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NATIONAL INTEGRITY SYSTEM ASSESSMENT

BOSNIA AND HERZEGOVINA 2023



Funded by
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LIST OF ABBREVIATIONS

ACA	Anti-corruption agency
ALAC	Advocacy and Legal Advice Centre
APIF	Agency for Intermediary, Information Technology and Financial Services
APIK	Agency for Prevention of Corruption and Coordination of the Fight against Corruption
BAM	Convertible Mark, currency
BD	Brčko District
BHRT	Radio and Television of Bosnia and Herzegovina
BIH	Bosnia and Hercegovina
BIRN	Balkan Investigative Reporting Network
BP	Border Police
CCI	Centre for Civic Initiatives
CEC	Central Election Commission
COM	Council of Ministers
CPI	Corruption Perception Index
CRA	Communications Regulatory Agency
CSO	Civil society organisation
CVR	Central Voter Register
DCBP	Direktorat for Coordination of BiH Police Bodies
EC	European Commission
EU	European Union
FBIH	Federation of Bosnia and Herzegovina
FIA	Financial and Information Agency
FTV	Federal Television
GDP	Gross domestic product
GRECO	The Group of States against Corruption
HDZ	Croatian Democratic Union
HJPC	High Judicial and Prosecutorial Council
HOR	House of Representatives
IDB	Investment Development Bank

INTOSAI	International Organization of Supreme Audit Institutions
ISA	Intelligence and Security Agency
ITA	Indirect Taxation Authority
KM	Convertible Mark
MOI	Ministry of the Interior
MP	Member of Parliament
NBP	Network for Building Peace
NGO	Non-governmental organisation
NIS	National Integrity System
ODC	Office of the Disciplinary Counsel
ODIHR	Office for Democratic Institutions and Human Rights
OECD	Organisation for Economic Co-operation and Development
OG	Official Gazette
OHR	Office of the High Representative
OSCE	Organization for Security and Co-operation in Europe
PA	Police Administration
PPA	Public Procurement Agency
PRB	Procurement Review Body
RS	Republika Srpska
RSF	Reporters Without Borders
RTRS	Radio Television of Republika Srpska
SAA	Stabilisation and Association Agreement
SAI	Supreme audit institution
SC	Sarajevo Canton
SDA	Party of Democratic Action
SDC	Swiss Agency for Development and Cooperation
SDP	Party of Social Democrats
SIDA	Swedish International Development Cooperation Agency
SIPA	State Investigation and Protection Agency
SLAPP	Strategic lawsuits against public participation
SMES	Small and medium enterprises
SNSD	Independent Social Democratic Party
SOES	State-owned enterprises
TI	Transparency International
UN	United Nations
USAID	United States Agency for International Development
VAT	Value added tax
WB	World Bank
ZDC	Zenica-Doboj Canton

EXECUTIVE SUMMARY

This National Integrity System (NIS) study is the fifth edition prepared for Bosnia and Herzegovina (BiH). It was first published in 2004 and has undergone several updates since, including a local integrity system assessment for the Brčko District of BiH in 2015. The current effort is part of a larger regional project that includes all the Western Balkans countries, where the NIS studies have been undertaken by respective Transparency International (TI) country chapters. At the end of 2023, the BiH NIS undertook a full review of each sector to provide an accurate snapshot as to how critical institutions tackle corruption, offering also recommendations on how to scale up efforts and establish best practices in good governance across all the social pillars.

The key findings evolve around BiH being branded a “failed state” and the current NIS portrays the country similarly. BiH institutions are largely captured by the ruling elite and the few independent, dissenting voices have been silenced by placing these institutions under partisan control. The backsliding was referenced several times across the text and the country has been regressing, as also demonstrated by its ranking in Transparency International’s Corruption Perception Index. It is not a democracy, but a country captured by nationalist elites who each hold nearly unlimited power among their respective ethnic

corps.

The NIS recommendations therefore focus primarily on the tasks ahead of the national institutions. Essentially, BiH must improve the accountability and transparency of the public sector, including public financial management, transparent budgets, prohibition of conflict of interest and depoliticising of the administration. These have been high on the agenda for more than two decades but have not seen much progress. As the conclusions suggest, removing the grip of the political parties and their leaders from nearly every institutional pillar would transform the society and that can be achieved through gradual democratisation of the parties. A functional review of the public sector should aim to reorganise and reduce it significantly. Meanwhile, each institution needs to develop its transparency and integrity provisions and ensure their full implementation to prevent their further eradication and restoration of the rule of law. With the details in the text, the key specific recommendations per pillar are as follows:

- Conflict of interest: In line with The Group of States against Corruption (GRECO) recommendations, all government levels need to adopt a uniformed credible legislative and institutional framework for preventing conflicts of interest, by extending the width of its

application and the depth of reporting.

- Freedom of information: The governments and parliaments need to harmonise free access to information legislation throughout the country by improving provisions on proactive transparency and introducing heavy sanctions for failure to provide information according to the law that would in turn make the governments and civil service more accountable.
- Whistleblower protection: The Federation of Bosnia and Herzegovina (FBiH) government and parliament need to adopt a whistleblower protection law and their Bosnia and Herzegovina (BiH) and Republika Srpska (RS) counterparts need to update of the laws to make reporting corruption safe and granting the whistleblowing status prompt and attainable.
- Parliamentary transparency: Parliaments must make the process of adopting laws more transparent and ensure the participation of experts and civil society in the law-making process, through full drafting and public discussion process instead of fast-track political bargaining behind closed doors.
- Executive oversight: Supreme audit institutions (SAIs) need to perform a proper oversight role over the public sector, the precondition to which is ensuring the auditors are appointed independently from the executive and accountable to all parliamentarians, the general public and the judiciary. This is achieved through timely and politically unconditioned approval of budgets

and no political appointments to SAIs. There has to be a feedback loop, whereby the institutions with negative SAI opinion must undertake actions to rectify the issue before the next reporting cycle.

- Ensuring the independence of judiciary and prosecution by automating their financing to reduce the possibility of influence from various levels of government. Independent vetting of all judicial and prosecutorial office holders, including the High Judicial and Prosecutorial Council (HJPC) needs to involve civil society organisations (CSOs) and be open to public and media scrutiny.
- The public sector's recently established financial management and internal control system needs coordination of its activities with the relevant SAI in order to enhance its efficiency and improve control of government spending. Greater transparency in recruitment to all public institutions goes beyond the urgently required law enforcement, SAI and ombudsperson.
- Police agencies must establish the independence of disciplinary mechanisms and more effective investigation and prosecution of corruption cases and other criminal offences. Transparent and prompt reporting of police agencies will support that cause.
- Elections: Support the work of the Central Election Commission (CEC):
 - The governments and parliaments need to ensure stability in financing of elections by prompt adoption of the proposed budgets, with

no political conditioning.

- The governments and parliaments need to strengthen the legal provisions to prevent political pressures against the operations of CEC (especially at the local election committee level, through transparent selection of its members).
- The CEC needs to undergo a detailed review of the election process to avoid any future election engineering.

➤ Anti-corruption agency:

- The governments need to expand the role of the Agency for Prevention of Corruption and Coordination of the Fight against Corruption (APIK) to include mechanisms for responding to violations of the related law or non-compliance with the institutional obligation to cooperate with the agency.
- The anti-corruption agency (ACA) needs to strengthen its coordinating role and improve collaboration with other institutions working on corruption prevention. The ACA law should make the collaboration of law enforcement, executive and public sector with the ACA mandatory, especially regarding requests for whistleblower status.

➤ Business sector and state-owned enterprises (SOEs): Reduce political pressure by SOEs professionalising their governing bodies and improving corporate governance, with an emphasis on management transparency and accountability.

- The government needs to amend the laws on the public contracting and procurement system by exposing the process to the public and enforcing greater transparency and access to contracting information to reduce the opportunities for corruption that arise from the interplay of the private and public sectors.
- The government needs to increase the transparency and accountability of the public administration by introducing harsher sanctions for political abuse of the business sector, to stop the ongoing political interference in the work of private businesses and vice versa, also to be prioritised by the judiciary. This would address both the supply and the demand side of corruption.
- The government needs to set up public registers and listing of all SOEs with the names of the management and supervisory boards members in both entities and the Brčko District (BD), including devising a register of beneficial ownership.
- Setting up mechanisms for integrity and transparency in the appointment of supervisory and management boards, prevention of conflicts of interest and strengthening independence and oversight.
- The public and the private sectors need to develop specific tools and guidelines for integrity plans to improve corporate governance and business integrity promoting good practices, also tailored to small and medium enterprises (SMEs).

- > Shrinking civic space: Independent media and CSOs have both been under extreme political pressure from the executive in particular, all leading back to the political parties. That pressure needs to stop, particularly in RS where independent CSOs have been subjected to orchestrated political scrutiny. The slander provisions in the criminal law and the so-called foreign agents act should be abolished. Across the country, public funding for all associations must be made available transparently and as part of public calls, administered under clear rules.
- > Media ownership transparency must improve through appropriate and detailed public registers of ownership. Similarly, budget funding for media either needs to stop or be awarded through public calls and transparent outcome-based evaluations.
- > Mainstreaming gender: All institutions need to elaborate their gender approach/strategy so as to allow for equal opportunities in recruitment and treatment of all employees. The end result should be more women elected and appointed, greater access to services and visibility of women in particular, as studies have shown that such integration supports anti-corruption efforts across all sectors.

I > INTRODUCTION

The National Integrity System (NIS) comprises the principal governance institutions in a country responsible for the fight against corruption. When these governance institutions function correctly, they constitute a healthy and robust National Integrity System, effective in combating corruption as part of the larger struggle against the abuse of power, misconduct and misappropriation in all its forms. However, when these institutions are characterised by a lack of appropriate regulations and by unaccountable behaviour, corruption is likely to thrive, with adverse ripple effects on the societal goals of equitable growth, sustainable development and social cohesion. Therefore, strengthening the NIS promotes better governance in a country and contributes to a more just society overall.

Transparency International (TI) developed the NIS as part of our holistic approach to combating corruption. While there is no absolute blueprint for an effective anti-corruption system, there is a growing international consensus on the salient aspects that work best to prevent corruption and promote integrity. The NIS assessment evaluates the legal basis and the actual performance of institutions relevant to the overall anti-corruption system. The NIS focuses on the institutions or “pillars” depicted in Figure 1 that are based on a number of foundations in terms of political, social, economic and cultural

conditions.

The NIS is based on a holistic approach to preventing corruption since it looks at the entire range of relevant institutions and also focuses on the relationships among them. Thus, the NIS presupposes that a lack of integrity in a single institution would lead to severe flaws in the entire integrity system. Consequently, the NIS assessment does not seek to offer an in-depth evaluation of each pillar, but rather puts an emphasis on covering all relevant pillars and assessing their inter-linkages.

Transparency International believes that such a holistic system analysis is necessary to appropriately diagnose corruption risks and develop effective strategies to counter those risks. This analysis is embedded in a participatory approach, involving the key anti-corruption agents in government, civil society, the business community, and other relevant sectors to build momentum, political will, and civic pressure for relevant reform initiatives.

