 17/08, Article 26.3.

<sup>680</sup> The RS Law on the Budget System, Official Gazette of the RS Nos. 121/12, 52/14 and 103/15, Article 46.

<sup>681</sup> The FBiH Law on the Budget of the FBiH, Official Gazette of the FBiH Nos. 102/13, 9/14, 13/14, 8/15, 91/15 and 102/15, Article 96.

<sup>682</sup> The State Law on the Financing of the Institutions of BiH, Official Gazette of BiH Nos. 61/04, 49/09 and 42/12, Articles 2 and 19.

<sup>683</sup> The BD Law on Accounting and Auditing, Official Gazette of the BD Nos. 6/06 and 19/07, Article 3.

<sup>684</sup> The FBiH Law on the Treasury, Official Gazette of the FBiH Nos. 58/02, 19/03, 79/07 and 26/16, Article 11.2.

be used; the existing rulebook specifies IPSAS standards<sup>685</sup>. None of the annual reports are aligned or compliant with ESA 2010 standards.

The value for the indicator ‘Transparency and comprehensiveness of budget report and scrutiny’ is 0.

| Transparency and comprehensiveness of budget reporting and scrutiny  |   |   |   |   |   |   |
|--|---|---|---|---|---|---|
| This indicator measures the extent to which the government facilitates external monitoring of the execution of the budget through the publication of relevant information, as well as the credibility of that information and whether it is used effectively to ensure accountability. The degree of budget scrutiny on the basis of the published information is also assessed. |   |   |   |   |   |   |
| Overall indicator value  | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators  | Points             |
|---|--------------------|
| <b>Comprehensiveness of published information</b>   |                    |
| 1. Quality of in-year reports of government revenue, expenditure and borrowing                      | 2/7                |
| 2. Quality of the annual financial report of the government   | 2/7                |
| 3. Quality of annual reports of state-owned enterprises, extra-budgetary funds and local government | 0/5 <sup>686</sup> |
| 4. Clarity of national accounting standards and consistency with international standards            | 2/4                |
| 5. Existence of reporting on fiscal risks identified in the budget                                  | 0/1                |
| <b>Scrutiny and oversight using published information</b>   |                    |
| 6. Quality of the annual financial reporting on the use of public finances                          | 0/3 <sup>687</sup> |
| 7. Timeliness of dissemination of the SAI report to the national parliament                         | 0/2 <sup>688</sup> |
| 8. Timeliness of parliamentary discussion on the report of the SAI                                  | 0/3 <sup>689</sup> |
| <b>Total<sup>690</sup></b>  | <b>6/32</b>        |

**In-year reporting is still weak and is performed on a quarterly basis only. Delays in completing and presenting the quarterly reports to the legislatures can result in long delays between the end of the quarter and the information becoming public.**

### **Key recommendations**

#### **Short-term (1-2 years)**

- 1) The MoFT at the State level and the MoFs at the Entity levels should publish a monthly budget review comparing actual monthly outcomes against a projected monthly profile compiled at the beginning of each year. These reviews should show expenditures by budget user and cover the operations of EBFs.
- 2) The MoFs in the FBiH and the RS should publish the quarterly reports by the local authority (e.g. cantons and municipalities in the FBiH, and municipalities in the RS) once they have received them.

<sup>685</sup> The RS Law on the Budget System, Official Gazette of the RS Nos. 121/12, Article 59, 52/14 and 103/15; Rulebook, Official Gazette of the RS No. 128/11.

<sup>686</sup> Insufficient data provided to enable assessment.

<sup>687</sup> Ditto.

<sup>688</sup> Ditto.

<sup>689</sup> Ditto.

<sup>690</sup> Point conversion ranges: 0-7=0, 8-12=1, 13-17=2, 18-22=3, 23-27=4, 28-32=5.

- 3) The MoFs should, with the help of international organisations, establish a monitoring system for arrears (including, where appropriate, arrears of the EBFs and the SOEs), publish comprehensive data on arrears, and strive to reduce the excessive levels of these arrears.

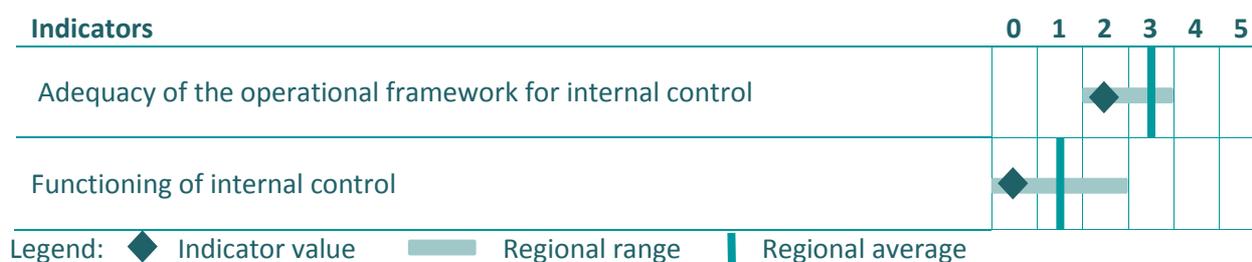
#### Medium-term (3-5 years)

- 4) The MoFT at the State level and the MoFs at the Entity level should prepare the monthly and year-end data and reports on an ESA basis.

### Internal control and audit

**Key requirement: National internal control policy is in line with the requirements of Chapter 32 of European Union accession negotiations and is systematically implemented throughout the public sector.**

The values of the indicators assessing Bosnia and Herzegovina's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



#### Analysis of Principles

**Principle 6: The operational framework for internal control defines responsibilities and powers, and its application by the budget organisations is consistent with the legislation governing public financial management and the public administration in general.**

Although based on common project origins<sup>691</sup>, the overall operational frameworks for FMC in the State and the Entities differ slightly, and are still at varying stages of development. The State has had legislation covering FMC since 2012<sup>692</sup>, but separate FMC legislation was only approved in the FBiH<sup>693</sup> and the RS<sup>694</sup> in 2016 – some years after it was initially drafted. While existing legislation in the BD covers elements of an FMC framework (e.g. through a system of internal control and compliance with international standards<sup>695</sup>), the Public Internal Financial Control (PIFC) Strategy acknowledges that this does not represent a “comprehensive basis for the co-ordinated development of public internal financial control”<sup>696</sup>.

At all four levels, these operational frameworks apply extensively across ministries, agencies, funds, cantons and municipalities. In the FBiH and the RS, they specifically include the SOEs. For the Entities,

<sup>691</sup> 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).

<sup>692</sup> Law Amending the Law on Financing of the Institutions of BiH, Official Gazette of BiH No. 22/12.

<sup>693</sup> Law on FMC in the Public Sector, the FBiH, Official Gazette No. 38/16.

<sup>694</sup> Law on the System of Internal Control in the Public Sector, the RS, Official Gazette No. 91/16.

<sup>695</sup> Budget Law of the BD, Official Gazette No. 17/08, Article 43.

<sup>696</sup> Development Strategy for PIFC, 2014-2017, the BD, October 2014, p. 17.

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however, there is no clear picture of the large number of institutions that will be required to introduce FMC so that developments can be monitored<sup>697</sup>.

In the FBiH and the RS, FMC legislation specifically provides a legal framework for delegating or transferring authority decisions and tasks, which is one of the preconditions for FMC and managerial accountability. At the State level, the equivalent legislation relates only to the delegation of responsibility for the FMC system itself. While a combination of articles in the State Law on Administration<sup>698</sup> could also enable the head of an institution to delegate responsibility throughout the organisation, this is not made explicitly clear. Issues of managerial accountability can cut across other horizontal legislation, but none of the bodies has conducted a formal analysis of FMC legal requirements<sup>699</sup> compared to other legislation, in order to identify and rectify any conflicts in areas such as objective-setting and delegation. The fact that two laws in the RS, the Law on Internal Control<sup>700</sup> and the Law on Public Enterprises<sup>701</sup>, regulate IA in the SOEs demonstrates the need for this analysis.

The recent approval of FMC legislation in the FBiH and the RS means that the required range of supporting secondary legislation and rulebooks is not yet fully in place. At the State level, guidance is more complete, but there is no specific material on managerial accountability (although this is planned for 2017).

Current development strategies<sup>702</sup> exist at the State level, the FBiH and the BD but not the RS, where the last development plan was dated April 2010 and included actions up to 2012. The State and the FBiH Strategies are clearly related, but have diverged, possibly due to the later timing of the State Strategy. Both emphasise the need to develop the conditions for managerial accountability and cover a similar range of topics, although with some variation in the specific actions required.

More detailed annual work plans were in place for the CHUs in the FBiH and the RS for 2016; 25% of the actions for the year were completed in the FBiH, and 100% in the RS, feeding into the sub-indicators for this Principle. The State did not have a 2016 work plan.

There is a legislative basis for the CHUs established in the State and the Entities, but no legislative basis or CHU exists in the BD. Staffing has improved slightly since the last baseline assessment, particularly in the FBiH. However, staffing in the FBiH and the RS<sup>703</sup> is still low, as implementing the new FMC legislation will require training, preparing rulebooks, drawing up detailed guidance and developing monitoring arrangement potentially covering hundreds of institutions.

Only the State has had FMC legislation in place long enough to have an established process for monitoring PIFC implementation. The State submits the FMC report to the CoM of BiH, then to the Parliamentary Assembly. In response to the 2015 Annual Report, the Decision of the CoM encouraged institutions to accelerate their implementation of FMC, through measures such as developing action plans<sup>704</sup>. The State gathers information through a 27-page self-assessment questionnaire featuring only 2 questions on how management is implementing FMC within the organisation (e.g. through establishing expert working groups); the remaining 17 questions address each of the elements of the Committee of

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<sup>697</sup> Discussions with the FBiH CHU indicate that approaching 300 organisations may be required to report on progress, but the process for this has not yet been finalised.

<sup>698</sup> The State Law on Administration, Official Gazette of BiH Nos. 32/02 and 102/09, Articles 60, 52 and 61.

<sup>699</sup> The FBiH CHU has carried out an analysis for FMC training purposes.

<sup>700</sup> The RS Law on Internal Control System in the Public Sector, Official Gazette of the RS No. 91/16, Articles 2 and 3.

<sup>701</sup> The RS Law on Public Enterprises, Official Gazette of the RS Nos. 75/04 and 78/11.

<sup>702</sup> The BD: Development Strategy for PIFC 2014-2017, October 2014; the FBiH: Development Strategy for PIFC 2015-2018, June 2015; the State: Development Strategy of the System of PIFC, December 2016.

<sup>703</sup> In March 2017, to cover both FMC and IA, the FBiH CHU had a head of unit and three staff and the RS CHU had an acting head of unit and three staff.

<sup>704</sup> CoM of BiH Decision No. 53, 26 April 2016.

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Sponsoring Organisations of the Treadway Commission (COSO) Framework<sup>705</sup> (e.g. the control environment) and request evidence to support the assessments made. There is no process for validating the information submitted to the CHU. In 2016, 70 of the 75 State institutions submitted questionnaires to the CHU (compared to 63 out of 74 institutions in 2015); the responses were then compiled, with commentary and recommendations, into the report issued in May 2017<sup>706</sup>.

The FBiH and the RS, for their part, have plans for monitoring reports<sup>707</sup>, but the first report (on 2017) will not be available until 2018.

The MoF of the RS has a Budget Inspection unit in the same directorate as IA. However, its work is generally directed by the Finance Minister, and focuses on complaints and suspected irregularities, i.e. its approach is reactive; this contrasts with the planned, independent approach for IA. The MoF of the FBiH also features a Budget Inspection unit, which is currently not staffed.

The sub-indicators below anticipate alignment in managing national and EU funds with regard to procurement, internal controls, payment authorisation and irregularities management. This is not yet possible in BiH, as it is not accredited for the management of EU-funded programmes and EU funds are managed directly by the EU Delegation. This is reflected in the value below but it must be noted that it is not possible for BiH to obtain a higher value until it is accredited for the management of EU-funded programmes.

On the basis of the available evidence, the value for the indicator 'Adequacy of the operational framework for internal control' is 2.

| <b>Adequacy of the operational framework for internal control</b>  |   |   |   |   |   |   |
|--|---|---|---|---|---|---|
| This indicator measures the extent to which the operational framework for internal control (financial management and control) is established, in terms of policy and strategic content, the regulatory framework, and adequate review and reporting mechanisms |   |   |   |   |   |   |
| A separate indicator measures the implementation of the operational framework for internal control.  |   |   |   |   |   |   |
| Overall indicator value  | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators   | Points |
|--|--------|
| 1. Policy for the development of internal control  | 3/6    |
| 2. Completeness of the regulatory framework for internal control                                       | 3/5    |
| 3. Comprehensiveness and regularity of the annual review and reporting on internal control             | 1/5    |
| 4. Alignment between national budget management and control systems and those for EU-funded programmes | 0/4    |
| Total <sup>708</sup>   | 7/20   |

**As a result of recent legislation in the FBiH and the RS, the regulatory framework for FMC is now largely complete, with the exception of the BD, where the legislative backing for FMC is incomplete and fragmented. Current strategies for FMC development are also in place, except in the RS. More**

<sup>705</sup> The COSO develops frameworks and guidance on enterprise risk management, internal control and fraud deterrence.

<sup>706</sup> Consolidated Statement of FMC in BiH institutions for 2016, State CHU, May 2017.

<sup>707</sup> For the FBiH, including approved formats for questionnaires.

<sup>708</sup> Point conversion ranges: 0-2=0, 3-6=1, 7-10=2, 11-14=3, 15-17=4, 18-20=5.

**detailed annual work plans were developed for 2016 (except in the State), with varying degrees of implementation.**

*Principle 7: Each public organisation implements internal control in line with the overall internal control policy.*

This Principle assesses a number of the preconditions for effective FMC and considers the operational effectiveness of several elements comprising a sound system of internal control.

While many institutions are now required to implement internal control, data is only available for the State. The FBiH institutions have only been obliged to implement internal control since May 2016, and the RS institutions since November 2016. As a result, it is too early to assess progress at an institutional level in the Entities.

At the State level, institutions have been required to implement internal control since 2012. This measure currently affects 75 institutions (compared to 74 in 2015) – all first-level budget users – which also are required to report annually on progress to the CHU. As previously mentioned, 70 of these 75 institutions completed questionnaires for 2016. The FMC Annual Report compiled from the answers received features a list of planned actions, which institutions may struggle to undertake in the absence of an established implementation process.

In terms of the process for implementing FMC, the questionnaires for 2016 showed that:

- 71% of institutions had appointed an FMC co-ordinator appointed someone responsible for FMC;
- 64% had appointed a working group for FMC;
- 71% had clearly defined tasks and deadlines.

However, of the three State-level institutions visited, only the Indirect Tax Authority had detailed plans for an FMC Rulebook<sup>709</sup> and had established an expert working party reporting annually on progress to the head of the institution<sup>710</sup>.

The State issued risk-management guidelines in 2015<sup>711</sup>. The 2016 annual report shows progress in risk management, with 49% of State institutions (versus 46% in 2015) taking steps to identify the impact and likelihood of risk, but only 36% of institutions (versus 10% in 2015) updating risk registers. However, in the sample of institutions visited at the State level, only the Indirect Tax Authority had detailed risk-management processes, and two other institutions had nothing in place. None of the institutions visited in the Entities had risk registers.

Budget alignment with management structures helps to develop managerial accountability, e.g. by supporting the delegation of budgets and programme activities to the relevant sectors within budget users. Neither the State nor the Entities provided the requested analysis of alignment for first-level budget users. However, responses from the State indicate alignment for 100% of the institutions, which seems improbable. The FBiH reported 0% and the RS provided no information. At the State level and in the Entities, the ministries develop plans and activities on a programme basis, but the legislatures approve the related budgets on a line item basis, which does not encourage alignment.

Considering delegation further, the overarching Reform Agenda<sup>712</sup> seeks to introduce more flexible working arrangements for civil servants that are broadly consistent with FMC objectives, including

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<sup>709</sup> BiH, Rulebook on FMC in the Indirect Taxation Authority, 02-2-1827-29/15, ITA, 30 October 2015.

<sup>710</sup> BiH, Report from the Committee for monitoring the functioning of FMC to the Director, reference 02-2-147-20/16, 11 February 2016.

<sup>711</sup> Guidelines for the Implementation of Risk Management in Institutions, the State, Official Gazette of BiH No. 29/15.

<sup>712</sup> The Reform Agenda 2015-2018 was adopted by all levels of the BiH administration in 2015. The CoM of BiH adopted the Reform Agenda on 10 June 2015, the Government of the FBiH on 27 July 2015, and the Government of the RS on 23 July 2015.

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managerial accountability: delegation of decision making and budgets to managers would bring it closer to the point of service delivery. In practice, no formal delegation of budgets from the head of institution (who is accountable in law) was found in the institutions visited for this assessment. Nevertheless, responses to the State level monitoring questionnaire showed that 41% of programme managers have budget funds within their jurisdiction. The sub-indicator value below shows that in the sample ministries, there is no evidence that the day-to-day delegation normally associated with managerial accountability occurs in practice.

Within the system of internal control, accounting and treasury controls are vital to maintaining financial integrity, and should restrict the ability to incur financial commitments beyond the funding available. Generally, arrears at the central government level in the State and the Entities are low, but are thought to be much more significant at lower levels of government within the Entities, as well as in the SOEs. As indicated earlier, data on arrears is not published, and data for the wider government sector is generally not recorded or published centrally, making it impossible to assess the effectiveness of commitment controls in practice.

While internal control arrangements within institutions should enable detecting and reporting irregularities, no overarching definition of irregularities, or a process for dealing with them within the FMC framework for the State or the Entities, currently exist. The State has “whistleblower” legislation<sup>713</sup>, which has led to rulebooks in individual institutions. At the State MoFT, this rulebook refers to corruption and other irregularities, but the equivalent rulebook at the Ministry of Transport and Communication only refers to corruption, indicating a lack of consistency in how irregularities are dealt with. In interviews, institutions also referred to civil service legislation, which was more related to disciplinary issues than to irregularities. CHU plans in the State and the FBiH acknowledge this gap and include proposals for detailed guidance. None of the sample institutions (except the State MoFT) provided more detailed internal guidance for staff<sup>714</sup>, and only 4 (out of 13) institutions provided data on the irregularities found in 2016, leading to the sub-indicator value below. Several institutions suggested that the SAI was responsible for identifying irregularities, which may well represent what happens in practice but shows a lack of understanding of the purpose of a sound system of internal control.

Neither the State nor the Entities have a specific organisational unit responsible for monitoring the implementation of large investment projects; each operates along similar processes, feeding half-yearly returns by institutions into a central monitoring system (e.g. the Public Investment Management Information System for the State). These systems, and higher-level reporting, record financial progress, e.g. completion, in terms of expenditure as a percentage of the allocated Budget. While established processes deal with physical progress at a more technical level within institutions, this is not reported to the higher management levels. These arrangements are reflected in the sub-indicator value below. However, consideration by managers of both financial and physical progress is necessary to ensure effective higher-level monitoring of such projects.

Looking at accountability more generally, a significant number of first-level budget users across the State and the Entities report directly to their respective legislatures. Within this aggregate figure, the number of institutions that are neither ministries nor constitutional bodies<sup>715</sup> leads to the sub-indicator value below.

On the basis of the available evidence, the value of the indicator ‘Functioning of internal control’ is 0.

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<sup>713</sup> Law on Whistleblower Protection in the Institutions of BiH, Official Gazette of BiH No. 100/13.

<sup>714</sup> The internal control rulebooks in two institutions in the RS referred to irregularities in the narrow context of bookkeeping or financial reporting, but still did not provide guidance on how to deal with them.

<sup>715</sup> Institutions required by the Office of the High Representative are treated in the context of BiH as constitutional bodies for this sub-indicator.

| Functioning of internal control   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|
| This indicator measures the extent to which internal control systems are implemented in practice within the budget organisations and between ministries and their subordinate organisations, and the immediate results in terms of improved managerial accountability and governance arrangements between ministries and subordinated bodies. |   |   |   |   |   |   |
| Overall indicator value   | 0 | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators  | Points             |
|---|--------------------|
| 1. Number of first-level budget organisations that are neither ministries nor constitutional bodies | 0/3 <sup>716</sup> |
| 2. Alignment between organisational and budget structures (%)                                       | 0/3 <sup>717</sup> |
| 3. Credibility of controls for avoiding commitments above the expenditure ceilings                  | 0/2                |
| 4. Availability of reporting of total cost and physical progress of major investment projects       | 0/2                |
| 5. Effectiveness of basic managerial accountability mechanism for central government bodies         | 0/4 <sup>718</sup> |
| 6. Delegation of decision-making authority within ministries  | 0/4 <sup>719</sup> |
| 7. Regularity and completeness of risk management practices   | 0/3                |
| 8. Existence of reporting on irregularities   | 1/2                |
| <b>Total</b> <sup>720</sup>   | <b>1/23</b>        |

Progress at the institutional level differs between the State and the Entities, with a higher level of development (including a monitoring regime) at the State level, which reflects the difference in timing of the FMC framework legislation. Even the State level shows marked variations between the institutions included in the FMC monitoring report, and the sample institutions visited as part of the assessment confirmed these differences. With regard to the Entities, the respective legislative frameworks have only recently been completed. Entity institutions are therefore only now beginning FMC implementation, and the first year of monitoring will be 2017.

#### **Key recommendations**

##### **Short-term (1-2 years)**

- 1) The CHU of the RS should develop an updated FMC strategy for the implementation of recent FMC legislation reflecting the current state of development.
- 2) The MoFT at the State level, the FBiH MoF and the RS MoF should provide adequate staffing to enable the CHUs to complete FMC implementation.
- 3) The CHUs of the State and both Entities should develop the skills to enable them to go beyond rulebooks and training and providing more practical help to institutions implementing FMC, such as giving advice on levels of delegation as well as on the appropriate control mechanisms to support that approach.

<sup>716</sup> Insufficient data provided to enable assessment.

<sup>717</sup> Ditto.

<sup>718</sup> Ditto.

<sup>719</sup> Ditto.

<sup>720</sup> Point conversion ranges: 0-3=0, 4-7=1, 8-11=2, 12-15=3, 16-19=4, 20-23=5.

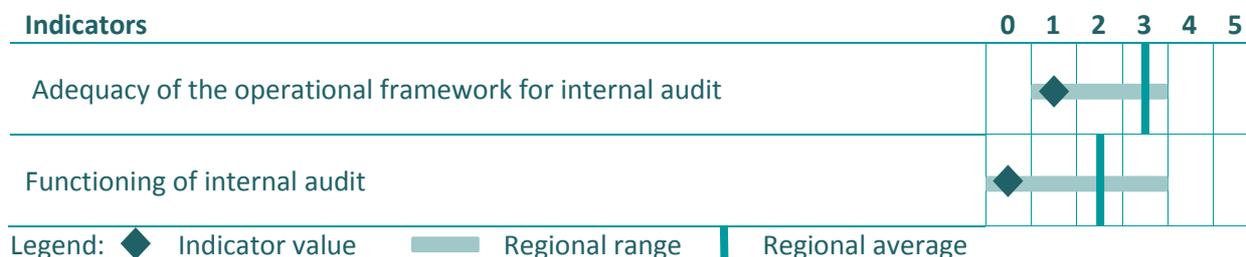
- 4) The CHUs in the State and both Entities should build on the existing questionnaires for assessing progress with FMC implementation to include questions concerning the implementation process itself and thereby further encouraging best practice.
- 5) The CHUs in the State and both Entities should consider inviting representatives from BD to training events, where appropriate, to encourage FMC implementation there.
- 6) The MoFT at the State level, the FBiH MoF and the RS MoF should each nominate a unit to take responsibility for monitoring the financial and physical progress of large investment projects, and arrange for them to receive the necessary information on a regular basis to fulfil this role.

#### Medium-term (3-5 years)

- 7) The MoFT at the State level, the FBiH MoF, the RS MoF and the BD FD should ensure that budget structures and financial management information systems of the Treasury are able to support the need for information at the level of delegated budget holders.
- 8) Budget users should strengthen their internal control processes so that the MoFT at the State level, the FBiH MoF, the RS MoF and the BD FD can begin to change the focus from centralised control to decentralised management of resources.

**Key requirement: The internal audit function is established throughout the public sector and internal audit work is carried out according to international standards.**

The values of the indicators assessing Bosnia and Herzegovina's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



#### ***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.***

Although the 2014 BD PIFC policy paper required the establishment of IA and a CHU in 2015, no real progress has been made in this area. As there is no IA in the BD, despite it being mentioned in legislation<sup>721</sup>, the assessment of Principles 8 and 9 does not include the state of play in the BD.