The NIS assessment creates a sound empirical basis that adds to our understanding of strong or weak performers on a cross-country level. In addition, from a regional perspective, the results can create a sense of peer pressure for reform and an opportunity for learning from countries in similar stages of development.

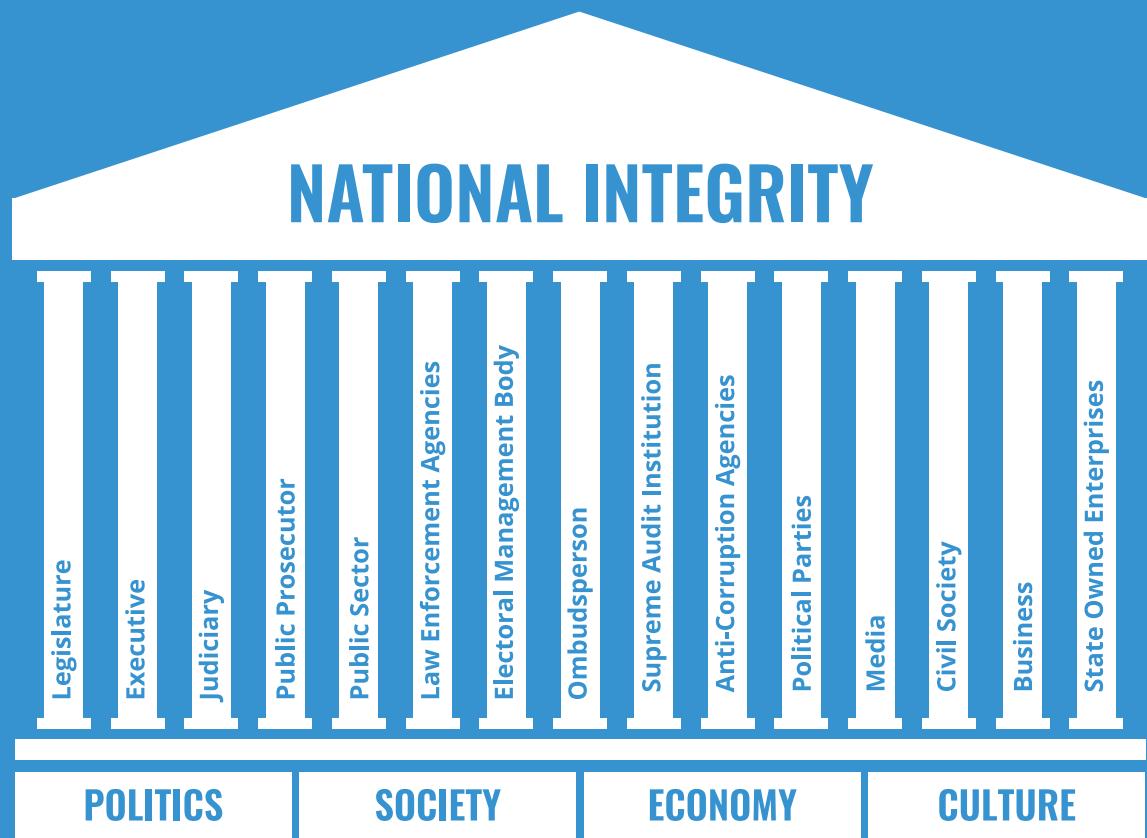


Figure 1 Pillars of a National Integrity System

II > COUNTRY PROFILE

2.1 > FOUNDATIONS OF THE NATIONAL INTEGRITY SYSTEM

1. GOVERNANCE AND POLITICS

The Dayton Peace Accords that ended the armed conflict in 1995 retained Bosnia and Herzegovina's international boundaries and created a multi-ethnic and formally democratic government charged with conducting foreign, diplomatic and fiscal policy. Politics take place in a framework of a parliamentary representative democracy whereby executive power is exercised by the Council of Ministers of Bosnia and Herzegovina (CoM). Legislative power is vested in both the CoM and the Parliamentary Assembly of Bosnia and Herzegovina. Members of the assembly are chosen according to a proportional representation system.

BiH has several levels of political structuring, according to the Dayton Agreement. Also recognised was a second tier of government composed of two entities roughly equal in size: the predominantly Bosniak-Croat Federation of Bosnia and Herzegovina (FBiH) and the predominantly Serb-led Republika Srpska (RS), the most important of the levels of government. The Federation and RS were

formally established by the Dayton Agreement because of the tremendous changes in BiH's ethnic structure. They were based largely on the territories held by the two warring sides at the time. Since 1996, the power of the entities relative to the state government has decreased significantly. Nonetheless, entities still have numerous powers to themselves.

Additionally, the Dayton Accords established the Office of the High Representative (OHR) to oversee the implementation of the civilian aspects of the agreement. The Peace Implementation Council at its conference in Bonn in 1997 also gave the High Representative additional authorities, the so-called Bonn powers making them formally the highest political authority in the country. The High Representative has many governmental and legislative powers, including the dismissal of elected and non-elected officials. Some of these features were questioned *inter alia* by the Council of Europe's Venice Commission claiming "such an arrangement is fundamentally

incompatible with the democratic character of the state and the sovereignty of BiH.”¹

The most important of these levels is the division of the country into two entities: the Federation of Bosnia and Herzegovina and Republika Srpska. The Federation covers 51 per cent of BiH’s total area, while Republika Srpska covers 49 per cent.

The country is led by a three-member presidency (one Bosniak and one Croat elected from the Federation and one Serb elected from the RS) directly elected by simple majority popular vote for a four-year term. The presidency’s chairpersonship rotates every eight months. The last general elections were held on 2 October 2022 and the governments have been formed at all levels, with few changes to the dominant national parties in power. After a long time, the Bosniak Party of Democratic Action (SDA) lost power to a coalition of parties chiefly representing the Bosniak ethnic group, led by the RS dominant Independent Social Democratic Party (SNSD) of Milorad Dodik and the Croatian Democratic Union (HDZ) representing the Croats that joined forces with the Party of Social Democrats (SDP), People and Justice party and Our Party, formerly in the dominantly Bosniak opposition. As a result, the Chair of the Council of Ministers is now Bojana Krišto from HDZ, while in the division of political seats, the Prime Minister of FBiH is Nermin Nikšić from the SDP. A similar division trickles down to the cantonal governments in FBiH, while RS remains an SNSD stronghold. The elections were seen as irregular by several opposition parties, particularly in the RS with a large-scale theft of votes and other

forms of election fraud. The Central Election Commission (CEC) was slow to react to these claims and their communication largely failed to match the seriousness of the opposition’s claims. The international community decided to play along and not question the legitimacy of the elections or their results.

The Brčko District (BD) in the north of the country was created in 2000 out of the land from both entities. It officially belongs to both but is governed by neither and functions under a decentralised system of local government. For election purposes, BD voters can choose to participate in either the Federation or RS elections. BD has been praised for maintaining a multi-ethnic structure and a level of prosperity above the national average.

The third level of BiH’s political subdivision is manifested in cantons. They are unique to the Federation, which consists of ten of them. Each has a cantonal government, subordinated to the laws of FBiH, but governed additionally by their own cantonal regulation, including on law enforcement. Some cantons are ethnically mixed and have special laws to ensure the equality of all constituent people.

The fourth level of political division is manifested in the municipalities. The Federation is divided into 79 municipalities and RS into 64. Municipalities also have their own local government and are typically based in the most significant city or place in their territory. As such, many municipalities have a long tradition and history with their present boundaries. Some others, however, were only created following the recent war after

traditional municipalities were split by the Inter-Entity Boundary Line. Each canton in the Federation consists of several municipalities that are divided into local communities.

The rule of law is formally upheld by the institutions that were modelled on liberal democracies. However, over time the institutions have fallen prey to the ruling elites and victim to state capture, as the country reversed some of the reformist progress achieved in the first post-war decade. From the period between 2005 and 2006 high-level political discussions on constitutional changes were launched, which additionally polarised the scene and introduced a new populist discourse which highlighted nationalist agendas, often to cover-up theft and corruption on a grand scale. Nevertheless, the election cycles are being observed, the institutions resume work following the election outcomes. However, as this publication will demonstrate, the entire process is captured and highly contaminated by the ruling elites.

2. SOCIETY AND CULTURE

In 2022 the population of BiHs was estimated to be 3.2 million. The ethnic distribution is 50.1 per cent Bosniaks, 30.8 per cent Serbs, 15.4 per cent Croats, 2.7 per cent other and 1 per cent not declared/no answer.² Society remains divided along ethnic lines, which is reflected in day-to-day politics.³ However, research into post-war confidence building has shown that the larger the volume of mutual trade, the fewer political tensions trouble the society.⁴

Also, significant economic differences exist among various parts of the country, which also causes differentiation. This led to the significant population outflow due to economic migrations. The worsening political and economic conditions led to a rapid increase in migration to European Union member states. It is estimated that some 400,000 people, or 13 per cent of the population left between 2011 and 2019, with the vast majority representing higher educated younger citizens.⁵ Together with the war-time immigration, there are more citizens of BiH living abroad than in the country.

Partly historically and partly as a result of these trends, the society has become more conservative than immediately after the war. Research shows women still get much less education (which only changes at the higher education level) and it is significantly easier for men than for women to find work. Men are also better remunerated, and women are rarely elected to public office. For example, only 4 per cent of all mayors are women.⁶ It is a patriarchal, traditional society where religious groups remain very influential and play a role in political life despite the formal separation of church and state.

In the 2020s serious human rights concerns remain due to ethnic divisions, discrimination, and the rights of minorities and asylum seekers. Pressure on media professionals continues. A long-delayed strategy was adopted to clear the backlog of war crime case prosecution.⁷ The country is located on the so-called Balkans route of human trafficking and smuggling of immigrants that places additional strain on the country's finances and security forces.

This publication examines the phenomenon of state capture in great detail, however the assessments of the last decade largely agree that the intra-party structures and procedures established have created a unique political system that has led to a crisis in the legitimacy of state institutions and a lack of public trust in the democratic process. In addition to being rated as the country with the highest level of corruption in the Western Balkans, BiH is increasingly described as a captured state and a hybrid regime.⁸ This publication therefore looks into limiting the power and influence wielded by political leaders through the largely undemocratic structures of their practically privatised political parties.

The public at large has been disillusioned with politics. Ever since the country's independence joining party ranks meant not believing in the causes the party stands for, but attaining personal or career goals through membership. Citizens have been motivated to vote by the nationalist rhetoric of party leaders, not the party programmes before, during and after the war – a cycle so difficult to break also due to the deteriorating quality of the education system and the brain drain among the young and employable members of the population. Ultimately, an endless list of corruption discoveries that remain unchallenged by the justice system left the population disinterested in the phenomenon. Citizens are learning to live with the corruption and often brush anti-corruption campaigns aside, assuming that “nothing will ever change” in this “doomed culture”. The NIS therefore focuses on the smaller attainable objectives that will render short-term results, alongside systemic reform

efforts, as it is of paramount importance to restore hope among citizens and engage them in the monitoring and reporting of corruption as well as stimulate their support for the actions, individuals and political parties that are seeking to break the corruption chain. The existing culture of impunity is supported by all the social pillars, as the NIS discloses and ending this social and institutional determinism has been the key challenge of post-war development.