The regulatory framework for IA at the State level and in the Entities and the BD is based on 2008 legislation<sup>722</sup>. The State IA Law was amended in 2012<sup>723</sup>, the FBiH IA Law was amended in 2016<sup>724</sup>, while

<sup>721</sup> The BD Law on Audit of Public Administration and Institutions, Official Gazette of the BD Nos. 40/08, 29/14 and 23/16.

<sup>722</sup> State Law on Internal Audit of the Institutions in BiH, Official Gazette of BiH No. 27/08; the FBiH Law on Internal Audit in the Public Sector, Official Gazette of the FBiH No. 47/08; the RS Law on Internal Audit in the Public Sector, Official Gazette of the RS No. 17/08; the BD Law on Audit of Public Administration and Institutions, Official Gazette of the BD No. 40/08.

<sup>723</sup> The State Law on Amendments to the Law on Internal Audit of the Institutions in BiH, Official Gazette of BiH No. 32/12.

<sup>724</sup> The FBiH Law to Amend the Law on Internal Audit in the Public Sector, Official Gazette of the FBiH No. 101/16.

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the BD Law was amended in 2014 and 2016<sup>725</sup>. In October 2016, the RS replaced the 2008 Law with a new PIFC Law that includes IA<sup>726</sup>. The IA Laws ensure the independence of IA: they regulate the independence of operational activities, access to information and premises, reporting arrangements, and the appointment and dismissal of the head of the IA unit<sup>727</sup>. The IA Laws of the State and the RS also require the consent of the CHU for the appointment and dismissal of the head of the IA unit<sup>728</sup>. The State and the Entities have developed IA standards, manuals and codes of ethics, and adopted the standards of the international Institute of Internal Auditors (IIA)<sup>729</sup>. Despite detailed differences, the IA guidance material is based on the same technical material developed by two EU-funded Technical Assistance projects<sup>730</sup>. The manuals (“handbooks”) are not fully in line with the IA Laws, as they do not cover the external quality assurance requirement<sup>731</sup> and the involvement of audit committees in the audit process<sup>732</sup>. They do, however, refer to the IIA standards, and are broadly in line with these standards (adapted, where needed, to public-sector requirements).

At the State level and in the Entities, IA applies to ministries, agencies, funds, cantons and municipalities, i.e. it covers the general government organisations.

Both the FBiH and the RS still have single-person audit functions. In the FBiH, many small agencies and municipalities have their own IA arrangements. In the RS, the legal framework requires a minimum of two internal auditors, but some IA functions are still systematised for a single internal auditor. However, both the State and the FBiH have developed additional criteria for establishing IA<sup>733</sup>, which stipulate that IA units should be staffed with a minimum of two internal auditors (and a maximum of four at the State level); where the institution is too small to establish an IA unit, designated IA units have the mandate to conduct audits in those institutions. The objective is to eliminate single-person IA functions.

The staffing of the CHU in the FBiH has improved (increasing from one person in 2015 to four in 2017), but the situation in the RS is poor (out of ten systematised positions, only four are staffed).

Across the State, 49% of the organisations required to establish IA functions have done so, but only 20% meet the minimum staffing levels. This indicates that while the overall framework for IA is complete, it falls significantly short of full implementation and has shown no real progress since 2015.

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<sup>725</sup> The BD Laws on Amendments to the Law on Audit of Public Administration and Institutions, Official Gazette of the BD Nos. 29/14 and 23/16.

<sup>726</sup> The RS Law on the Internal Control System in the Public Sector, Official Gazette of the RS No. 91/16, Article 61.

<sup>727</sup> The State Law on Internal Audit of the Institutions in BiH, Official Gazette of BiH Nos. 27/08 and 32/12, Articles 7, 12, 16, 18 and 19; the FBiH Law on Internal Audit in the Public Sector, Official Gazette of the FBiH Nos. 47/08 and 101/16, Articles 5A, 14, 15, 17 and 18; the RS Law on the Internal Control System in the Public Sector, Official Gazette of the RS No. 91/16, Articles, 16, 27, 36, 41, 48 and 52.

<sup>728</sup> The State Law on Internal Audit of the Institutions in BiH, Official Gazette of BiH Nos. 27/08 and 32/12, Article 24; the RS Law on the Internal Control System in the Public Sector, Official Gazette of the RS No. 91/16, Article 44.

<sup>729</sup> The intellectual property section of the IIA standards has not yet been translated into the Serbian language. Therefore, the standards have not yet been published.

<sup>730</sup> 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).

<sup>731</sup> The State Law on Internal Audit of the Institutions in BiH, Official Gazette Nos. 27/08 and 32/12, Article 21; the FBiH Law on Internal Audit in the Public Sector, Official Gazette of the FBiH Nos. 47/08 and 101/16, Article 8; the RS Law on the Internal Control System in the Public Sector, Official Gazette of the RS No. 91/16, Articles 35 and 48.

<sup>732</sup> The State Law on Internal Audit Institutions in BiH, Article 23; the RS Law on the Internal Control System in the Public Sector, Official Gazette of the RS No. 91/16, Articles 47 and 48.

<sup>733</sup> Both the State and the FBiH have adopted “Instructions on criteria for the establishment of IA units”, in 2012 at the State level and 2013 at the FBiH. This was in addition to the requirements established in their respective IA laws: the State Law on Internal Audit of the Institutions in BiH, Official Gazette of BiH Nos. 27/08 and 32/12, Article 7, and the FBiH Law on Internal Audit in the Public Sector, Official Gazette of the FBiH Nos. 47/08 and 101/16, Article 9.

**Table 10. Current state of play on IA**

|  | State level | FBiH | RS | Total | Percentage 2017 | Percentage 2015 |
|--|-------------|------|----|-------|-----------------|-----------------|
| <b>Institutions required to establish IA</b> | 17          | 73   | 68 | 158   | -               | -               |
| <b>Units established</b>                     | 13          | 55   | 45 | 113   | 72%             | 49%             |
| <b>Units meeting staffing requirements</b>   | 6           | 14   | 11 | 31    | 20%             | 19%             |
| <b>Internal auditors employed</b>            | 29          | 64   | 59 | 152   |                 |                 |

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.

While all the CHUs have approved policy papers, the RS policy paper is not up to date<sup>734</sup>. The CHU annual reports do not report on progress in implementing the planned activities. Rather, they report more generally on progress in developing IA, focusing on the organisation of IA rather than the quality of IA products.

In December 2016, following a resolution of the CHU Co-ordination Board, which was revitalised in spring 2016, all CHUs approved the IA certification programmes that had been developed in 2014. To date, however, no internal auditors have received their certification under this scheme. The number of internal auditors with other certificates awarded is increasing within BiH as a whole, although this training is not specific to the public sector. At the end of 2015 there were 152 internal auditors employed in the public sector. However, no data is available regarding the number of these internal auditors who are certified<sup>735</sup>.

A CPD programme to update internal auditors' professional knowledge and skills only exists at the State level,<sup>736</sup> but is not yet implemented. Developing a CPD programme is one of the 2017 objectives of the FBiH policy paper, 2015-2018. The CHU in the RS does not yet have plans to develop a CPD programme.

While the EU Technical Assistance project was ongoing in 2015, the CHUs met the heads of IA units on a regular basis. However, since the project finished, regular meetings to discuss common issues have been held only in RS, while in the FBiH no meetings have been held and in the State heads of IA units only have met with the CHU individually to discuss their own problems<sup>737</sup>.

Although the IA Laws regulate quality assurance, neither the State nor the Entities have a quality-assurance system. Given the budgetary constraints, external quality assurance is difficult to introduce, and the CHUs lack sufficient resources to review the quality of the IA work in line with international standards. The FBiH regulation on quality assurance is a positive development<sup>738</sup>. The importance of the cost-effectiveness of performing external quality assurance is the main reason as to why the regulation charges the FBiH CHU with conducting periodic reviews of IA units and renders external quality assurance optional. The annual CHU reports are mainly based on the annual self-assessment reports which the CHUs receive from the IA units or from individual internal auditors.

<sup>734</sup> The PIFC Strategy of the RS dates from 2010. The State has an updated PIFC Strategy 2016-2018, and the FBiH has a PIFC Strategy 2015-2018.

<sup>735</sup> The CHUs do not collect data regarding the certification of internal auditors.

<sup>736</sup> Official Gazette of the BiH, 27 January 2015.

<sup>737</sup> This information was provided by the respective finance ministries.

<sup>738</sup> The FBiH Law on Internal Audit in the Public Sector, Official Gazette of the FBiH Nos. 47/08 and 101/16, Article 20.

Given the above factors, the value for the indicator 'Adequacy of the operational framework for internal audit' is 1.

| Adequacy of the operational framework for internal audit  |   |          |   |   |   |   |
|---|---|----------|---|---|---|---|
| This indicator measures the extent to which the operational framework for internal audit (IA) has been established, assessing the adequacy of the regulatory framework, the institutional set-up, and co-ordination and quality assurance mechanisms. |   |          |   |   |   |   |
| A separate indicator measures the implementation of the framework and the results achieved.   |   |          |   |   |   |   |
| Overall indicator value   | 0 | <b>1</b> | 2 | 3 | 4 | 5 |

| Sub-indicators  | Points      |
|---|-------------|
| 1. Adequacy of the regulatory framework for internal audit              | 4/5         |
| 2. Organisational capacity for internal audit                           | 1/5         |
| 3. Co-ordination, development and guidance of the internal audit system | 0/5         |
| 4. Existence of a system for quality assurance for internal audit       | 0/3         |
| <b>Total<sup>739</sup></b>  | <b>5/18</b> |

**The regulatory framework for IA is adequate, but the implementation of this framework has been slow. Mainly due to budgetary constraints, the organisational capacity to implement the framework is still lagging, resulting in the lack of capacity to provide for CPD and quality assurance.**

*Principle 9: Each public organisation implements internal audit in line with the overall internal audit policy documents, as appropriate to the organisation.*

The requirements for planning IA work in budget organisations are set out in IA Manuals and other guidance materials<sup>740</sup>, which present templates for strategic and annual plans. In 2016, there is no evidence to suggest that all budget organisations with an established IA function had developed these plans: IA units or individual auditors delivered 70% of the 2017 strategic plans to the CHUs and 54% of the 2017 annual plans. Strategic and annual plans are developed at the State level, but not for all small institutions, some of which are covered by a ministry's IA unit. In the FBiH, nearly 100% of the IA units have developed strategic and annual plans, but institutions with only one auditor did not deliver the plans to the FBiH CHU.

**Table 11. Strategic and annual plans on IA**

|              | Institutions | Strategic plans | Percentage | Annual plans | Percentage |
|--------------|--------------|-----------------|------------|--------------|------------|
| <b>State</b> | 36           | 31              | 86%        | 25           | 69%        |
| <b>FBiH</b>  | 55           | 34              | 62%        | 33           | 60%        |
| <b>RS</b>    | 45           | 26              | 57%        | 16           | 36%        |
| <b>Total</b> | 136          | 91              | 70%        | 74           | 54%        |

Sources: Ministry of Finance and Treasury of the State of Bosnia and Herzegovina, Ministry of Finance of the Federation of Bosnia and Herzegovina, and Ministry of Finance of the Republika Srpska.

<sup>739</sup> Point conversion ranges: 0-2=0, 3-6=1, 7-9=2, 10-12=3, 13-15=4, 16-18=5.

<sup>740</sup> For example, the 2014 "Manual for risk assessment and audit planning" of the FBiH.

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A review of five audit plans showed that they are prepared in line with national legal requirements. However, they do not cover risk assessment, although they refer to the risk assessment presented in the strategic plans. As circumstances in the audit universe<sup>741</sup> of an IA unit can change since the drafting of a strategic plan, international standards require that annual plans at least update the risk assessment presented in the strategic plan. The annual IA plans focus mainly on compliance; except for the IA unit of the State MoFT, they do not include audits on EU or other donor funds.

A review of five audit reports showed that the reports of the State and the FBiH include the audit objectives and scope of the audit, as well as the evidence for the recommendations made in the report, and they also address systemic weaknesses in internal control. The RS audit reports do not always present the audit's objective, scope of the audit or recommendations, but merely highlight findings on regulatory non-compliance. None of the five audit reports addresses weaknesses in achieving value for money.

The CHUs do not report on how IA units or internal auditors follow up on their recommendations, although the annual IA reports submitted to the CHUs do include some information on such follow-up.

In 2015, the IA units of the State and the Entities made 2 625<sup>742</sup> recommendations between them. The CHUs of the State and the FBiH report on the number of recommendations implemented in a given calendar year. Since the annual report of the RS does not include information on the implementation rate of recommendations, a general percentage across the country as a whole is not available. However, the annual reports of the State and the FBiH indicate that the implementation rate of recommendations during a single calendar year is below 50%.

While reports from five IA units in each of the levels of the administration were required to conduct the assessment for this Principle, SIGMA received only 6 reports in total out of the 20 requested<sup>743</sup>. In light of this, therefore, the value for the indicator 'Functioning of internal audit' is 0.

| Functioning of internal audit  |          |   |   |   |   |   |
|--|----------|---|---|---|---|---|
| This indicator measures the extent to which internal audit is implemented and whether activities effectively contribute to improved management of public finances within the budget organisations. |          |   |   |   |   |   |
| Overall indicator value  | <b>0</b> | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators  | Points      |
|---|-------------|
| 1. Strength of planning of internal audit in budget organisations | 0/7         |
| 2. Quality of audit reports                                       | 0/6         |
| 3. Follow-up and implementation of audit recommendations          | 0/3         |
| <b>Total<sup>744</sup></b>  | <b>0/16</b> |

**Not all budget organisations where IA has been established have developed strategic and annual audit plans. In general, IA units and internal auditors plan their audit work in line with national legal requirements, and follow the IA manuals. However, audit planning is weak and IA work focuses on compliance with laws and regulations. Performance audit is at an early stage.**

<sup>741</sup> The audit universe is an inventory of all the possible auditable activities that bear risks related to an organisation.

<sup>742</sup> Of the 2 625 recommendations, the IA units at the State level made 443 recommendations, while the IA units in the FBiH made 1 046, and the IA units in the RS made 1 136.

<sup>743</sup> Two reports from the State, two from the FBiH, and two from the RS.

<sup>744</sup> Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

### **Key recommendations**

#### **Short-term (1-2 years)**

- 1) The CHUs should encourage IA units to undertake quality control of their audit work, beginning with periodically reviewing the functioning of IA units.
- 2) The BD should reconsider establishing its own IA units and CHU, and it should consider the possibility of co-operating with the IA units and CHUs of the State and other Entities.
- 3) The CHUs should start to improve the professional development of internal auditors by implementing certification programmes and developing CPD programmes, and reporting on the results of their actions in their annual reports.

#### **Medium-term (3-5 years)**

- 4) The CHU Co-ordination Board should reconsider the elaboration of a cost-effective and comprehensive quality-assurance programme that would be applicable at the State level and in all Entities.

## **Public procurement**

**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.**

The values of the indicators assessing Bosnia and Herzegovina's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.

| Indicators  | 0 | 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|---|---|
| Quality of legislative framework for public procurement and PPP/concessions   |   |   |   | ◆ |   |   |
| Central institutional and administrative capacity to develop, implement and monitor public procurement policy effectively and efficiently |   |   |   | ◆ |   |   |

Legend: ◆ Indicator value    ■ Regional range    | Regional average

### **Analysis of Principles**

**Principle 10: Public procurement regulations (including public-private partnerships and concessions) are aligned with the European Union acquis, include additional areas not covered by the acquis, are harmonised with corresponding regulations in other fields and are duly enforced.**

The PPL in its current version already reflects some of the key elements of the 2014 EU Public Sector and Utilities Directives, for instance with regard to their personal scope, the range and main characteristics of available public procurement procedures and the fundamental principles underlying the selection and award criteria. However, there is still significant room for further alignment. In addition, a number of problematic provisions of the PPL need to be addressed.

First, the mandatory application of domestic preferences<sup>745</sup> remains incompatible with the *acquis*<sup>745</sup>. While

<sup>745</sup> PPL, Article 67, Decision on Obligatory Application of Domestic Preferences of 11 November 2016, Official Gazette of BiH No. 83/16.

it is supposed to be gradually phased out, the application of domestic preferences is not in line with the principle of equal treatment, and leads to discrimination against EU companies in BiH.

Second, with regard to the material scope of the 2014 Directives, particular attention should be paid to the exemptions from the scope of the PPL. Contracts which are exempted<sup>746</sup> include contracts “for natural and legal monopolies that may include procurement of water, electricity, gas, heating and other services, until the relevant market is open for competition”. Undoubtedly, it would be impractical to require the application of competitive procedures in these situations (when for technical reasons there is only one economic operator capable of fulfilling a particular contract). However, the EU legislation, instead of exempting such contracts, offers another solution, which is the application of the negotiated procedure without prior publication.

The 2014 EU Public Procurement Directives provide for a number of new procurement techniques, procedures and concepts (such as innovation partnership, best price–quality ratio and life-cycle costing), which are currently not transposed into the PPL of BiH. Moreover, the new EU Directives intend to make it easier for small and medium-sized enterprises (SMEs) to participate in public tenders (for example by permitting to make it obligatory to award contracts in the form of separate lots). No such focus on SMEs is present in the PPL.

Generally, some provisions of the PPL use imprecise wording or excessively vague terms which risk allowing the decision maker a large margin of discretion or lead to misinterpretation (e.g. the ability to reject or permit bids, in addition to specific and clearly defined cases, “in other justified cases”<sup>747</sup>).

Despite significant progress achieved in the adoption of outstanding secondary legislation under the PPL, further efforts are necessary as regards the adoption of specific implementing regulations, such as the draft Rulebook on Training of Public Procurement Officers, whose aim is to address the issue of the financing of training delivered by the PPA to contracting authorities and to prevent stagnation in this very important segment of the public procurement system.

The existing legal framework in the area of concessions and PPPs in BiH is highly fragmented. Being explicitly excluded from the scope of the PPL<sup>748</sup>, the award of concession and PPP contracts is regulated by the Law on Concessions of BiH (the State level)<sup>749</sup>; the Law on Concessions of the FBiH<sup>750</sup>; the Law on Concessions of the RS<sup>751</sup>; the Law on PPPs of the RS<sup>752</sup>; Cantonal laws on concessions and PPPs; and the Law on PPPs of the BD<sup>753</sup>. A number of by-laws have been adopted pursuant to the adoption of the above-mentioned laws<sup>754</sup>.

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<sup>746</sup> PPL, Article 10.

<sup>747</sup> PPL, Article 68(4)(i).

<sup>748</sup> PPL, Article 10 (3) and (4).

<sup>749</sup> Official Gazette of BiH Nos. 32/02 and 56/05.

<sup>750</sup> Official Gazette of the FBiH Nos. 40/02 and 61/06.

<sup>751</sup> Official Gazette of the RS No. 59/13.

<sup>752</sup> *Idem*, Nos. 59/09 and 63/11.

<sup>753</sup> Official Gazette of the BD No. 7/10.

<sup>754</sup> For example, Rulebook on Request Submitting Procedure and Concession Granting Procedure, Official Gazette of BiH No. 65/06; Rulebook on the Registry of Contracts on Concessions, Official Gazette of BiH No. 55/12; Rulebook on Granting Concessions, Official Gazette of the FBiH Nos. 67/06 and 87/11; Rulebook on Determining the Concession Fee, Official Gazette of the FBiH No. 67/06; Rulebook on the Procedure of Ceding the Concession’s Contract and the Change of the Ownership Structure, Official Gazette of the RS No. 65/14; Rulebook on the Content and the Manner of Management of the Registry of Contracts, Official Gazette of the RS No. 65/14; Instructions for Evaluation of Existence of Public Interest for Unsolicited Proposal, Official Gazette of the RS No. 103/05; and Regulation of the Procedure for the Realisation of the PPP in the RS, Official Gazette of the RS No. 104/09.

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The new EU Directive on Concessions<sup>755</sup> has not been transposed, even with respect to the basic definition of the term “concession”, which, furthermore, is subject to divergent interpretations in the Law on Concessions of BiH<sup>756</sup>, the Law on Concessions of the FBiH<sup>757</sup> and the Law on Concessions of the RS<sup>758</sup>.

The term “concession” in BiH also extends to contracts that are neither concession contracts nor public contracts in the meaning of EU public procurement law, e.g. “concessions” to exploit natural resources.

The concessions laws at the State level and in the FBiH allow for the award of a concession based on either a public invitation or an unsolicited proposal by a bidder, without a public invitation<sup>759</sup>. In the case of the RS<sup>760</sup>, the award can be made based on a public invitation (initiated by a contracting authority or a bidder, in the latter case the bidder who initiated the process is given a 10% bonus compared to other competitors<sup>761</sup>), or a negotiated procedure without a public invitation in certain cases<sup>762</sup>. Only the public invitation procedure can broadly be compared to a transparent procedure with prior publication of a concession notice, the elements of which are set forth in the Concessions Directive.

The prescribed award procedure for the selection of the private partner pursuant to the Law on PPP in the RS is a competitive dialogue “in accordance with the norms of international law”<sup>763</sup>. The details of this procedure are further regulated in the Regulation on the PPP Procedure<sup>764</sup> and, to a great extent, resemble the competitive dialogue procedure as provided in the Directive 2014/24/EU<sup>765</sup>.

Overall, the value for the indicator ‘Quality of legislative framework for public procurement and PPPs/concessions’ is 3.

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<sup>755</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

<sup>756</sup> Law on Concessions of BiH, Article 3: “ ‘Concession’ is the right granted by a conceding party to provide infrastructure and/or services and to exploit natural resources under terms and conditions agreed on by the conceding party and the concessionaire.”

<sup>757</sup> Law on Concessions of FBiH, Article 4: “ ‘Concession’ – the right to perform economic activities through the utilisation of natural wealth and goods in general use and perform activities of general interest is stipulated by this law.”

<sup>758</sup> Law on Concessions of RS, Article 2: “For the purpose of this law the concession means the right to perform economic activities using public goods, natural resources and other goods of general interest as well as the right to perform activities of general interest in accordance with this law and this right is being granted to a concessionaire for certain period of time, under terms defined by this law with payment of a concession fee.”

<sup>759</sup> Law on Concessions of BiH, Chapter III; Law on Concessions of the FBiH, Chapter III.

<sup>760</sup> Law on Concessions of the RS, Article 11.

<sup>761</sup> *Idem*, Article 25.

<sup>762</sup> *Idem*, Article 26.

<sup>763</sup> *Idem*, Article 12.

<sup>764</sup> *Idem*, Article 18.

<sup>765</sup> *Idem*, Article 30.

### Quality of legislative framework for public procurement and PPP/concessions

This indicator measures the quality of the legislative framework for public procurement and public-private partnerships (PPPs)/concessions, above and below EU thresholds. Opportunities for participation of SMEs in public procurement are assessed, as well as whether practical measures are taken to allow for proper implementation of the legislation. The other indicators in the public procurement area analyse the actual implementation of laws and regulations and the results thereof.

Overall indicator value 0 1 2 **3** 4 5

#### Sub-indicators

#### Points

#### Compliance of public procurement legislation with the *acquis* above EU thresholds

|  |     |
|--|-----|
| 1. Level of alignment of public procurement legislation with the EU Directives | 2/6 |
| 2. Scope of public procurement legislation                                     | 4/6 |
| 3. Public procurement procedures   | 3/4 |
| 4. Publication and transparency  | 5/5 |
| 5. Choice of participants and award of contracts                               | 2/5 |
| 6. Availability of procedural options  | 2/4 |

#### Public procurement procedures below EU thresholds

|   |     |
|---|-----|
| 7. Advertising of public procurement procedures | 3/3 |
| 8. Contract award procedures                    | 6/7 |

#### Opportunities for participation of SMEs in public procurement

|  |     |
|--|-----|
| 9. Opportunities for participation of SMEs in public procurement | 4/5 |
|--|-----|

#### Availability of measures for the practical application of the legislative framework

|   |     |
|---|-----|
| 10. Availability of measures for the practical application of the legislative framework | 2/5 |
|---|-----|

#### Quality of legislation concerning PPPs/concessions

|   |     |
|---|-----|
| 11. Coverage of legislation on PPPs/concessions   | 1/2 |
| 12. Value for money, free competition, transparency, equal treatment, mutual recognition and proportionality for PPPs/concessions | 3/8 |

**Total<sup>766</sup>** **37/60**

The current legal framework for public procurement is largely aligned with the *acquis*, but requires further alignment with the 2014 Directives. Secondary legislation is mostly in place, but the adoption of missing regulations in the field of training activities, for which the PPA is responsible, is of paramount importance. The current legal framework in the area of concessions and PPPs is highly fragmented and not harmonised with the *acquis*. As such, it constitutes a severe hindrance to the implementation of concession and PPP projects. The PPL, concessions laws and PPP laws are not coherent. The transposition of the 2014 Concessions Directive has not begun even at a conceptual level.