On a general note, several social features have taken steep turns for the worse and need to be addressed urgently in order to secure any future for the country. Further structural issues that receive little or no attention will result in a social collapse. These are gender equality and the quality of education.⁹ Both are detrimental to the long-term development of the country. All of these problems together, including the weak institutions that this assessment will analyse, have contributed to the largest (alongside Albania) brain drain in a European country that will adversely affect the future of BiH for several generations to come.¹⁰

The media operate in a relatively favourable legal environment but in an extremely unfavourable political and economic atmosphere. Journalists do not feel protected while doing their work, and there are large differences in media freedom and the quality of journalism across the country.¹¹ Correspondingly, as this publication will demonstrate, public opinion is shaped by the political elites, often joined by religious leaders and a myriad of organisations and institutions.

3. ECONOMY

Bosnia and Herzegovina has a transitional economy with limited market reforms. The economy relies heavily on the export of metals, energy, textiles and furniture and on remittances and foreign aid. Its highly decentralised government hampers economic policy coordination and reform, while excessive bureaucracy and a segmented market discourage foreign investment. The economy is among the least competitive in the region. Foreign banks control much of the banking sector. The konvertibilna marka (convertible mark, abbreviated BAM) – the national currency introduced in 1998 – is pegged to the euro through a currency board arrangement, which has maintained confidence in the currency and has facilitated reliable trade links with European partners. Real GDP (purchasing power parity) amounts to US\$47.05 billion (2020 estimate of €43.8 billion, growing at about 3 per cent rate pre-COVID-19), which makes the per capita GDP US\$14,300 (2020 estimate of €13,320).¹²

BiH's private sector is growing slowly, as foreign investment dropped sharply after 2007 and remains low. High unemployment remains the most serious macroeconomic problem. The successful implementation of a value-added tax in 2006 provided a steady source of revenue for the government and helped rein in grey-market activity, though public perceptions of government corruption and misuse of taxpayer money have encouraged a large informal economy to persist. National-level statistics have improved over time, but a large share of economic activity remains unofficial and

unrecorded. Weak economic policies rely on external borrowing with external debt reaching US\$5 billion (€4.66 billion) in December 2022, compared with US\$4.7 billion (€4.38 billion) in the previous quarter, coming to 34.5 per cent of GDP.¹³

Borrowing by Republika Srpska surpasses borrowing by the Federation of Bosnia and Herzegovina. RS also has far fewer means of servicing debt. Personal remittances from abroad peaked in 2021, the last year when the data is available, at nearly US\$2.5 billion (€2.33 billion)¹⁴, more than a third of the nominal GDP of US\$6.17 billion (€5.75 billion).¹⁵ Even though the last available poverty data covers 2015, the poverty headcount ratio at US\$ 2.15/day amounts to 16.9 per cent of the population.¹⁶ This has remained mostly unchanged through the years, and there is no widespread poverty and the common features associated with it. Most citizens have access to basic physical and social infrastructure and the country still enjoys the benefits of the fast industrialisation and development in the final years of the former Yugoslavia, which set the foundation for the country's economy. However, the social safety net has suffered tremendous setbacks in the fragmented and corrupt successor country, so while the bulk of the population lives above the poverty line, this necessitates only for the basic living conditions for the vast majority of population, while the ruling elites enjoy immense wealth both inside the country and syphoned abroad.

High corruption rates represent a key economic challenge, deterring private investment and adversely impacting the economy, particularly

small and medium-sized enterprises. State-owned enterprises (SOEs) are identified as a major corruption source and a crucial power asset within the corrupt system. The substantial influence wielded by political parties in the appointment and decision-making processes of SOEs contributes to inefficiencies, impeding these enterprises from fulfilling their purpose of serving the general public, by delivering crucial services. Yet, the ability to control a significant portion of the GDP through SOE control, makes the society quasi-socialist, allowing the private sector to blossom only where the owners are politically networked. High fiscal and administrative barriers for all others prevent a level playing field.

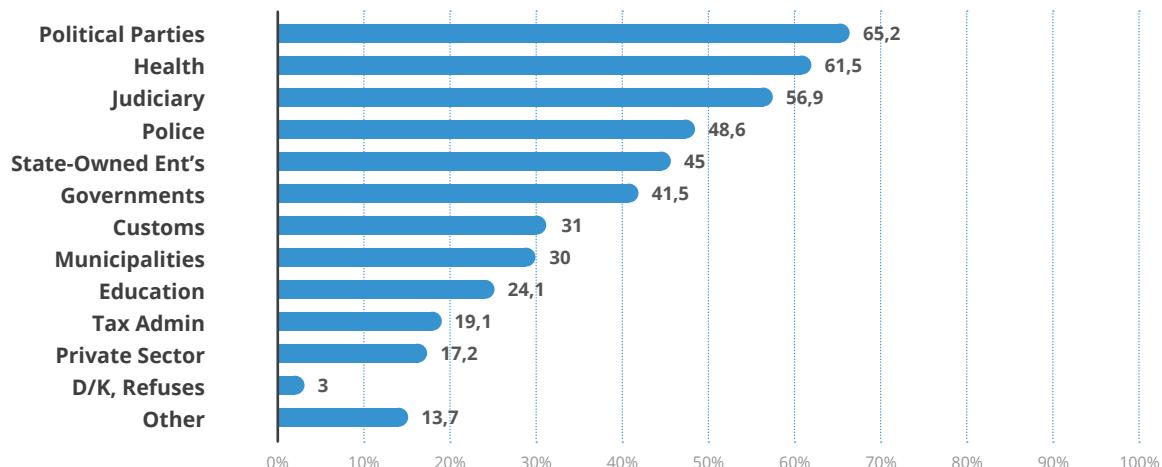
2.2 > CORRUPTION & ANTI-CORRUPTION

CORRUPTION: WHAT IS KNOWN ABOUT CORRUPTION IN THE COUNTRY BASED ON EXISTING RESEARCH?

According to Transparency International's Corruption Perception Index (CPI) 2022, BiH holds the worst place in Southeast Europe with a score of 34, on a scale from 0 to 100. The score worsened by eight points between 2012 and 2022, making it the biggest decline compared to 2012 in the region of Eastern Europe and Central Asia. The assessment reflects the ongoing lack of reform agenda.¹⁷

A public opinion survey conducted by TI Bosnia and Herzegovina in late 2019 shows that 85.4 per cent of the population thinks the level of corruption is high or very high.¹⁸ The following chart shows which sectors are considered most corrupt (sectors marked by respondents as corrupt, with multiple responses possible):

✖ Prevelence of corruption



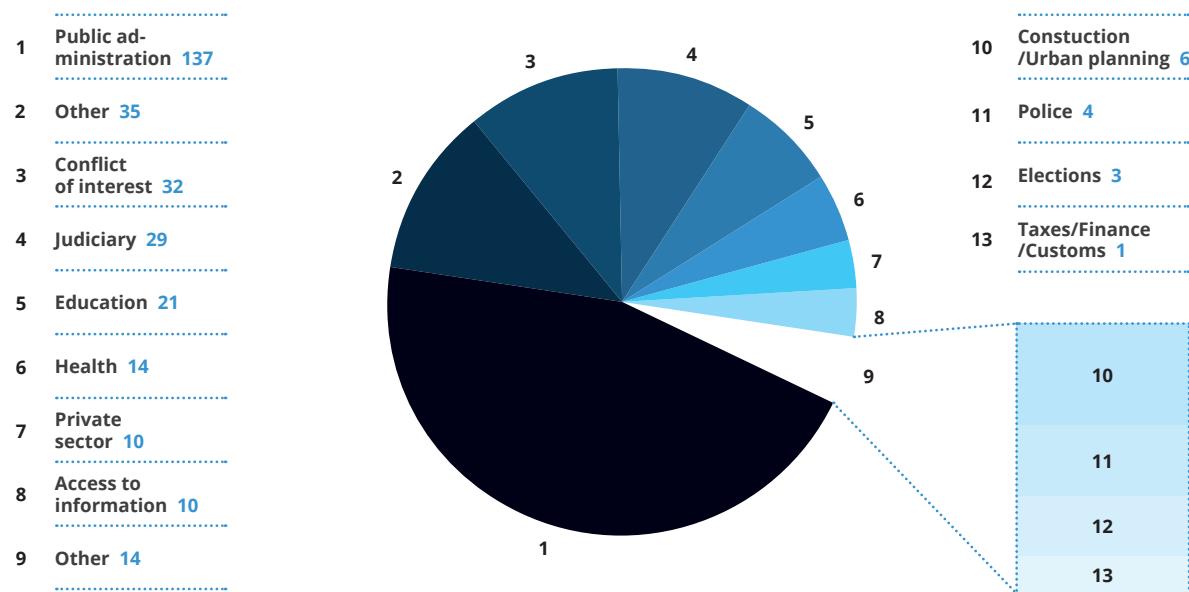
Clearly, citizens perceive political parties as the pinnacle of corruption in society, which translates into control of nearly all the institutions captured by the ruling elites. According to over two decades of surveys, these patterns remain intact. The governments or parliaments come lower in the list simply because they are accountable to the ruling parties, with those sectors where citizens experience corruption first-hand, such as health, judiciary or police, following closely behind.

The same survey gives insight into who is more likely to report corruption. This is typically a

higher educated person, from an urban centre, who is better off than average. Under these circumstances women step forward, while in all other instances it is men who are more likely to report corruption.

When it comes to reporting the actual acts of corruption, the Advocacy and Legal Advice Centre's (ALAC) database of TI BiH for 2022 received 1,561 calls reporting corruption, which resulted in 302 cases opened in that year alone, mostly by the citizens guided by the ALAC staff and 13 of those by TI BiH directly. Their breakdown is presented below:

☒ Number of ALAC submissions in 2021¹⁹



Also noticed over the decades of public surveys is a constant drop in bribery rates, while monitoring of contracts, public procurement etc. has been demonstrating a steady increase in embezzlement of public funds. These have been drained not only via the public sector institutions, but also by the large state-owned enterprise sector (a procurement database tracking public enterprises has been set up by TI BiH).²⁰ The patronage networks have closed control over a range of institutions, including their internal and external control mechanisms, so they can continue to siphon resources without interruption, suggesting state capture. The face of corruption has changed, moving away from petty to grand corruption, albeit both exist in parallel to the detriment of citizens.