**Principle 11: There is central institutional and administrative capacity to develop, implement and monitor procurement policy effectively and efficiently.**

The PPA is an independent administrative body responsible for policy making, preparing draft legislation, monitoring, and advisory and training activities in the field of public procurement. The PPA has two branch offices in Banja Luka and Mostar. At the moment it employs 25 staff members (instead of the

<sup>766</sup> Point conversion ranges: 0–10=0, 11–20=1, 21–30=13, 31–40=3, 41–50=4, 51–60=5.

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planned 32), 15 of which are assigned to the head office in Sarajevo. Understaffing is a source of concern given the volume, variety and importance of the functions the PPA is called to undertake under the provisions of the PPL.

The new monitoring mechanism adopted in October 2016 presupposes that the PPA's supervision may be requested as a result of complaints from economic operators or interested third parties pointing out irregularities in procurement notices, contract award notices, or notices of cancellation of public procurement or procurement plans. If, upon its assessment, the PPA comes to the conclusion that a violation of the basic principles of public procurement procedures defined by the PPL has indeed occurred, and if the contracting authority fails to rectify its behaviour accordingly, the PPA is under obligation to bring an action before the courts of BiH. Given the wide scope of such complaints, their number, and the number of documents involved, could potentially be very high and could place the PPA under more pressure than it has the human resources to cope with.

Another source of concern regarding the activities of the PPA is the training of public procurement staff within the contracting authorities, which the PPA is mandated to provide under the PPL. The current inability of the CoM of BiH to finalise the adoption of the draft Rulebook on Training of Public Procurement Officers leaves the vital issue of the financing of such training suspended and *de facto* hampers the provision of regular and systematic professional support to contracting authorities by the PPA.

The new Public Procurement Strategy (the Strategy)<sup>767</sup>, adopted by the CoM on 13 October 2016, provides an outline for the development, implementation and monitoring of procurement policy. The Strategy, together with Action Plan for 2016-2017, offers a thorough overview of the state of play and current challenges in the public procurement system. Among its main strategic objectives<sup>768</sup>, the Strategy highlights better co-ordination within the public procurement systems, further aligning the legislative framework with the 2014 Directives, enhancing transparency, strengthening the institutional capacity and competition, and putting a stronger focus on the "value for money" approach. However, the implementation of the Strategy has not yet started, despite the fact that the adoption of several measures had already been scheduled in 2016.

In the field of concessions and PPPs, the distribution of functions and responsibilities among the institutions reflects the fragmented legislative framework of the country.

The administrative set-up for regulating and managing concessions is extremely complex. The relatively large Concessions Commissions are replicated at each level of government. The administrative cost of the system is high and the levels of activity differ. While the RS Concessions Commission has been active, the BiH Commission and the FBiH Commission have been virtually inactive, since almost no actual concession has been awarded at those levels. This problem, however, stems at least partially from the constitutional set-up of BiH and cannot be easily resolved without implementing a more general political solution.

The concession laws set out the institutional structure in the concessions area: the BiH Concessions Commission<sup>769</sup> located in Banja Luka, the FBiH Concessions Commission located in Sarajevo, and the RS Concessions Commission<sup>770</sup> located in Banja Luka. All three Commissions act as independent regulatory legal entities and play an important role in the award procedure and implementation of concessions by issuing approvals.

Each Concessions Commission participates in the overall regulation of the system (developing policy papers, preparing legislation, adopting implementing regulations and issuing standard forms), and plays

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<sup>767</sup> The Strategy and Action Plan for the Development of the Public Procurement System in BiH for the Period 2016-2020.

<sup>768</sup> The Strategy, section 1.3.

<sup>769</sup> [http://www.koncesijebih.ba/home/index.php?option=com\\_frontpage&Itemid=1](http://www.koncesijebih.ba/home/index.php?option=com_frontpage&Itemid=1).

<sup>770</sup> <http://koncesije-rs.org/cir/>.

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an important role in both the concession award procedures (approving feasibility studies before launching the procedure, approving tender documents, participating in the selection process and accepting the content of contracts) and in the monitoring of execution of concession contracts (approving all successive contractual changes during contract execution).

The competence of the BiH Concessions Commission (State level) encompasses the concessions to be granted in the sectors under the jurisdiction of state institutions. In practice, the Commission is virtually inactive. As shown by the 2015<sup>771</sup> and 2016<sup>772</sup> annual reports, the number of concessions actually awarded amounts to zero.

The FBiH Commission plays an important role in the process of awarding those concessions that are regulated by the FBiH Concessions Law (the Commission approves the feasibility study and tender documentation, and recommends, after negotiations conducted by a contracting authority, the conclusion of the contract). The FBiH Commission is in charge of regular monitoring of the implementation of the Policy Paper on Granting Concessions<sup>773</sup>. In practice, the activities of this Commission have been limited<sup>774</sup>, and all concessions within the FBiH territory (in 2015-2017) were awarded at the local level by cantons.

The RS Commission is responsible for awarding those concessions that are regulated by the RS Concessions Law. In practice, during 2015 and 2016 approximately 20 concessions<sup>775</sup> were granted each year, although the majority of them concerned the exploitation of natural resources<sup>776</sup>, which are not concessions within the meaning of Concessions Directive.

As regards the PPPs in the RS, the MoF of the RS is responsible for monitoring the PPP Law<sup>777</sup>. This task is assigned to the PPP unit with two employees within the Public Investment Management Department. In practice, since the adoption of the PPP Law in the RS there has not been a single PPP project implemented, although several attempts have been made<sup>778</sup>.

There is no strategy for the development of the PPPs at any level of government. The Strategy for the Development of the Public Procurement System in BiH for the period 2016-2020 is explicit in excluding the concessions and PPPs from its scope<sup>779</sup>.

The value for the indicator 'Central institutional and administrative capacity to develop, implement and monitor public procurement policy effectively and efficiently' is 3.

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<sup>771</sup> [http://www.koncesijebih.ba/home/images/izvrsenje\\_dokumenta\\_o\\_politici\\_dodjele\\_koncesija\\_u\\_bosni\\_i\\_hercegovini.pdf](http://www.koncesijebih.ba/home/images/izvrsenje_dokumenta_o_politici_dodjele_koncesija_u_bosni_i_hercegovini.pdf).

<sup>772</sup> [http://www.koncesijebih.ba/home/images/izvjestaj\\_o\\_radu\\_komisije\\_za\\_koncesije\\_bih\\_2016\\_prednacrt\\_za\\_komentare.pdf](http://www.koncesijebih.ba/home/images/izvjestaj_o_radu_komisije_za_koncesije_bih_2016_prednacrt_za_komentare.pdf).

<sup>773</sup> The Policy Paper on Granting Concessions was adopted by the Government of the FBiH in 2005 and amended in 2011.

<sup>774</sup> [http://www.parlamentfbih.gov.ba/dom\\_naroda/bos/parlament/propisi/El\\_materijali\\_2016/Izvjestaj\\_o\\_radu\\_Komisije\\_za\\_koncesije\\_2015\\_godinu.pdf](http://www.parlamentfbih.gov.ba/dom_naroda/bos/parlament/propisi/El_materijali_2016/Izvjestaj_o_radu_Komisije_za_koncesije_2015_godinu.pdf).

<sup>775</sup> This information was provided in an interview with a member of the RS Commission, 20 March 2017.

<sup>776</sup> <http://koncesije-rs.org/lat/index.php?prikaz=stranica&id=24>.

<sup>777</sup> Including preparation of primary and secondary legislation, approval of the feasibility study or pre-study for the particular PPP project prepared by the public partner, approval of the final draft of the PPP contract, and management of the register of PPP contracts.

<sup>778</sup> Information on the PPPs in the RS, February 2014.

<sup>779</sup> [https://www.javnenabavke.gov.ba/vijesti/2016/Strategija\\_2016-2020\\_en.pdf](https://www.javnenabavke.gov.ba/vijesti/2016/Strategija_2016-2020_en.pdf), p.5.

**Central institutional and administrative capacity to develop, implement and monitor public procurement policy effectively and efficiently**

This indicator measures to what extent public procurement policy is systematically developed, implemented and monitored, how central public procurement functions are distributed and regulated, and to what extent the preparation and implementation of policies are open and transparent.

Overall indicator value 0 1 2 **3** 4 5

**Sub-indicators**

**Points**

**Quality of the policy framework for public procurement**

|   |     |
|---|-----|
| 1. Quality of the strategy for development of public procurement and PPPs/concessions | 3/5 |
| 2. Quality of the operational action plan   | 4/5 |
| 3. Implementation of the strategy and the action plan                                 | 0/5 |
| 4. Monitoring of strategy implementation  | 4/5 |

**Capability of central procurement institutions and their performance**

|   |       |
|---|-------|
| 5. Adequacy of the legal framework to ensure capable institutions                             | 8/10  |
| 6. Clarity in definition and distribution of central procurement functions in the legislation | 10/10 |
| 7. Performance of the institutions involved, their capacity and resources                     | 10/20 |

**Comprehensiveness and efficiency of systems for monitoring and reporting on public procurement**

|   |              |
|---|--------------|
| 8. Presence and quality of monitoring and data collection | 4/10         |
| 9. Accessibility of public procurement data               | 4/10         |
| <b>Total<sup>780</sup></b>                                | <b>47/80</b> |

The PPA is a central administrative body responsible for the development, implementation and monitoring of procurement policy. However, its limited staff capacity needs to be reinforced to enable it to deal with these tasks effectively and efficiently. This is particularly the case with the PPA's new monitoring function of supervising public procurement operations upon the request of interested parties. Currently, the PPA is unable to deliver regular and systematic professional training to contracting authorities and economic operators. This is partly due to the lack of necessary secondary legislation resolving the issue of the financing of such training activities. A new Public Procurement Strategy was adopted in 2016 but its implementation has been delayed. In the field of concessions and PPPs, the distribution of functions and responsibilities among the institutions is fragmented and excessively complex.

**Key recommendations**

**Short-term (1–2 years)**

- 1) The PPA should prepare and submit for adoption amendments to the PPL and secondary legislation to remove the provisions on mandatory domestic preference.
- 2) The PPA should prepare and submit for adoption amendments to the PPL and secondary legislation to remove the provisions on the use of the lowest price as the only award criterion.

<sup>780</sup> Point conversion ranges: 0-12=0, 13-25=1, 26-39=2, 40-53=3, 54-67=4, 68-80=5.

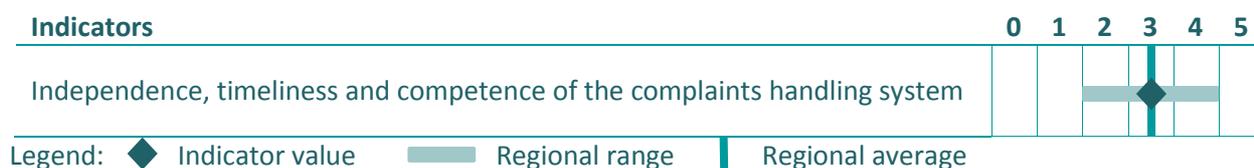
- 3) The competent authorities should adopt the Rulebook on Training of Public Procurement Officials.
- 4) The competent authorities should implement the activities provided for in the Strategy according to the timeline indicated in the Strategy's Action Plan.

### Medium-term (3–5 years)

- 5) The CoM of BiH should strengthen the capacities of the PPA, in particular by increasing the number of officials involved in monitoring functions.
- 6) The PPA should undertake the process of alignment of the legislation with the 2014 Directives.
- 7) The competent decision-making bodies should harmonise the PPP/concession laws with the EU Concessions Directive, and thereby with each other, and increase the level of co-ordination between the authorities concerned.
- 8) The PPL, the concession and PPP laws at all levels of the administration need to be harmonised in order to eliminate overlaps, inconsistencies and uncertainties.

**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.**

The values of the indicators assessing Bosnia and Herzegovina's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



### Analysis of Principles

**Principle 12: The remedies system is aligned with the European Union acquis standards of independence, probity and transparency and provides for rapid and competent handling of complaints and sanctions.**

The regulatory and institutional framework in the system of legal review and remedies remains fundamentally unchanged since the adoption of the PPL in 2014.

The PPL is mainly compliant with the EU Remedies Directive<sup>781</sup>, but two issues require further alignment. First, the time limits for bringing appeals before the PRB (five days<sup>782</sup>) are manifestly too short and do not comply with the requirements of the Remedies Directive. Second, the deadline for rectifying the deficiencies in the appeal (three days followed by a possible dismissal of the appeal<sup>783</sup>) equally appear excessively short and might lead to the dismissal of appeals on the basis of purely formal irregularities. As a result of these requirements, prospective applicants may be discouraged from challenging the decisions of contracting authorities before the PRB.

<sup>781</sup> Council Directive 89/665/EEC of 21 December 1989 on the co-ordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts.

<sup>782</sup> PPL, Article 100(4).

<sup>783</sup> *Idem*, Article 106.

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In terms of the institutional framework, the PRB acts as an independent and autonomous institution responsible for the review of complaints. This process comprises two stages, as prior to complaint being submitted to the PRB, it should be examined by the contracting authority in question<sup>784</sup>. The PRB's actual staff (the headquarters and the branch offices together) is comprised of only 33 people (17 members and the supporting staff) rather than the 57 required by the official staff regulations<sup>785</sup>. The branch offices in Mostar and Banja Luka have no support staff, and the institution as a whole lacks basic technical resources (such as a website and professional e-mail addresses). Such a significant shortage of staff and technical resources is likely to have negative repercussions on the efficiency and quality of the overall functioning of the institution, especially in light of the increasing flow of complaints (2 684 were received in 2016<sup>786</sup>, compared with 2 011 complaints in 2015). There are cases where the PRB does not respect the statutory time limits for deciding on appeals<sup>787</sup>.

Some 400 complaints submitted in late 2013 and early 2014, when the branch offices in Banja Luka and Mostar had not yet been established, still remain unaddressed. In October 2016, the Committee of Finance and Budget of the Parliamentary Assembly adopted a conclusion<sup>788</sup> by which it entrusts the PRB to resolve outstanding complaints received in the period 2013-2014 by distributing it proportionally between the head office and the branches, notwithstanding the financial and territorial census.

Decisions of the PRB only started to be published on the website of the PPA in 2015, and the vast body of its previous case law remains practically inaccessible. The PRB's decisions are published months after they are adopted<sup>789</sup>. Publication was interrupted in 2016 but resumed in 2017.

The manner in which this publication is presented has one major deficiency in that the system allows browsing of the PRB's decisions using a number of criteria (e.g. the procedure or decision number, the contracting authority involved, the name of economic operator and the date), but it does not offer a basic text search option, which would enable prospective or actual parties to the proceedings before the PRB, or even the PRB itself, to be able to obtain information on how the earlier case law dealt with a specific situation or legal problem. As a result, the published information is of limited value and relevance, since it does not assist with regard to the legal continuity in decision making, legal certainty and transparency which ought to be manifest in a properly functioning legal review system.

Apart from informal meetings, the handling of complaints by the three offices of the PRB is done without co-ordination of the decision making or a common document management or sharing system. Ensuring wider access to the PRB's case law through a comprehensive search engine is therefore vital in order to ensure the coherence of the output of the institution as a whole.

Remedies under the PPL are not available for award procedures relating to concessions and PPPs since the PPL explicitly excludes concessions and PPPs from its scope<sup>790</sup>. Thus, the PRB does not deal with complaints regarding the award of concessions and PPP contracts.

The State Concessions Law provides for a general review mechanism by stating that in the event of disputes arising from violations of the Law, the competent court is to be the Court of BiH<sup>791</sup>. The situation is the same in the case of the FBiH, except that the competent court is the Supreme Court of the Federation<sup>792</sup>. According to the RS Concessions Law, the decision on the selection of the best tender

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<sup>784</sup> PPL, Part III "Legal protection".

<sup>785</sup> Rulebook on Internal Organisation of the PRB, No. 01-02-3-221/13, 15 December 2015.

<sup>786</sup> Statistics provided by the PPA.

<sup>787</sup> Interviews with stakeholders on 20-21 April 2017 concerning, for example, PRB Case No. JN2-02-07-1-415-5/16.

<sup>788</sup> Conclusion of the Committee of Finance and Budget of the BiH Parliamentary Assembly No. 02/3-50-8-24-26 of 26 October 2016, Official Gazette of BiH No. 21/16.

<sup>789</sup> <https://www.ejn.gov.ba/Resolution/ResolutionSearch>.

<sup>790</sup> PPL, Article 10 (3) and (4).

<sup>791</sup> *Idem*, Article 35.

<sup>792</sup> The FBiH Concessions Law, Article 36.

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and the award of concession is final and an administrative dispute may be initiated against it before an administrative court. This possibility is provided only where a public invitation procedure is used. No such provision applies in cases of an unsolicited proposal or negotiated procedure.

The RS PPP Law does not envisage any remedies, but the Regulation on the PPP Procedure states that a “decision adopted by the public partner in the private partner selection procedure shall be final in the administrative procedure and an administrative dispute may be initiated before the competent district court”<sup>793</sup>.

The Laws of all administrative levels do not contain any further provisions on the review and remedies system. It is thus not clear, for example, which deadlines need to be respected for lodging complaints, what the time limits are for deciding on disputes, whether interim measures are available, against which decisions review can be sought, and whether the procedure allows or obliges the decision-making body to take “rapid and effective” decisions.

Administrative disputes in concessions and PPPs award procedures are not frequent but last for two to three years<sup>794</sup>.

The value for the indicator ‘Independence, timeliness and competence of the complaints handling system’ is 3.

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<sup>793</sup> *Idem*, Article 18.

<sup>794</sup> This information was provided during Interviews with stakeholders on 20 and 21 April 2017.

### Independence, timeliness and competence of the complaints handling system

This indicator measures the effectiveness of the system for handling complaints on public procurement. First, the quality of the legislative and regulatory framework is assessed, specifically in terms of compliance with the EU Directives. Then, sub-indicators measure the strength of the institutional set-up for handling complaints. Next, the actual performance of the review system is measured using a combination of qualitative and quantitative indicators. Finally, the performance of the remedies system for PPP/concessions is evaluated.

Overall indicator value 0 1 2 **3** 4 5

#### Sub-indicators

#### Points

#### The legislation sets out the mechanisms for handling complaints in compliance with EU Directives

|   |     |
|---|-----|
| 1. Right to challenge public procurement decisions  | 5/5 |
| 2. Time limit for challenging decisions taken by contracting authorities/entities         | 0/2 |
| 3. Transposition of mechanisms to avoid ineffectiveness of contracts and impose penalties | 3/3 |
| 4. Mechanisms to ensure implementation of the review body's resolutions                   | 2/2 |
| 5. Right to challenge decisions of the review body  | 3/3 |

#### The institutional set-up for handling complaints

|   |     |
|---|-----|
| 6. Legal provisions establishing the review body ensure independence of the institution and its members | 7/7 |
| 7. Adequacy of the organisational set-up and procedures of the review body                              | 2/4 |
| 8. Public availability and timeliness of data on the review system                                      | 1/4 |

#### Performance of the review system

|   |     |
|---|-----|
| 9. Fairness of fee rates for initiating review procedures         | 0/3 |
| 10. Actual processing time of complaints                          | 3/3 |
| 11. Complaint submission in practice                              | 1/4 |
| 12. Quality of decision making by the review body                 | 0/4 |
| 13. Cases changed or returned after verification by the court (%) | 0/2 |

#### Performance of the remedies system in PPPs/concessions

|  |     |
|--|-----|
| 14. Right to challenge lawfulness of actions/omissions in PPP/concessions procedures             | 2/5 |
| 15. Legal provisions ensure independence of the review body for PPPs/concessions and its members | 5/5 |
| 16. Timeliness and effectiveness of complaints handling system for PPPs/concessions              | 0/5 |

**Total<sup>795</sup>** **34/61**

**The legal framework for the remedies system (for public contracts) is broadly aligned with the EU legislation. The functioning of the PRB presents numerous weaknesses, which are primarily due to its insufficient staffing and technical capacity. Publication of the PRB's decisions is in place but the manner in which a decision is presented does not fully ensure efficient access to the PRB's case law. No formal co-ordination mechanisms have been set up to ensure the coherence of decision making of the three PRB offices. Remedies available under the PPL do not cover concessions and PPPs. The legal framework for the remedies system for concessions and PPPs is not aligned with the EU legislation.**

<sup>795</sup> Point conversion ranges: 0-8=0, 9-19=1, 20-30=2, 31-41=3, 42-52=4, 53-61=5.

### Key recommendations

#### Short-term (1–2 years)

- 1) The competent authorities should strengthen the staff and technical capacity of the PRB to fully enable it to deal with its tasks under the PPL, including the publication of its decisions.
- 2) The PRB should introduce a formal co-ordination mechanism whereby the uniformity and coherence of the decision making of its three offices are ensured.
- 3) The competent decision-making bodies should establish an efficient review system for decisions taken in procedures related to the award of concessions and PPPs.
- 4) The PRB's decisions issued before 2015 should be published.

#### Medium-term (3–5 years)

- 5) The method of publication of the PRB's decisions should include a text-search option to allow the browsing of its decisions by subject matter, keyword or legal provision.

**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.**

The values of the indicators assessing Bosnia and Herzegovina's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



### 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 PPL foresees publication of procurement plans on the contracting authority's website<sup>796</sup>. However, in practice this obligation cannot always be fulfilled due to the fact that not all contracting authorities have a website. The same problem applies to the obligation to publish contract modifications that occur during the contract implementation stage. Shifting the publication of procurement plans and contract modifications from the individual websites of contracting authorities to the centralised procurement portal administered by the PPA could fill this gap and greatly increase the transparency of procurement planning and contract implementation.

<sup>796</sup> PPL, Article 17.

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Furthermore, the *ex post* monitoring activities carried out by the PPA<sup>797</sup>, as well as the SAI detected cases of insufficient quality of procurement plans (e.g. imprecise wording and a lack of detail as to the subject matter of the procurement), which diminishes the efficiency of the planning process and, as a consequence, undermines the efficient use of public funds. No guidelines are issued on the subject of preliminary market analysis or consultations to enable contracting authorities to better define their needs.

The applicable secondary legislation is practically silent on the subject of contract implementation and *de facto* leaves this important phase of the public procurement process wholly to the discretion of contracting authorities. Contracting authorities are only under the obligation to report on the procedure to the PPA, and the only relevant piece of implementing regulation concerns the publication of amendments to the procurement contract<sup>798</sup>, but substantive aspects of the contract implementation procedure are left unaddressed.

While the use of centralised procurement is covered by the legislation currently in force<sup>799</sup>, in practice no such centralised purchasing is taking place yet. The Strategy envisages creating a pilot project for the establishment and implementation of central purchasing bodies at the cantonal level in order to assess the readiness for the creation of a centralised purchasing body at the State level.<sup>800</sup>

Of the contracts awarded in 2015, 21% were awarded through a negotiated procedure without publication of a contract notice<sup>801</sup>. While the use of this non-transparent procedure is problematic, its use has significantly decreased compared with the situation in 2014, when only 50.4% of the contracts awarded had prior publication of a notice<sup>802</sup>. Preliminary data for 2016 shows a further decrease in the use of this procedure: 1 554 contracts were concluded using a negotiated procedure without publication. The total value of these was BAM 258 million (EUR 130 million), representing just 10.2% of all concluded contracts<sup>803</sup>.

There is a continued positive trend in the management and development of the central public procurement portal by the PPA (<https://www.ejn.gov.ba/>). The portal collects data from more than 95% of all contracting authorities in the country and allows browsing through procurement notices and contract award notices; the system is designed to allow searches by specific contracting authority or economic operator. The PPA's efforts in maintaining the portal are beneficial for the overall transparency of public procurement operations and wider availability of information. The use of electronic procurement has been expanded to enable the downloading of tender documents; in 2016, the e-auction module was introduced and was used in 30 procedures that year. Due to technical problems, the e-auction module could not be used for some time in 2017.

Irregularities identified by the SAIs<sup>804</sup> concern all stages of public procurement operations. During the initial stage, the most common errors detected were concerning the choice of the procurement procedure, the estimation of the value of the contract and the determination of the financial threshold, a failure to adopt a procurement plan backed by available funds, imprecise definition of the subject matter of the procurement, and poor timing of the initiation of the procurement procedure. The SAIs' findings

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<sup>797</sup> [https://www.javnenabavke.gov.ba/izvjestaji/izvjestaj%20o%20monitoringu/Izvjestaj\\_o\\_monitoringu\\_2015\\_bs.pdf](https://www.javnenabavke.gov.ba/izvjestaji/izvjestaj%20o%20monitoringu/Izvjestaj_o_monitoringu_2015_bs.pdf)

<sup>798</sup> Instructions on the Publication of Basic Contract Elements and Amendments to the Contract, Official Gazette No. 56/15, August 2015.