The complex administrative mechanics prescribed in the Dayton Accords presented opportunities for nationalist leaders to abuse public office. At the same time, economic reforms and a high degree of decentralisation gave elites and local communities the facility to resist externally induced structural adjustments. The economic paradigm introduced for the transition limited any attempt to establish a social contract between the individual and the state. Consequently, a degree of social cohesion remains through adherence to local, clientelist loyalties and informal economic activity. This provides the cultural and structural economic context where abuse of public office flourishes.²¹

ANTI-CORRUPTION LEGAL FRAMEWORK

The last institutional anti-corruption effort was led by the BiH's Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (APIK) that was tasked with carrying out the *Anti-corruption Strategy for 2015-2019* and the *Action Plan for the Implementation of the Anti-corruption Strategy for 2015-2019*, both adopted only in 2016. However, these brought mixed results partly due to the insufficient mechanisms available to APIK as well as the general lack of political appetite for reforms, particularly in the area of governance. Attempts to adopt a new, current or a future strategy fail due to the ongoing political blockages, mostly aimed at preventing any systemic and institutionalised anti-corruption efforts. These documents, as well as the efforts at the lower levels of government, will be examined in greater detail under the anti-corruption agencies pillar of the NIS.

Meanwhile, the entities have adopted their own anti-corruption laws that look to transfer as many responsibilities for processing corruption closer to the perpetrators of crimes, therefore keeping justice subdued.²² No value has been added to the anti-corruption work through their existence or the specialised institutions set up in the process of their implementation, such as the specialised courts that attempted to take the responsibility away from the state-level Court of BiH. The entire anti-corruption agenda comes more as a result of the external processes such as the country's EU agenda, driven from Brussels. For example, one of

14 key priorities outlined in the *European Commission's Opinion on BiH's Application for EU Membership*, BiH must develop a genuine political desire to deal with the issue systemically.

ANTI-CORRUPTION WORK IN THE COUNTRY

A number of CSOs, including TI BiH, have observed a continuous lack of progress in key reforms, such as the conflict of interest law, public procurement, party financing and the protection of whistleblowers. Judicial reforms have been blocked for several years, while the judicial system is instrumentalised and captured by the ruling elites requiring fundamental reforms and a system of checks of judicial office holders (this is also recognised by the EU Country Reports).²³ Until the October 2022 general elections the legislatures have been technically blocked, with the exception of the Republika Srpska parliament which was entirely dominated by the ruling party and passing laws that reflected capture by the elites. On the other hand, the activities of the executive at all levels were rarely focused on the reform agenda but instead on embezzling public resources, used for personal gain supporting the power- structure of the ruling parties.²⁴

In contrast to the lack of public sector efforts, civil society has been very vocal and comparatively organised in advocating reforms, supporting rare good governance initiatives. This is particularly important given the political,

social and economic context described above, where very few institutions are free to report corruption and speak up.

The recent elections promised a quick formation of the state institutions, given the solid election performance of the ruling Serb and Croatian parties, SNSD and HDZ respectively, joined by a coalition of eight opposition Bosniak parties. This allowed for a swift granting of the EU candidate status for BiH on 13 December 2022. While this was done with the view to motivate political pragmatism and to support the EU's geopolitical influence in the region, it is extremely doubtful if it presents sufficient leverage to kickstart the reformist course and an anti-corruption agenda. If any progress is indeed demonstrated, that will likely bring renewed donor support, monitoring mechanisms and a stronger international/EU presence in the country to minimise the impact of the corrupt elites.

Based on its extensive research, TI BiH advocates the following priority good governance agenda in the medium to long-run for the country:²⁵

Problem	Intervention	Logic of intervention
Hypertrophied and inefficient public sector organised as a patronage network – a power base of captors (ethnopolitical elites)	First step: Systemic Functional review of the public sector	Drying up resources for corruption
Systemic illegal extraction of public resources through public contracting	Centralisation and digitalisation of public procurement	Reducing opportunities for corruption
Political parties as parallel structure of governance – patronage networks are mafia-like	Democratisation of political parties	Leveraging and articulating the public's deep mistrust in the government through citizens' active involvement in decision-making
Clientelism/distribution of public sector jobs as key mechanisms of generating voter support	Introduction of mandatory voting	Creating greater accountability for elected officials
	Election integrity reform and prevention of abuse of office for pressuring voters	

A detailed legislative and institutional agenda will be presented in the NIS findings below.

III > NATIONAL INTEGRITY SYSTEM PILLARS

1 > LEGISLATURE



SUMMARY

The constitutional status of the Bosnia and Herzegovina Parliamentary Assembly, as well as the entity parliaments (the Republika Srpska National Assembly and the Federation of Bosnia and Herzegovina Parliament), is defined by the Constitution of Bosnia and Herzegovina and the respective entity constitutions. BiH has a bicameral parliamentary system, consisting of the directly elected House of Representatives (with 42 MPs elected from two entities: 28 from FBiH and 14 from RS) and the House of Peoples (with 15 delegates reflecting equal representation of the three constituent peoples, with five delegates from each people) indirectly elected by the FBiH Parliament and the RS National Assembly.

A complex constitutional and legal framework governs the functioning of parliaments, outlining their roles, independence, transparency and accountability. However, this framework is somewhat limited by the country's intricate constitutional structure and the presence of veto mechanisms designed to safeguard the national interests of the ethnic groups.

Parliaments have the necessary financial and human resources to perform their duties. However, significant issues have been identi-

fied in the implementation of the legal framework governing parliamentary operations and in the ability of parliaments to fulfil their roles effectively.

The main issue with the legislature is that the power to pass laws and oversee the executive branch has been largely shifted away from parliaments and into the hands of party leadership that often resides in the executive. As a result, the parliaments' role has been reduced to merely rubber-stamping political leaders' agreements. During the 2018-2022 parliamentary term, parliaments largely failed to fulfil their constitutionally and legally mandated roles and were, for most of the term, obstructed due to the ongoing political crisis.

Although there are constitutional and legal mechanisms in place to ensure that the legislatures are accountable to voters for their actions and decisions, in practice, MPs/delegates are only accountable to the parties from whose lists they were elected to parliament. Their focus on citizens intensifies only before elections when they require votes. The issue of integrity and the identification and prevention of conflicts of interest is treated as a matter of marginal importance.

CAPACITY

> INDICATOR 1.1.1

Resources (law)

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

Score: 100/100

Legal provisions provide legislatures with adequate resources for their administrative and professional services, as well as their parliamentary commissions and committees.

The CoM, through its Ministry of Finance and Treasury, is responsible for preparing the budget.²⁶ The Presidency reviews the draft budget and sends it in the form of a Proposal to the Parliamentary Assembly for approval. The Parliamentary Assembly has to submit its draft budget within the limits of the state budget to the Ministry of Finance and Treasury for inclusion in the draft Law on the Budget of the Institutions of BiH. The Ministry of Finance and Treasury, the Council of Ministers and the Presidency can provide their opinions on the draft budget of the Parliamentary Assembly without being able to change it.

The legislatures are responsible for the adoption of the budget in the form of a law and the adoption of the law on budget execution.

The legislatures also have the authority to adopt budget revisions. The budget provides for the financing of the legislatures themselves and their houses, the financing of their administrative and professional services, as well as the financing of parliamentary commissions and committees.²⁷ Each direct budget beneficiary can only spend the funds allocated to it within its budget line. At the government's proposal, funds can be redistributed between current and capital expenditures. Additionally, funds can be redistributed within the budget based on the decision of the relevant ministry, at the request of the budget beneficiary.²⁸

At the entity level, entity parliaments adopt the annual budgets. This includes the budgets of the parliaments themselves since parliamentary commissions/committees review the budget proposal and make suggestions to the government. However, unlike at the state level, laws governing the adoption of entity budgets do not prescribe a government opinion on the draft budget of the parliaments without the ability to change it.²⁹

> INDICATOR 1.1.2

Resources (practice)

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

Score: 75/100

In practice, the parliaments generally have sufficient resources, both financial and human, to fulfil their roles as defined by the constitutions, laws and rules of procedure. This includes limited expert services/resources that support the parliaments.

A comparison of the recent budgets for the Parliamentary Assembly shows BAM16,279,000 (€8.32 million) was allocated for its work in 2020. The 2022 budget increased by BAM 3,247,000 (€1.66 million) to a total of BAM19,526,000³⁰ (€9.99 million), while the

2023 budget increased even more to BAM 22,757,000 (€11.63 million).³¹ The 2021 budget was not adopted during that entire year and financing was based on decisions for temporary financing. In the budget for the Parliamentary Assembly in 2021, BAM940,000 (€480,388) was allocated for the programme “Clubs of Political Parties”. Of this amount, about BAM366,000 (€187,025) was for the work of clubs of political parties and about BAM574,000 (€293.343) for financing the headquarters of political parties³² in accordance with the Law on Political Party Financing.³³ Despite the upward trend in the parliament’s budget, it has had little effect on its overall work.

☒ **Table 1.1: Budget allocation to the Parliamentary Assembly’s House of Representatives for the period from 2018 to 2023**

Year	Amount in BAM	Amount in €	Percentage increase of budget
2023	22,757,000	11,635,469	16.55%
2022	19,526,000	9,983,485	19.95%
2021 ³⁴	16,279,000	8,323,320	
2020	16,279,000	8,323,320	3.42%
2019	15,740,000	8,047,734	2.01%
2018	15,430,000	7,889,233	

Operating within the parliaments are administrative and professional services that are available to parliamentarians and parliamentary commissions. Each of the 16 commissions has its own office and a secretary. In addition, joint services encompass a wide range of sectors, such as international relations, public relations, the EU, etc.

Official gazettes, which publish decisions, are regularly printed and are available in both written and electronic forms.³⁵ In addition to having their regular budget funds, the parliaments have continued to receive support from external donors. For example, from 2019 to 2021, an EU-funded twinning project EU Support to the Parliaments of BiH in EU Integration Tasks was implemented.³⁶ The project focused on executing tasks related to EU integration and implementing the Stabilisation and Association Agreement (SAA) signed between the EU and BiH.

Similar to the state level, entity parliaments have administrative and professional services that are available to the parliamentarians and parliamentary committees.³⁷ All existing committees and working bodies have their own secretary.

➤ INDICATOR 1.1.3

Independence (law)

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

Score: 100/100

The independence of the legislatures from the executive and judicial branches is guaranteed by the constitutions and relevant legislation.

The legislative branch is separated from the executive and judicial branches and parliaments represent the highest authority. The judiciary, represented by the constitutional courts, has the power to determine the constitutionality of laws. If a law is found to be unconstitutional, the Constitutional Court invalidates the entire law or specific provisions within it. A parliament is then required to pass a new law (or a specific provision of it) in accordance with the court's legal opinion. Obviously, the Constitutional Court has no authority to impose or pass a law in lieu of parliament, even if the parliament fails to act on its instructions.

According to the constitutions of the entities, after a law has been passed in the parliamentary procedure, the president of the entity may request that the parliament reconsider the law if they believe it violates the basic principles of state functioning. If the parliament adopts the law in identical text, the president of the entity has a constitutional

obligation to promulgate the law and issue a decree for its promulgation. The Constitution does not allow the Presidency (collective head of state) to dissolve the Parliamentary Assembly. According to the RS Constitution (Article 72, paragraph 6), "The President of the Republika Srpska may decide to dissolve the National Assembly after hearing the opinion of the Prime Minister and the Speaker of the National Assembly."³⁸ According to the FBiH Constitution (Article 16) "If the President of the Federation determines that the Houses are unable to pass necessary laws, s/he may dissolve one or both Houses with the consent of the Vice-President of the Federation, provided that neither House can be dissolved during the first year of its tenure."³⁹

Only parliaments have the authority to appoint the speaker of the parliament and their deputies, members of parliamentary commissions and committees, and other technical staff employed in the parliament. Additionally, only the parliament can define its order of business and no other authority can impose it. The government may request that the parliament convenes a session to consider a particular issue in order for the parliament to take a position on it.⁴⁰

The Law on Immunity states that delegates of the House of Peoples and members of the House of Representatives shall not be held criminally or civilly liable for any actions performed within the scope of their duties in the Parliamentary Assembly.⁴¹ According to the amended Law on Immunity and the Rules of Procedure of the two chambers, the competent court decides on the right of a person who has

invoked immunity.

➤ INDICATOR 1.1.4

Independence (practice)

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

Score: 25/100

During the 2018-2022 term, parliaments continued to be heavily subordinated to the executive branch and particularly to party leaders.

According to the *Report on Legislative Activity of the Eighth Term of the Parliamentary Assembly 2018-2022*, only 5 of the 20 laws ratified during the parliamentary term were proposed by parliamentarians, while the executive proposed the remaining 15. Furthermore, during this term, 44 legislative proposals were rejected. Of these, 34 proposals were submitted by parliamentarians and 10 were submitted by the executive branch, that is the CoM.⁴²

Decision-making typically occurs through direct and informal negotiations between political leaders in non-institutional settings behind closed doors. These negotiations address the most significant issues facing the country, including constitutional reform, election law reform, the allocation of key positions within government and public institutions, budgetary concerns and other important matters. Once

party leaders have reconciled their positions, the parliamentary procedure serves merely to ratify these informal and extra-institutional agreements. The negotiations surrounding the reform of electoral legislation represent an example. Despite the formal establishment of the Interdepartmental Working Group for Amending the Election Law⁴³ representatives of political parties conducted parallel and independent negotiations on electoral reform outside of the institutions, with the involvement of EU and US representatives.⁴⁴

The functioning of the parliament is heavily reliant on the will and prior agreement of party leaders. This was particularly evident in the case of the state legislature during the 2018-2022 parliamentary term. From July 2021 to March 2022, the work of the Parliamentary Assembly was completely obstructed, resulting in a cessation of all legislative activities.⁴⁵ The insufficient independence of parliaments is further demonstrated by their inadequate performance in exercising their supervisory function over the executive branch. Parliaments have rarely been able to fulfil this function satisfactorily, and during the 2018-2022 legislative term, there was only one joint session of both houses of the Parliamentary Assembly that took the form of a question time titled "MPs/delegates ask – CoM answers" on 16 June 2021.⁴⁶

In general, governments frequently disregard parliamentary questions or direct monitoring. When they do respond, they rarely provide detailed, satisfactory replies.⁴⁷

GOVERNANCE

› INDICATOR 1.2.1 Transparency (law)

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

Score: 75/100

Public access to information is regulated by state and entity laws on free access to information and the public to gain insight into the work of parliaments and to receive timely and relevant information through the press, TV, internet and official gazettes. However, legal provisions for collecting and verifying data from asset declarations remain ambiguous.

Parliamentary sessions at the state level and in the entities are either broadcast directly by public service broadcasters or made available to the public through news broadcasts and special programmes on public service broadcasters or via live streaming. Only in exceptional circumstances may parliamentary sessions be closed. Public broadcasting stations are not required to pay a fee to parliaments for broadcasting sessions. Journalists may attend sessions of parliaments and parliamentary commissions and committees.

The attendance of other members of the public is subject to the spatial constraints of the parliamentary assembly hall. Representatives of NGOs, foundations, trade unions and other associations may attend sessions provided they received accreditation.⁴⁸ The parliament's order of business is published in advance on its website and a press release is typically issued following the session.⁴⁹

When parliaments or governments that act as sponsors of a law, deem the adoption of a particular law to be of significant public importance, they may initiate a public hearing procedure. This allows the professional community and general public to express their observations. Upon the adoption of a law in its first reading by the House of Representatives of the Parliamentary Assembly, deadlines for submitting amendments commence. The House may decide that the competent committee should hold a public hearing on the proposed law within 30 days.⁵⁰ According to the parliamentary procedures, MPs are not obligated to receive citizens or respond to their queries. The minutes of the discussions in the chambers and other activities are available on the parliament's website as stipulated by the rules of procedure. Additionally, chamber commission sessions are open to the public and minutes of these sessions are regularly published.⁵¹

The Election Law⁵² stipulates that candidates elected at all levels of government are obliged to submit to the Central Election Commission (CEC), on a pre-determined form, a signed declaration of their total assets within 30 days from the publication of the certification

of mandate in the Official Gazette of BiH, as well as within 30 days from the expiry of the mandate.⁵³ The CEC does not verify the data in asset declaration forms filled out by elected officials. According to Article 15.9 of the Election Law of BiH, the CEC is in charge of making asset declarations available to the public, with no deadlines for their publication.

➤ INDICATOR 1.2.2

Transparency (practice)

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

- Score: 50/100

The public generally has access to most parliamentary work. However, there is a lack of transparency in the legislative branch's fast-tracked procedures.

The public has access to parliamentary work with certain limitations. With the exception of FBiH Parliament sessions, sessions of parliaments are broadcast by public service broadcasters or online at no cost. The agendas for parliamentary sessions can be accessed through the websites of state and entity parliaments and are mostly accurate.

However, there is a lack of transparency in the legislative process, as stated by NGOs⁵⁴

and the EU's Bosnia and Herzegovina Report 2022.⁵⁵ The report states that the Parliamentary Assembly passed only three laws in 2021, one of which was fast-tracked. While entity parliaments operated without obstruction, they also frequently deployed fast-track procedures. For instance, in 2021, 76 per cent of the 29 laws passed by the FBiH Parliament were fast-tracked, while the RS National Assembly fast-tracked 62 per cent of the 66 laws it passed that year, including the budget.⁵⁶ This method of law-making does not provide for adequate transparency or opportunities for amendment and public participation in the decision-making. It should only be used in exceptional circumstances of extreme necessity, which was not the case in these instances.

The public has access to the work of parliamentary commissions/committees. The Parliamentary Assembly website provides information about all its commissions, incl. the Constitutional Law Commission, naming its members, competencies, contact persons and activity reports.⁵⁷ Commission sessions in the Parliamentary Assembly are open to the public and citizens and CSO representatives may attend given prior notice.

Asset disclosures for legislators are publicly accessible on the CEC's website⁵⁸. However, the CEC does not verify the accuracy of information contained in the asset disclosures of elected officials.

> INDICATOR 1.2.3

Accountability (law)

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

Score: 75/100

Although there are legal mechanisms in place, such as constitutional review, to ensure that the legislatures are accountable for their actions, direct accountability to citizens beyond elections is limited.

The constitutional and legislative framework outlines the rules for parliamentary reporting to the public. However, this framework is not fully developed, primarily due to the absence of a requirement or a mechanism for closer communication between citizens/voters and MPs/delegates. As elected representative bodies, legislatures are regarded as the crucial component of political structures and are not required to submit special reports to any other authority. Activity reports of parliaments can be found on their respective websites.

The only parliamentary accountability to their constituencies is through elections. Since parliaments pass laws as universal acts, there is no appeal mechanism for citizens to challenge legal provisions when resolving their individual cases. Even when parliaments make decisions on issues concerning specific persons, no legal remedy is available against the parliament's

decision. According to Article 10 of the Law on Administrative Litigation administrative action (judicial control of administrative acts) cannot be brought in matters directly decided by the Parliamentary Assembly on the basis of its constitutional powers.⁵⁹

The Constitutional Court of BiH is responsible for assessing the constitutionality of laws and other legal acts passed by the Parliamentary Assembly. According to Article VI, Paragraph 3 of the BiH Constitution, actions before the Constitutional Court can be initiated by any member of the Presidency, chair of CoM, chair or a deputy chair of either chamber of the Parliamentary Assembly, by one-fourth of the members of either chamber of the Parliamentary Assembly or by one-fourth of the members of either chamber of a legislature of an entity.⁶⁰

The rules of procedure of the chambers of the Parliamentary Assembly⁶¹ state that parliamentary commissions may hold public hearings on proposed laws (based on discretion of the legislature), involving interested organisations, institutions and individuals. Public hearings must be held within 30 days.

> INDICATOR 1.2.4

Accountability (practice)

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

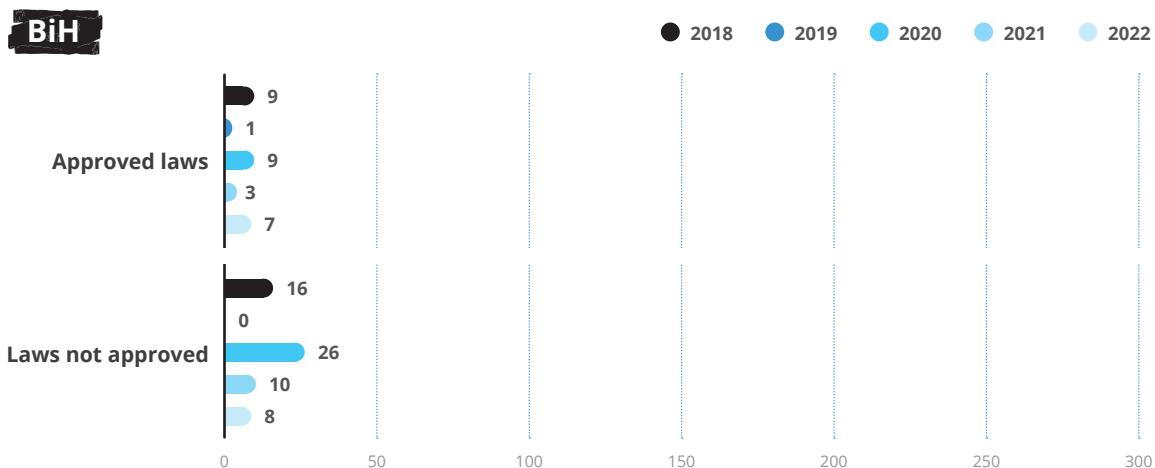
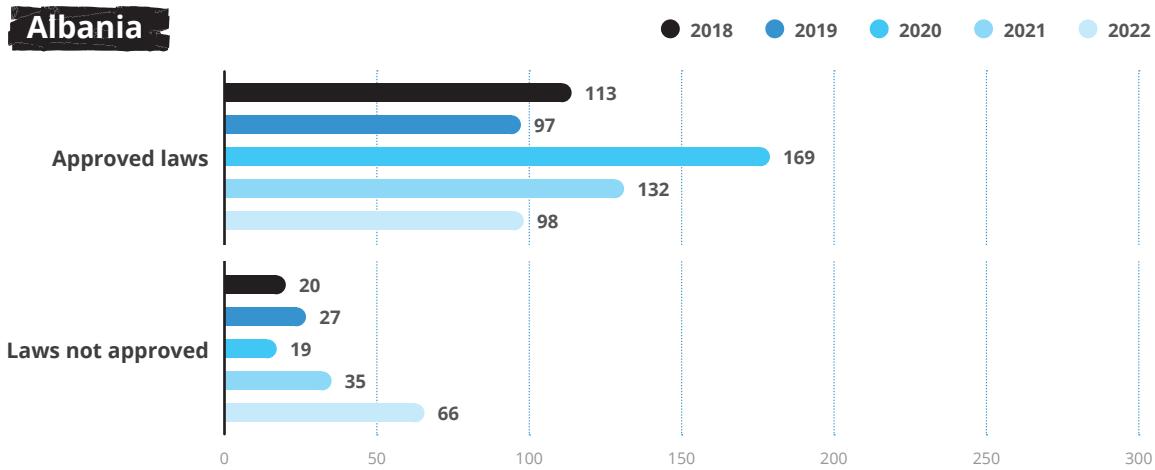
Score: 50/100