<sup>799</sup> PPL, Article 4(2), Rulebook on Joint Procurement and Central Purchasing Body, Official Gazette No. 55/15, July 2015.

<sup>800</sup> Strategy, section 2.3.

<sup>801</sup> PPA Annual Report 2015.

<sup>802</sup> OECD (2015), *Baseline Measurement Report: Bosnia and Herzegovina*, OECD Publishing, Paris, p.114, <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-BiH.pdf>.

<sup>803</sup> PPA, Pre-draft of the Analysis of the Implementation of the PPL, pp. 7-8, [https://www.javnenabavke.gov.ba/vijesti/2017/Prednact\\_analize\\_2016.pdf](https://www.javnenabavke.gov.ba/vijesti/2017/Prednact_analize_2016.pdf).

<sup>804</sup> [https://www.javnenabavke.gov.ba/izvjestaji/izvjestaj%20o%20monitoringu/Izvjestaj\\_o\\_monitoringu\\_2015\\_bs.pdf](https://www.javnenabavke.gov.ba/izvjestaji/izvjestaj%20o%20monitoringu/Izvjestaj_o_monitoringu_2015_bs.pdf)

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also emphasised certain non-transparent and discriminatory practices, such as continued co-operation with former suppliers after the contracts have expired or the imposition of overly restrictive criteria in the tender notice, resulting in a certain producer being favoured.

The value for the indicator 'Efficiency, non-discrimination, transparency and equal treatment practiced in public procurement operations' is 0.

| <b>Efficiency, non-discrimination, transparency and equal treatment practiced in public procurement operations</b>  |          |   |   |   |   |   |
|---|----------|---|---|---|---|---|
| This indicator measures the extent to which public procurement operations comply with basic principles of equal treatment, non-discrimination, proportionality and transparency, while ensuring most efficient use of public funds. It measures performance in the planning and preparation of public procurement, the transparency and competitiveness of the procedures used, the extent to which modern approaches and tools are applied, and how the contracts are managed once they have been concluded. |          |   |   |   |   |   |
| Overall indicator value   | <b>0</b> | 1 | 2 | 3 | 4 | 5 |

| Sub-indicators  | Points       |
|---|--------------|
| <b>Planning and preparation of the public procurement procedure</b>   |              |
| 1. Due attention is given to the planning process   | 0/5          |
| 2. Presence and use of cost estimation methods and budgeting  | 1/2          |
| 3. Perceived quality of tender documentation by contracting authorities and economic operators (%)                                      | 1/4          |
| <b>Competitiveness and transparency of conducted procedures</b>   |              |
| 4. Perceived fairness of procedures as seen by businesses (%)   | 4/4          |
| 5. Contracts awarded by competitive procedures (%)  | 2/5          |
| 6. Contracts awarded based on acquisition price only (%)  | 0/5          |
| 7. Average number of tenders submitted per competitive procedure (2.5 bids in goods and services and 2.97 bids in procurement of works) | 1/3          |
| 8. Contracts awarded when one tenderer submitted a tender (%)   | 0/2          |
| <b>Use of modern procurement methods</b>  |              |
| 9. Adequacy of regulatory framework for and use of framework agreements   | 0/5          |
| 10. Adequacy of regulatory and institutional framework and use of centralised purchasing  | 0/5          |
| 11. Penetration of e-procurement within the procurement system  | 3/5          |
| <b>Contract management and performance monitoring</b>   |              |
| 12. Presence of mechanisms requiring and enabling contract management   | 0/6          |
| 13. Contracts amended after award (%)   | 0/4          |
| 14. Extent of <i>ex post</i> evaluation of the procurement process and of contract performance  | 0/6          |
| <b>Risk management for preserving the integrity of the public procurement system</b>  |              |
| 15. Existence of basic integrity tools  | 0/4          |
| <b>Total<sup>805</sup></b>  | <b>12/65</b> |

**A significant share of contracts continues to be awarded without using transparent procedures, e.g. through the negotiated procedure without publication. No guidance is available to contracting**

<sup>805</sup> Point conversion ranges: 0-12=0, 13-23=1, 24-34=2, 35-45=3, 46-56=4, 57-65=5.

authorities regarding procurement planning and contract management. The potential for centralised purchasing has not yet been explored, despite the adoption of the relevant secondary legislation. Greater transparency and wider access to information are being achieved through the rapid development of e-procurement.

*Principle 14: Contracting authorities and entities have the appropriate capacities and practical guidelines and tools to ensure professional management of the full procurement cycle.*

The inability of the PPA to deliver training in accordance with its obligations under the PPL is one of the weaknesses that currently characterise the area of public procurement training and professional support to contracting authorities and economic operators in BiH. It is commonly acknowledged that there is a high demand for such training, given the fact that public procurement is an area which is still relatively new and which requires a thorough knowledge and understanding of specific domestic legislation, as well as EU practice and the case law of the EU Court of Justice. Furthermore, staff turnover in the contracting authorities is high.<sup>806</sup>

The first shortcoming of the system is that the educational level of public procurement officers<sup>807</sup> is not monitored. Moreover, the PPL does not require mandatory professional training and development.

Second, the system of training for procurement officers, as envisaged by the PPA, has not been implemented. The relevant Rulebook on the Training of Public Procurement Officers has been prepared by the PPA but its adoption is pending agreement between the MOJ and the MoF at the State level. As a result of this legal vacuum – and in the absence of any implementation of regulations on the financing of such training activities – training is mainly offered by private providers. The system of private sector training relies on certified public procurement trainers (whose obligations, certification and training are regulated by the Rulebook on the Training of Certified Trainers<sup>808</sup>), but it offers no systematic approach to or co-ordination of the training activities, their content and modules. Under the EU project “Strengthening the Public Procurement System in Bosnia and Herzegovina”, 29 trainings were delivered in 2015 for 885 participants. In the same year, private providers carried out 60 trainings for 2 429 participants and some training activities were provided by the Civil Service Agencies of the State, the FBiH and the RS (20 trainings with 690 participants)<sup>809</sup>.

However, the PPA does offer a range of professional advice and support activities to all interested parties, such as *ad hoc* advice (through a hotline and in writing) as well as a compilation of the most frequently asked questions and problematic issues, for example on the subject of tender documentation. Since November 2016, however, the provision of advice by the PPA through the hotline has been reduced to only one day per week (Wednesday) for three hours<sup>810</sup>. Samples of standard bidding documentation date from 2014 and have not yet been updated.

Overall, the value for the indicator ‘Availability and quality of support to contracting authorities and economic operators to strengthen professionalisation of procurement operations’ is 2.

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<sup>806</sup> Strategy, pp. 8, 11 and 16.

<sup>807</sup> The expression “public procurement officers” does not refer to a regulated professional category but to the entirety of employees of contracting authorities who are dealing with public procurement procedures.

<sup>808</sup> Official Gazette of BiH No. 62/15.

<sup>809</sup> PPA, Information on training in the field of public procurement conducted in 2015.

<sup>810</sup> <https://www.javnenabavke.gov.ba/index.php?id=03vij&vij=122&jezik=bs>

**Availability and quality of support to contracting authorities and economic operators to strengthen professionalisation of procurement operations**

This indicator measures the availability and quality of support given to contracting authorities and economic operators to develop and improve the knowledge and professional skills of procurement officers and to advise them in preparing, conducting and managing public procurement operations. This support is usually provided by a central procurement institution.

This indicator does not directly measure the capacity of contracting authorities and entities. The assessment is of the scope of the support (whether all important stages of the procurement cycle are covered), its extent, and its quality and relevance for practitioners (whether it provides useful, practical guidance and examples). Surveys of contracting authorities and economic operators are used to gauge the relevance and practical applicability of the support.

Overall indicator value 0 1 **2** 3 4 5

**Sub-indicators**

**Points**

**Availability and quality of manuals, guidelines, standard tender documents and other operational tools**

|   |     |
|---|-----|
| 1. Availability and quality of manuals and guidelines   | 1/5 |
| 2. Availability and quality of standard tender documents, standard forms and standard contract models | 1/5 |

**Availability and quality of training and advisory support**

|  |     |
|--|-----|
| 3. Access to quality training for procurement staff                                      | 2/5 |
| 4. Availability of advice and support for contracting authorities and economic operators | 3/5 |

**Procurement procedures cancelled**

|   |              |
|---|--------------|
| 5. Procurement procedures cancelled (%) | 5/5          |
| <b>Total<sup>811</sup></b>              | <b>12/25</b> |

The level of educational and professional qualifications of procurement officers within contracting authorities is not monitored. Public procurement training fully relies on the initiative and funding of private organisations, but it is neither co-ordinated nor regular. A systematic and coherent approach to the content and scope of training is lacking. The adoption of the Rulebook on Training of Public Procurement Officers, which is essential for the PPA to be able to fulfil its important training tasks, has stagnated. Overall, the PPA provides regular, *ad hoc* advisory support to contracting authorities and economic operators.

**Key recommendations**

**Short-term (1–2 years)**

- 1) The competent authorities should finalise the adoption of the Rulebook on Training of Public Procurement Officers.
- 2) The PPA should provide additional guidance or regulation (e.g. in the form of Instructions or Rulebooks) on the conduct of preliminary market analysis, procurement planning and contract management.

**Medium-term (3–5 years)**

<sup>811</sup> Point conversion ranges: 0-4=0, 5-8=1, 9-12=2, 13-16=3, 17-20=4, 21-25=5.

- 3) The PPA and other competent authorities should implement and monitor the system of regular training for procurement officers.
- 4) The PPA should draft and propose amendments to the PPL in order to remove provisions on mandatory domestic preferences and the exclusive use of the lowest-price criterion as the contract-award criterion.
- 5) The publication of procurement plans and contract modifications should be moved to the central public procurement portal administered by the PPA.

## External audit

**Key requirement: The constitutional and legal frameworks guarantee 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.**

The values of the indicators assessing Bosnia and Herzegovina's performance under this key requirement are displayed below in comparison with the regional average and the range of values for the same indicators in the Western Balkans. The range is formed by the values given to the lowest and highest performer for a given indicator.



### Analysis of Principles

**Principle 15: The independence, mandate and organisation of the supreme audit institution are established, protected by the constitutional and legal frameworks and respected in practice.**

The respective Constitutions do not establish SAIs. Functional, operational and financial independence, mandate and organisation are regulated in the Law on Auditing the Institutions of BiH (2006), the Law on Public Sector Auditing of the RS (2005 and 2014), the Law on Auditing the Institutions of the FBiH (2006) and the Law on the Audit of Public Administration and Institutions in the BD of BiH (2008, 2014 and 2016). Neither the SAI Laws nor any other law regulate protection of the institutions by a Supreme Court against interference in their independence.

The Auditors General and deputies of the four SAIs are appointed for a term of seven years, without the possibility of re-appointment.

Except for the SAI Law of BD, the SAI Laws ensure the financial independence of the SAIs<sup>812</sup>. The SAIs submit their draft budget to the responsible Commission of the respective legislatures and, after approval, to the relevant MoF and Treasury to be incorporated in the respective budgets. During the past few years, the Parliamentary Assembly at the State level, the National Assembly of the RS, the Parliament of the FBiH and the Assembly of the BD (hereafter the Parliaments) and the four SAIs have taken into account austerity restrictions required for the whole of the public administration. However,

<sup>812</sup> SAI Laws: Articles 5 (the State and the FBiH) and Article 25 (the RS); the BD SAI (Article 5) will have to submit its draft budget to the Finance Directorate.

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the financial independence of the FBiH SAI has been breached. The FBiH MoF changed the SAI budget for 2017, which was approved by the Parliamentary Commission, and in practice this Ministry controls the execution of the FBiH SAI budget<sup>813</sup>.

The SAIs have a sufficiently broad mandate. The audit of interests of the State, the FBiH and the BD in legal entities is limited for the SAIs to those entities in which the CoM, the Government of the FBiH or the Government of the BD holds more than half of the quotas or shares. The RS SAI is authorised to conduct audits of public institutions, as well as public and other companies in which the RS holds any direct or indirect ownership share<sup>814</sup>.