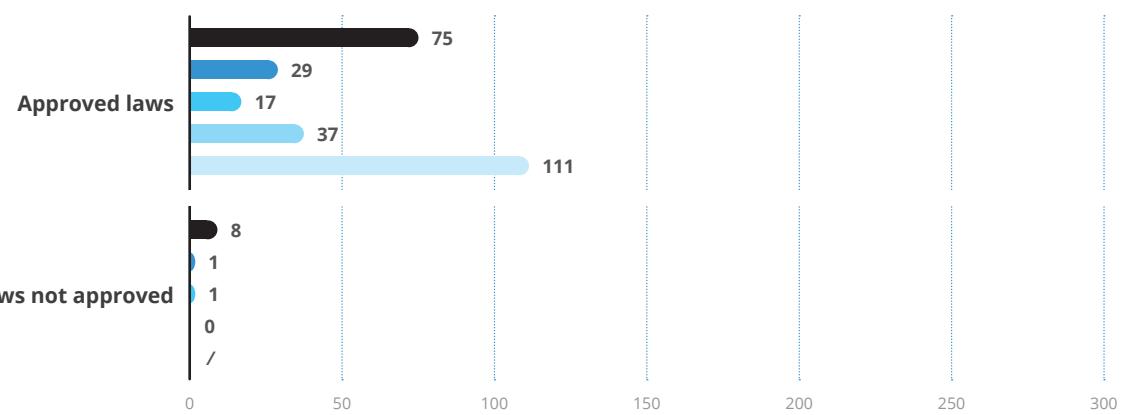
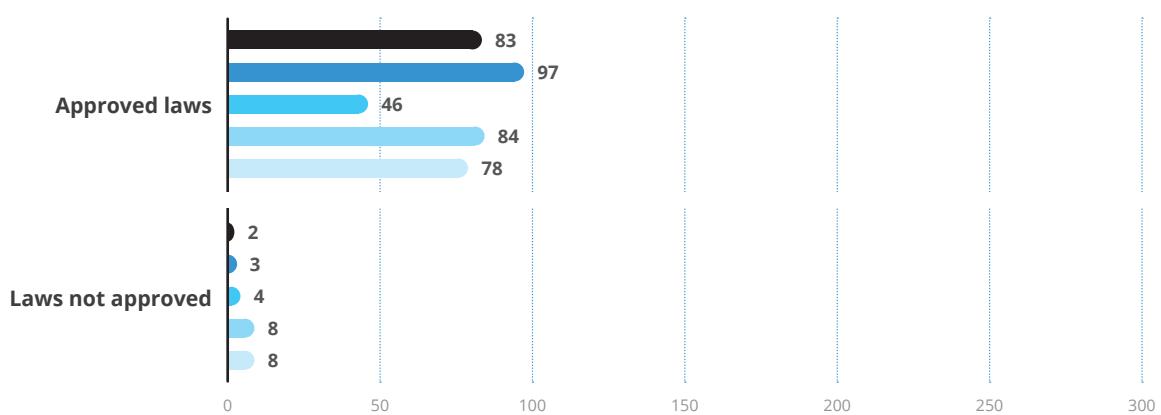
Despite constitutional and legal mechanisms for the legislatures' accountability to voters, in practice, MPs/delegates are only accountable to the parties from whose lists they were elected to parliament. Their focus on citizens intensifies only before the general elections when they require votes.

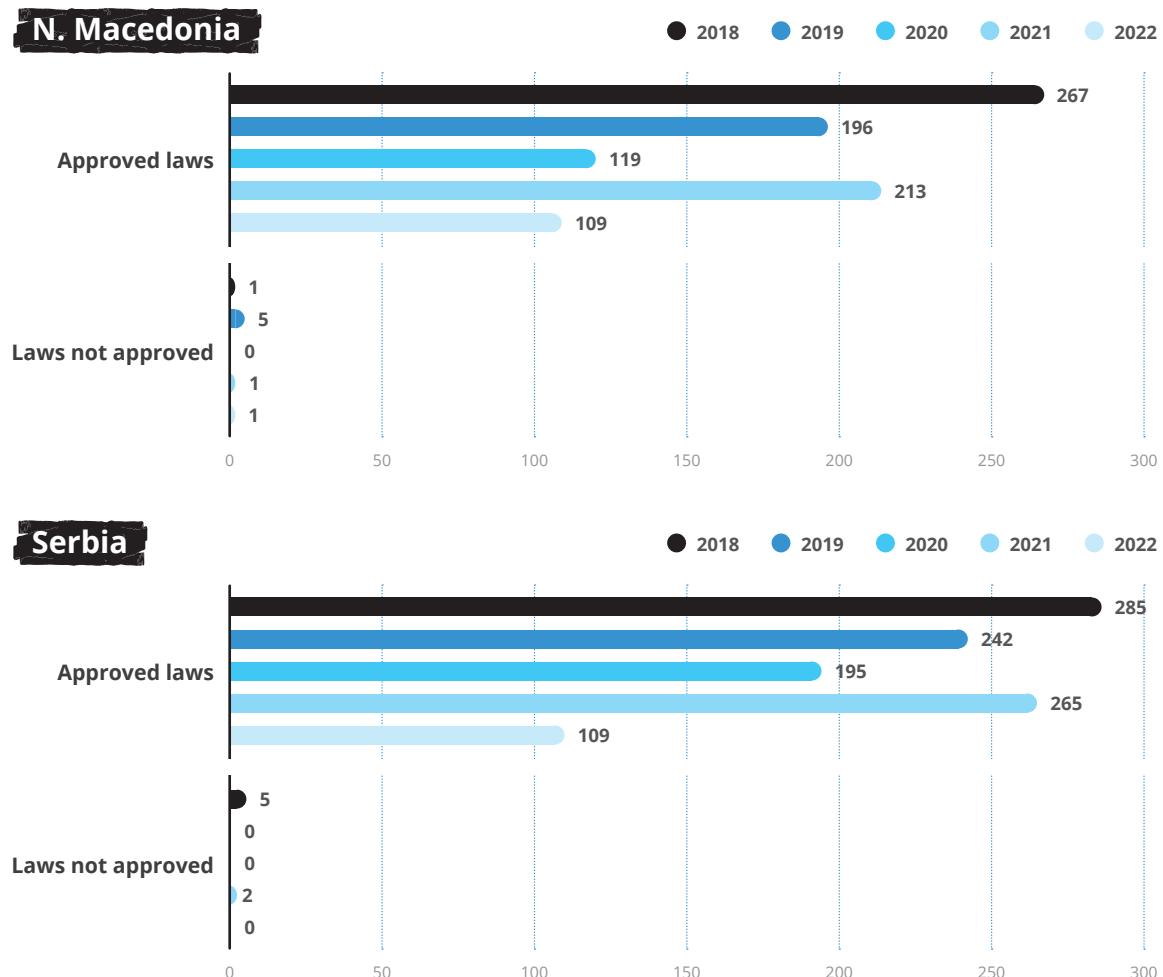
During the legislative term that lasted between 2018 and 2022, the work of the Parliamentary Assembly was blocked from July 2021 to March 2022, and no one was held accountable for the boycott of institutional work.⁶² The blockade was instigated by the imposition of amendments to the Criminal Code by the Office of the High Representative that prohibit and sanction the denial of genocide and the glorification of war crimes.⁶³

Through the period 2018 to 2022, inclusive of both years, the BiH parliament had by far the lowest scores in terms of the laws read and passed by parliament. As the chart above illustrates, it is the only country in the Western Balkans that has more laws rejected than approved, and its totals, seen in the chart below, are only a fraction of the laws

✖ **Statistics of laws adopted by parliaments of the Western Balkans during 2018-2022**



Kosovo***Montenegro**



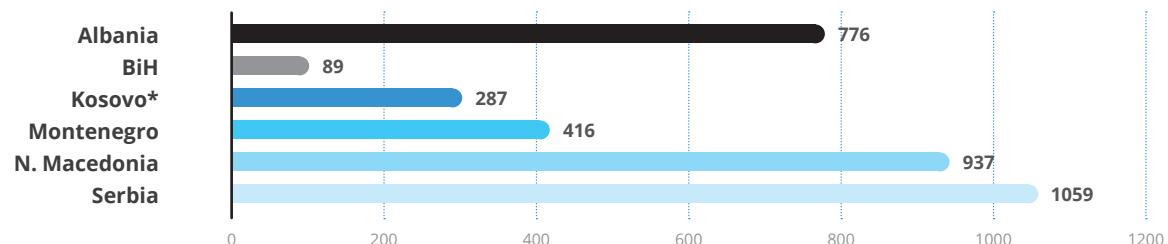
processed by the parliaments in the region. BiH is convincingly the worst performing country when it comes to the efficiency of legislature.⁶⁴

A telling example of the absence of accountability is the failure to adopt the budget within the legally mandated timeframe during the 2018-2022 legislative term. The budget of the state-level institutions and international dues for 2019 were adopted on 20 December 2020, while the budget for 2020 was adopted

on 29 July 2020. The budget for 2021 was not adopted at all, with the complete financing of institutions being carried out on the basis of decisions on temporary financing. The budget for 2022 was adopted on 30 June 2022. Also, it is discouraging that the Parliamentary Assembly passed only 20 laws during that election cycle, especially given that the *Opinion on BiH's Application for EU Membership* was released during this term, establishing precise priorities for gaining candidate status.⁶⁵

☒ All draft laws subject to a final vote by the parliament 2018-2022

Source: OECD, 2023



In terms of adherence to the decisions of the constitutional courts of BiH and its entities, parliaments generally pass laws in response to court rulings declaring a law or provision unconstitutional. According to the *Overview of the Work of the Constitutional Court of BiH from 1 January 2010 until 31 December 2021 report*⁶⁶ the Parliamentary Assembly failed to implement four rulings of the Constitutional Court, while the FBiH Parliament failed to implement three rulings and the RS National Assembly failed

to implement one ruling of the Constitutional Court.

In December 2009, the European Court of Human Rights delivered a judgement in the Sejdić and Finci case, finding that the BiH Constitution restricts the passive rights of ethnic minorities to run for the presidency and to be elected to the House of Peoples of the Parliamentary Assembly. The Court of Human Rights in Strasbourg determined that these

provisions of the constitution conflict with the European Convention on Human Rights.⁶⁷ Despite this judgement, which was made on 22 December 2009 and later confirmed in the Pilav, Zornić, Šlaku and Pudarić cases, and despite the obligation of all Council of Europe member states to align their legislation or specific decisions with the positions of the Strasbourg Court, no changes have been made to the constitution to enable national minorities to run for such public offices.

> INDICATOR 1.2.5

Integrity mechanisms (law)

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

Score: 25/100

The issue of integrity and the identification and prevention of conflicts of interest is treated as a matter of marginal importance. New laws on conflict of interest in the institutions of BiH as well as in FBiH have yet to be adopted despite featuring among the 14 key priorities outlined in the European Commission's Opinion on BiH's Application for EU Membership.

The 2013 amendments to the Law on Conflict of Interest in Government Institutions of BiH assigned responsibility for enforcing the law to the Conflict of Interest Commission.⁶⁸

However, due to its composition and decision-making process, the commission is highly politicised. Six of its nine members are MPs and delegates in the Parliamentary Assembly, while the remaining three members are the director and deputy directors of the Agency for Prevention of Corruption and Coordination of the Fight Against Corruption (APIK). This means that the Commission members who are parliamentarians make decisions on conflicts of interest involving their party colleagues and other MPs. These changes have rendered the institute of conflicts of interest at the state level ineffective and its application impossible. Furthermore, the law applies to a very narrow group of individuals and positions and contains numerous shortcomings.

Despite warnings from international institutions that the current sanctions for conflicts of interest are insufficiently rigorous and do not effectively encourage compliance, the law still allows elected officials, executive officeholders and advisers to resolve conflicts of interest on their own, in which case the commission may suspend its proceedings. This provision allows for the possibility of negotiating with lawbreakers and can result in inconsistent enforcement. The previous prohibition on running for office was superseded by sanctions in the form of a "proposal for dismissal from office" that the commission submits to the relevant appointing authority. However, the use of the term "proposal" indicates that the relevant authority is not bound to act on it.⁶⁹

The adoption of a new law on conflict of interest in the state institutions is among the 14 key priorities outlined in the European

Commission's *Opinion on BiH's Application for EU Membership*.⁷⁰ A draft of the new law, which was developed with input from international organisations and TI BiH in accordance with international standards, has been under consideration by the parliament since 2017. In March 2021, the law was passed by the House of Representatives of the Parliamentary Assembly, albeit only after softening provisions through amendments.⁷¹ However, it was never adopted by the House of Peoples of the Parliamentary Assembly.⁷² Meanwhile, in parallel with the procedure in the Parliamentary Assembly, the Ministry of Justice has initiated its own efforts to prepare a draft law that falls short of international standards and offers even weaker solutions than those currently in place.⁷³

In addition to the requirement to disclose assets (see transparency law, above), there are legal restrictions in place that prevent MPs and delegates in all parliaments from being employed by government organisations or state-owned/public enterprises after their mandate ends. For example, the Law on Conflict of Interest prohibits elected officials (MPs or delegates) from serving on the board of directors, supervisory board, assembly, administration or management of a public enterprise, or as a member of governing bodies or director of a privatisation agency during their term of office and for six months after leaving office.⁷⁴

A comparable prohibition is present in the Law on Conflict of Interest in the Governmental Authorities of FBiH. In contrast, the Law on Prevention of Conflict of Interest in the Governmental Authorities of RS (Articles 5 and

6) specifies a briefer prohibition period of only three months and the prohibition applies solely to the same administrative level.⁷⁵

In FBiH, the situation regarding conflicts of interest is somewhat different. After the amendments to the state-level Law on Conflict of Interest transferred responsibility for managing conflicts of interest from the BiH CEC to a newly established commission, the FBiH has not yet updated its own Law on Conflict of Interest. As a result, since 2013, there has been no authority at the FBiH level responsible for addressing issues related to conflicts of interest.

Lobbying activities are not subject to legal regulation, and there are no rules requiring lobbying or interest groups to register. There is no requirement for MPs to report informal contacts with individuals or parties that could be considered lobbyists or interest groups.⁷⁶ The obligation to adopt a lobbying law has been included once again in the new *Draft Anti-Corruption Strategy for 2022-2024* that is currently awaiting adoption by the CoM.

Parliamentary rules of procedure stipulate that MPs must uphold the dignity of parliament and address one another with respect. This is also regulated by the code of conduct of MPs.⁷⁷ The use of offensive language or remarks concerning third parties is prohibited. Furthermore, during the parliamentary debates, MPs are not permitted to interrupt speakers or engage in any behaviour that impedes freedom of speech. In cases where these rules are breached, the speaker of parliament may issue a warning to the offending MP/delegate, revoke

their speaking privileges or remove them from the parliamentary session.

> INDICATOR 1.2.6

Integrity mechanisms (practice)

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

Score: 0/100

Enforcement of conflict-of-interest legislation is very weak or non-existent at both state and entity levels. Ruling political parties ensure impunity for their loyal members.

The state-level Commission for Prevention of Conflicts of Interest was largely inactive during its 2018-2022 term. It took almost two years to appoint members to the commission, only for its work to be blocked again in 2021 while the entire work of the Parliamentary Assembly came to a halt. According to the 2021 *Report on the Work of the BiH Conflict of Interest Commission*, only three sessions were held during 2021, when sanctions were imposed in cases carried over from the previous term. Over its entire 2018-2022 term, the commission imposed only five fines while some cases did not result in sanctions due to the expired mandates.⁷⁸

The Law on Conflict of Interest in the Governmental Institutions of FBiH has not been enforced since 2013. As a result, many officials in this entity are in a position of conflict of interest. Although a conflict of interest commission has been established in RS to enforce the law, in recent years it has issued arbitrary decisions and opinions, resulting in a large number of conflict of interest cases that have gone unpunished.⁷⁹ Additionally, the number of decisions and other acts issued by the commission has been notably small. In 2021, the commission identified only seven cases of conflicts of interest, issued 23 opinions on whether holding multiple positions concurrently constitutes a conflict of interest, rejected four reports and issued 12 decisions concluding that the reported officeholders were not in a conflict of interest.⁸⁰

There are no known instances of House of Representatives members being sanctioned with suspension from parliamentary work. In practice, lobbyists and interest groups contact elected MPs, but parliamentarians do not disclose these contacts as they are under no legal obligation to do so.

In all the parliaments, penalties for misconduct are typically limited to sporadic reprimands or revocation of speaking rights. Monetary fines are not imposed and there have been no instances of parliamentarians being sanctioned for violating the code of ethics.

> INDICATOR 1.2.7

Gender representation

To what extent are women represented in the legislature?

- Score: 50/100

Women are underrepresented in the legislatures at national and entity level.

According to the election law, every candidate list for elections must include equal representation of men and women. The law stipulates that equal representation exists when one gender accounts for at least 40 per cent of the total number of candidates on the list.⁸¹ However, it does not specify a minimum quota for women's representation in legislatures.

Following the October 2022 general election, women make up only 19 per cent of the total number of MPs in the House of Representatives of the Parliamentary Assembly and around 26 per cent in entity parliaments. This matter is discussed at a greater length in the chapter on political parties. In the last three terms of the House of Representatives of the Parliamentary Assembly, only one woman has served as a member of the legislative leadership composed of three MPs. This occurred during the 2018-2022 legislative term.

In the current term of the House of Representatives of the FBiH Parliament, the speaker and one deputy are women. However,

women were not represented in the leadership of the House of Representatives of the FBiH Parliament throughout the 2014-2018 and 2018-2022 terms. In RS, no woman has been elected as speaker in any of the last three terms of the RS National Assembly. During the 2018-2022 term of the RS National Assembly, two out of four deputy speakers were women. For the 2022-2026 period, one out of three elected deputy speakers is a woman.

ROLE

> INDICATOR 1.3.1

Executive oversight

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

Score: 25/100

Legal mechanisms to oversee the executive branch, such as public hearings, are in place, but are rarely applied in practice.

Parliament has the constitutional and legal mechanisms to oversee the executive branch (government). However, since the government is composed of members from political parties that hold a majority in the parliament, this oversight is ineffective. In 2018, the Law on Parliamentary Oversight was enacted to govern parliamentary oversight and increase accountability, effectiveness and efficiency, and to establish procedures and bodies responsible for oversight.⁸² This law provides parliament with additional means to oversee the work of the executive branch.

Under Article 29 of the Rules of Procedure of the House of Representatives of the Parliamentary Assembly the house may establish a temporary inquiry committee at the request of an MP or a club of MPs, or a joint inquiry committee at the request of the House of Peoples.⁸³ Additionally, an inquiry committee

may be formed to look into a specific situation or to establish facts regarding certain occurrences or incidents.⁸⁴ Such committees are useful in exercising some control, but do not have investigative or judicial powers. The government is required to regularly report to parliament on its work. MPs may ask questions to the government and its ministries through the institute of parliamentary questions or during question time and the government is required to provide requested information to parliament promptly.⁸⁵

Typically, the government proposes laws and budgets for adoption by parliament. Through parliamentary committees and plenary sessions, the parliament participates fully in the budget adoption process, particularly during the amendment procedure. The government is required to keep parliament informed about the budget execution. The BiH Parliament elects the BiH Ombudsmen, the Auditor General and members of the CEC based on the proposal from commissions that conduct competitive procedures. In practice, however, parliaments often merely ratify agreements made between leaders of political parties that hold a parliamentary majority.⁸⁶

Parliaments do not have the power to directly monitor the executive branch's compliance with public procurement rules. However, through supreme audit institutions, parliaments can obtain reports on public contracting by the executive. In May 2020, the House of Representatives established a temporary inquiry committee to assess the state of judicial institutions.⁸⁷ The committee held 37 sessions and published its findings in a report containing

15 recommendations for improving the situation in the justice sector.⁸⁸

In practice, the executive dominates the legislative branch, contrary to the constitution and the law. This is evidenced by numerous instances where parliaments have failed to adopt reports on the work of certain institutions and, as a result, executive officeholders were not held to account. The dominance of other branches of government over the legislature is also evident in the election of heads of independent agencies who are required by law to be elected by the legislature. In the majority of instances, parliaments merely verify a pre-agreed distribution of top positions, often contrary to ranking lists compiled by parliamentary professional services.⁸⁹

In its 2022 and 2023 reports on BiH, the European Commission notes that the legislative branch does not sufficiently promote public accountability and anti-corruption principles.⁹⁰ Although corruption is occasionally discussed in parliament, it is used solely for partisan disputes and verbal attacks.⁹¹

A new commission was added to the operations of the Parliamentary Assembly on 27 July 2022 that was to deal with corruption and kleptocracy. The chair, an opposition leader, was chosen from among its eight MP members.⁹² At the end of 2023, it was still undertaking a snapshot of the existing anti-corruption activities and it has not yet mapped its work ahead but it is the first time the parliament specifically focused its attention on corruption.