The SAIs are empowered to carry out financial, compliance and performance audits<sup>815</sup>. Audit reports are shared with auditees for their comments. The SAIs submit their reports to their respective Parliaments<sup>816</sup>. In 2016, the SAIs submitted a total of 241 audit reports<sup>817</sup> to the Parliaments and published the reports on their websites. The published reports include the mandatory financial audit reports, the audit report on the consolidated budget, performance audit reports; and audit reports on the implementation of recommendations. The financial audit reports also encompass findings and conclusions on compliance with laws and regulations. For the budget year 2016, the financial audit reports of the SAIs start including separate opinions on the reliability of the financial statements and compliance with laws and regulations in line with the new International Standard of the International Organisation of the SAIs for compliance audit (ISSAI 4000)<sup>818</sup>. The SAI Laws also foresee special audits at the request of the Parliament<sup>819</sup>. In 2016, only the State-level SAI received a request for such an audit<sup>820</sup>.

The SAI Laws guarantee access to premises and information<sup>821</sup>. There has been no denial of or restriction on the SAIs' work during the past two years.

BiH citizens do not have much trust in the political independence of the SAIs. Only 16% of citizens who responded to the 2017 Balkan Barometer survey<sup>822</sup> totally agreed or tended to agree that the SAIs are independent of political influence.

Given the lack of constitutional protection and legal protection by a Supreme Court, as well as citizens' perception, the value for the indicator 'Independence of the supreme audit institution' is 2.

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<sup>813</sup> This information was provided by the Auditor General of the SAI of the FBiH.

<sup>814</sup> SAI Laws, Article 12 (the State SAI), Article 11 (the FBiH SAI), Article 16 (the RS SAI) and Article 11 (the BD SAI).

<sup>815</sup> SAI Laws, Articles 8, 13 and 14 (the State SAI, the FBiH SAI and the BD SAI) and Articles 13, 18- 19 (the RS SAI).

<sup>816</sup> SAI Laws, Article 16 (the State SAI and the FBiH SAI), Article 21 (the RS SAI) and Articles 18-20 (the BD SAI).

<sup>817</sup> The State SAI 81, the FBiH SAI 57, the RS SAI 74 and the BD SAI 29.

<sup>818</sup> ISSAI 4000 was adopted during the International Congress of SAIs in Abu Dhabi in December 2016.

<sup>819</sup> SAI Laws, Article 18 (the State SAI and the FBiH SAI), Article 23 (the RS SAI), Article 15 (the BD SAI).

<sup>820</sup> This request concerned an audit of the BiH Public Broadcaster. The Auditor General decided to accommodate the Parliament's request (the audit started in January 2017), although Article 18.2 of the SAI BiH Law gives the Auditor General discretionary power to decide whether the Audit Office shall perform such an audit.

<sup>821</sup> SAI Laws, Articles 39 and 40 (the State SAI, the FBiH SAI and the RS SAI) and Articles 40 and 41 (the BD SAI).

<sup>822</sup> Balkan Barometer, annual survey conducted by the Regional Cooperation Council (RCC), <http://www.rcc.int/seeds/results/2/balkan-opinion-barometer>

| Independence of the supreme audit institution  |   |   |          |   |   |   |
|--|---|---|----------|---|---|---|
| This indicator measures the extent to which external audit by the supreme audit institution (SAI) is conducted independently and the internationally recognised conditions for the effective functioning of the SAI are found in law and practice. |   |   |          |   |   |   |
| Overall indicator value  | 0 | 1 | <b>2</b> | 3 | 4 | 5 |

| Sub-indicators   | Points      |
|--|-------------|
| 1. Constitutional and legal independence of the SAI  | 1/4         |
| 2. Organisational and managerial independence of the SAI   | 3/5         |
| 3. Adequacy of the SAI mandate and alignment with International Standards of Supreme Audit Institutions (ISSAIs) | 3/3         |
| 4. Access to information and premises  | 1/1         |
| 5. Perceptions of SAI independence by population (%)   | 0/3         |
| <b>Total<sup>823</sup></b>   | <b>8/16</b> |

**SAIs are established, though their independence, mandate and organisation are not anchored in the Entities' Constitutions but are well-defined in SAI Laws. However, this did not protect the FBiH SAI from a breach of its financial independence by the FBiH MoF. No Supreme Courts legally protect the SAIs' independence. BiH citizens do not perceive the SAIs as free from political influence.**

*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.*

On the basis of their respective SAI Laws, the SAIs co-operate by means of a CB. The Law on Auditing the Institutions of BiH sets out the establishment and responsibilities of the CB. These are to establish audit guides and instructions, to exchange professional experiences, and to organise and co-ordinate developmental activities. The CB has been an important vehicle for the joint development of audit standards and guidelines

Besides the mandatory audits, the FBiH SAI and the RS SAI have very wide remits, covering approximately 2 000 auditees in the Federation and around 950 in the RS.

The SAIs carry out all types of audit: financial, compliance and performance. In 2016, the SAIs carried out 274 audits, as shown in Table 12.

<sup>823</sup> Point conversion ranges: 0-2=0, 3-5=1, 6-8=2, 9-11=3, 12-14=4, 15-16=5.

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**Table 12. Number of audits in 2016**

|  | Bosnia and Herzegovina | Federation of Bosnia and Herzegovina | Republika Srpska | Brčko District | Total      |
|--|------------------------|--------------------------------------|------------------|----------------|------------|
| <b>Mandatory financial/compliance audits</b>     | 74                     | 20                                   | 25               | 28             | 148        |
| <b>Non-mandatory financial/compliance audits</b> | 1                      | 31                                   | 43               | Not applicable | 74         |
| <b>Performance audits</b>                        | 4                      | 5                                    | 6                | 1              | 17         |
| <b>Follow-up audits</b>                          | 1                      | 1                                    | 33               | Not applicable | 35         |
| <b>Total number of audits</b>                    | <b>80</b>              | <b>57</b>                            | <b>107</b>       | <b>29</b>      | <b>274</b> |

Source: Information provided by the SAIs.

All mandatory (financial) audits include audit opinions as defined by the ISSAIs and are submitted to the respective Parliaments.

Mainly due to the limited resources, the development of performance audits is slow and the number of performance audits is around five a year in each SAI<sup>824</sup>. In 2016, a number of performance audits covered financial issues and did not focus on policy areas. The published performance audit reports are discussed at the Assembly of the State level but have not attracted much attention from Parliaments or the Entities' civil societies.

The SAIs have one manual for financial and compliance audits and one for performance audit. In 2013-2016, in close co-operation with the Swedish National Audit Office (SNAO), a working group with representatives of the BiH SAI, the FBiH SAI and the RS SAI upgraded the Financial Audit Manual (including compliance) for all the stages of the audit process (planning, implementation and reporting) in accordance with the ISSAIs. Some of the amendments refer to the issuance of two separate audit opinions on financial statements and on compliance. The working group will update the manual to incorporate the changes in the ISSAIs that were adopted during the XXII International Congress of SAIs of December 2016. The Performance Audit Manual reflects the audit approach according to the ISSAIs, but it is not yet fully consistent with those standards. All SAIs, except the BD SAI, have established units for methodology and quality control.

Under the auspices of the CB, the SAIs have developed quality control and assurance procedures with checklists. In co-operation with the SNAO, these procedures were upgraded in 2016. The State-level SAI has also established a specific unit for quality control of performance audits. The quality control at the team level functioned in 2016. The internal independent quality control of audits was carried out by the SAIs' Methodology and Quality Control departments, but a lack of resources prevented a quality assurance of the functioning of the quality control procedures. There are no reports relating to the outcome of the quality control procedures<sup>825</sup>.

The SAIs monitor auditees' implementation of audit recommendations, but not all SAIs systematically monitor for both types of audit, i.e. the combined financial/compliance audit and performance audit.

<sup>824</sup> Except the BD SAI, whose resources do not allow for more than one performance audit a year.

<sup>825</sup> From the BD SAI, SIGMA received filled-out but unsigned checklists.

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For 2012 and 2013 respectively, 31% and 32%<sup>826</sup> of the total number of recommendations accepted by auditees of the BiH SAI, the FBiH SAI and the RS SAI had been implemented by the end of the following year. The limited data available for 2014, 2015 and 2016 shows that the level remains low especially in the FBiH SAI, where only 23% of the financial audit recommendations are reported to have been implemented in 2015<sup>827</sup>. Also the BiH SAI (50%-60%) and the RS SAI (54%) report to be unsatisfied with the implementation of recommendations by audited institutions. According to the SAIs, the unwillingness of managers is the main factor for the low implementation.

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 the RS and the Budget Committee of the Assembly of the BD have internal regulations on handling SAI reports.

The Committees discuss the SAIs' audit reports<sup>828</sup> in hearings with auditees and produce reports with recommendations that are based on the work of the SAIs. The Assemblies of the State level and the RS draft conclusions on the SAIs' financial audit findings and recommendations for auditees to take into account, though only the Assembly of the State level does so on performance audit findings and recommendations.

BiH citizens do not have much trust in the SAIs. Only 22% of the citizens who responded to the 2017 Balkan Barometer survey totally agreed, or tended to agree, that the SAIs are to be trusted. Citizens' trust in the judiciary and the Parliaments is low too: trust in the courts scored 23% and trust in the Parliaments 16%.

Asked whether the SAIs are institutions that can effectively scrutinise the Government and hold it accountable, 29% of BiH citizens who responded to the Balkan Barometer survey totally agreed or tended to agree. The scores for other oversight bodies, such as the Assemblies (29%) and the Ombudsmen (27%) were comparable to the SAIs' score. On the other hand, citizens' trust in civil society organisations as an effective control mechanism was higher, at 37%.

Given these factors, the value for the indicator 'Effectiveness of the external audit system' is 3.

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<sup>826</sup> 2013 data provided by the BiH SAI, the FBiH SAI and the RS SAI; data for the BD SAI is not available. The percentages are an average for the State and the two Entities.

<sup>827</sup> The FBiH SAI Annual Audit Report for 2015/2016.

<sup>828</sup> There is no data on whether or how the Assembly of the BD deals with the BD SAI reports.

| Effectiveness of the external audit system   |   |   |   |          |   |   |
|--|---|---|---|----------|---|---|
| This indicator measures the extent to which external audits contribute to improved management of public finances and how the supreme audit institution applies standards to ensure high-quality audits. (e.g. through its manuals and quality assurance system). |   |   |   |          |   |   |
| Overall indicator value  | 0 | 1 | 2 | <b>3</b> | 4 | 5 |

| Sub-indicators                                     | Points       |
|--|--------------|
| 1. Coverage of mandate by external audit           | 4/6          |
| 2. Compliance of audit methodology with ISSAIs     | 5/6          |
| 3. Quality control and quality assurance of audits | 4/6          |
| 4. Implementation of SAI recommendations           | 0/6          |
| 5. Use of SAI reports by the legislature           | 5/6          |
| <b>Total<sup>829</sup></b>                         | <b>18/30</b> |

**Although the SAIs have limited resources, they all carry out their mandatory audits in line with ISSAIs. Nevertheless, the effectiveness of their work is not yet high. The Governments' level of implementation of the recommendations remains low. BiH citizens do not perceive the SAIs as control institutions that can effectively hold the Government accountable to the citizens.**

### **Key recommendations**

#### **Short-term (1-2 years)**

- 1) The SAIs and the CB should work closely with the Parliamentary Assembly at the State level, the Assembly of the RS, the Parliament of the FBiH, the Assembly of the BD and the auditees to organise awareness-raising events to improve the auditees' implementation rate of audit recommendations.
- 2) The SAIs should systematically, on an annual basis, record the audit recommendations made, accepted and implemented and subsequently analyse the reasons for non-acceptance and non-implementation of the recommendations. These actions would enable the SAIs to gain a better understanding of the root causes of the low implementation rate of audit recommendations.
- 3) The SAIs and the CB should reconsider their quality control and quality assurance procedures and strive to organise audit activities more efficiently in order to achieve better results, taking into account the limited structural resources available for these activities.
- 4) The SAIs and the CB should communicate more proactively with the media and the wider public in order to explain audit results and further explaining their role through concrete audit examples.

#### **Medium-term (3-5 years)**

- 5) The FBiH SAI and the RS SAI should analyse ways of increasing the coverage of their mandate, while taking into account their limited resources. A reconsideration of the need for annual audits of the current mandatory subjects should be part of this analysis.

<sup>829</sup> Point conversion ranges: 0-6=0, 7-11=1, 12-16=2, 17-21=3, 22-26=4, 27-30=5.

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