During the 2018-2022 legislative term, the Parliamentary Assembly adopted only one law in the field of anti-corruption (public procurement law), while other laws on the list of 14 priorities from the European Commission's *Opinion on BiH's Application for EU Membership*, such as the Law on Conflict of Interest and the Law on the HJPC, were not adopted (in case of the latter, amendments have been adopted in 2023, but not a new law).⁹³ Similarly, FBiH failed to amend its conflict of interest law, as well as adopt Law on Whistleblower Protection, as one of the key priorities in the fight against corruption.

The legislature has been utterly ineffective in enforcing judgements of the European Court of

> INDICATOR 1.3.2

Legal reforms

To what extent does the legislature prioritise anti-corruption and governance as a concern in the country?

Score: 25/100

Until recently, the legislature continuously failed to promote public accountability and anti-corruption, despite its importance in the EU accession process. A newly formed Commission might bring the topic to the parliamentarian limelight.

Human Rights and the Constitutional Court of BiH that have been awaiting implementation for years.

The Balkan Barometer 2022 shows a profound lack of public trust in the anti-corruption efforts, with 69 per cent of citizens expressing little or no trust in the work of parliaments.⁹⁴

INTERACTIONS

The legislature primarily interacts with the executive and judicial branches. However, the executive branch exerts dominance over the legislature, relegating it to a subordinate position and limiting its ability to exercise its statutory oversight functions. This is evidenced by the disparity in the number of adopted laws proposed by parliamentarians versus those proposed by institutions of the executive branch.⁹⁵

According to the Rules of Procedure of the House of Representatives of the Parliamentary Assembly, the parliament has the power to establish inquiry commissions. In 2020, the House of Representatives established a temporary inquiry commission to assess the state of judicial institutions.⁹⁶ The Commission held 37 sessions and produced a report.

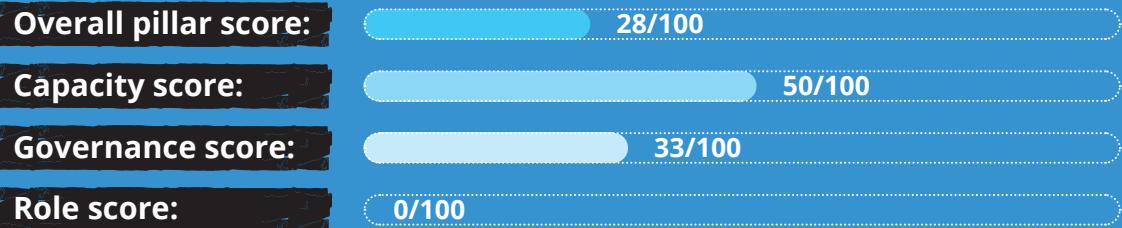
PILLAR RECOMMENDATIONS

- The legislature needs to increase the use of public hearings to make the process of adopting laws more transparent and to ensure the participation of experts and civil society in the law-making process.
- The legislature needs to discontinue the practice of adopting laws in fast-tracked procedures.
- MPs, particularly those from opposition parties, should play a more active role in requesting from government additional or missing information and data on policy, its impact and risks to inform their parliamentary scrutiny. This can happen before the committee review stage.
- The executive and the legislature need to revise the legal framework governing conflicts of interest to conform to international standards. This especially includes:
 - Guaranteed independence of the commission through a revised appointment formula (exclude MPs in such large proportion).
 - Expansion of the persons to whom the law will apply to include all elected and appointed persons in the public sector institutions, offices and companies.

- Introducing the obligation to submit property records for public office holders and establishing effective control through administrative, disciplinary and criminal sanctions.
- Defining in detail the restrictions on performance of functions, engagement and business of public office holders in a period of two years after the termination of the mandate.
- Increasing monetary sanctions and introducing additional sanctions such as dismissal from office and annulment of an act created in a situation of violation of the law.

> The legislature needs to strengthen the parliament's practice of oversight of the executive branch by using public hearings, monitoring or recommendations of the SAI reports and other tools available.

2 > EXECUTIVE



SUMMARY

All administrative levels have been legally provided with the appropriate powers and resources for the exercise of the executive power. In addition to the various levels of government, the High Representative formally remains the final authority responsible for the implementation of the Dayton Agreement, with powers to ensure that all governments comply with the provisions of the agreement.⁹⁷

Despite this, effective implementation of policies is hampered by the country's extremely complex constitutional setup and the lack of subordination and coordination among multiple levels of government. One of the country's biggest problems remains the abject lack of efficiency, transparency and, not least, accountability of its executive branch. A particularly strong negative trend has been observed in accountability, including political obstructionism impeding the enactment of important

legislation in the area of the integrity of the executive and the weakening of the legislature's control of the executive, as reflected in the pressures on the supreme audit institutions (SAIs). Another problem is evidenced by the serious delays in forming governments after general elections, which has contributed to a lack of public sector and anti-corruption reforms across state and local levels.

Capture of the executive by the political parties and the ruling elites is both the problem and the potential solution if this hold was to loosen. A range of laws need to be improved or adopted to ensure freedom from conflicts of interest, access to information and greater proactive transparency. This includes contracting or procurement as well as the areas partially mentioned under this chapter and also under the other NIS pillars such as the legislative branch, political parties, etc.

CAPACITY

> INDICATOR 2.1.1

Resources (practice)

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

Score: 50/100

The executive has sufficient human resources at its disposal but limited financial resources lead to excessive spending on employee salaries compared to investments in infrastructure and technical resources. The lack of meritocracy in the selection process ensures the spending on staff serves private and not public interests.

Budgets at all levels are still not sufficient for functioning and meeting public needs. According to World Bank estimates BiH realised a fiscal deficit between 1 and 2.5 per cent of the gross national product in 2020, 2021 and 2022.⁹⁸

On the other hand, the constitutional setup of the executive is very complex. At the state level it includes the Council of Ministers (CoM) made up of nine ministries and the three-member presidency. At the entity level, it includes the FBiH Government with 16 ministries, the RS Government with 17 ministries and the president and two vice presidents in both entities. At the cantonal level

of FBiH it consists of 10 cantonal governments with a total of 95 ministries and the level of the BD the constitution establishes ethnic representation in the executive at all levels, as all three constitutions have accepted the constitutionality of the three ethnic groups. The ethnic quota ensures that this is based on the pre-war population census dating back to 1991.

Due to such a setup the executive is extremely costly and cumbersome leading to a very poor ratio between administrative and investment costs. Furthermore, all attempts to streamline the system have been blocked by a lack of political will, mostly due to the entrenched patronage schemes of the ruling political elites.⁹⁹ The consolidated expenditure and expenses (to include state, entity, cantonal and local level, (see table 2.1)) for the last five years amount to an average of 42.4 per cent of the country's GDP.¹⁰⁰ If one examines the structure of public expenditure and expenses, the consolidated data shows that the public wage bill makes up a large portion of expenditure and spending in the last five years (10.98 per cent of GDP), while investment averages a mere 4.24 per cent of GDP.

This leads to the situation where the executive does have the appropriate human resources at its disposal, but the technical resources are still limited because a lot of young citizens with the appropriate skillsets chose not to work for the governments given their tainted image. Also, the low investment ratio due to corruption and irresponsible and non-transparent spending of public funds means that hiring and retaining good, skilled individuals is never favoured.

> INDICATOR 2.1.2

Independence (law)

The independence of the executive from other branches of government is ensured by constitutions and laws.

Score: 100/100

The independence of the executive from other branches of government is ensured by constitutions and laws.

The state constitution and entity constitutions lay down the principle of power separation according to which the executive is independent of the other branches of government.¹⁰¹

The three-member BiH Presidency and the RS President are elected directly, while the FBiH President is elected by the FBiH Parliament.¹⁰²

The BiH Constitution establishes the division of competencies and responsibilities between the state and the entities, but it does not provide for a hierarchy of subsidiarity between them.¹⁰³ It exhaustively enumerates the competences and responsibilities of the state and establishes that all other functions and powers belong to the entities. In fact, rather than only one level being responsible for a certain executive role, several are in parallel, which makes the institutional maze even more complex and expensive.

In addition to the state and entity constitutions, the work of the executive is governed by the Law on the CoM, the Law on the Government of FBiH and the Law on the Government of RS.¹⁰⁴ The executive reports and is answerable for its work to the legislature, which in turn decides on its appointment and dissolution.¹⁰⁵ In carrying out its duties, the executive passes decrees, decisions, instructions, conclusions and other forms of secondary legislation.¹⁰⁶ The work of the executive is also subject to judicial control in that the acts of general application passed by governments are subject to a constitutionality and legality review by constitutional courts whose competences and rules of operation are governed by constitutions, laws and the general rules of these courts. Individual acts, which are passed by lower instances of the executive deciding on specific obligations of individuals and legal entities, are subject to judicial control through appropriate administrative litigation procedures.¹⁰⁷

Although the work of the executive is controlled by the legislature and the judiciary, these forms of control do not diminish the independence of the executive power, since these mechanisms aim to ensure only the basic accountability of the executive.

The Dayton Peace Agreement, where Annex 4 sets out the BiH Constitution, also established the Office of the High Representative (OHR) that technically overrides the executive decisions if they are perceived to be in breach of the constitution.

> INDICATOR 2.1.3

Independence (practice)

To what extent is the executive independent in practice?

Score: 0/100

In practice, the formally proclaimed independence of the executive is hampered by the informal undue influence of the political leaders.

The independence of the executive in exercising its powers is seriously eroded by how political parties operate. Without intra-party democracy, political parties that are predominately centred around strong leaders allow for a significant concentration of real power in the hands of party leaders (see 11.2.6). In practice, effective and efficient checks are exerted only by the leading ethnic parties through expansive power-sharing mechanisms.¹⁰⁸ As a result, all important decisions that fall under the purview of the executive are made in routine, informal meetings of the leaders of the dominant political parties. These are then referred to the executive for formal follow-up and adoption.¹⁰⁹

Particularly noteworthy is a case from 2022 in RS where, acting on the order of the Member of the BiH Presidency from RS, the RS Government, through its relevant line ministry, prepared and submitted for the RS National Assembly's adoption of the RS Law on Medicines and Medical Devices, although this area was out the presidency's jurisdiction.¹¹⁰

The virtually constant crises of the FBiH government and the Council of Ministers of Bosnia and Herzegovina (CoM) are yet another example of how the executive is subordinated to the erratic wishes of party leaders. Although general elections were held in October 2018, the FBiH government was not formed nearly until the next election cycle, with two ministerial posts remaining permanently vacant.¹¹¹ The situation was not much better when it came to the formation of the CoM. Following the 2018 election, the new CoM took 14 months to form. In the aftermath of the 2022 elections, the CoM was formed significantly faster, after only a few months of partisan negotiations, while the FBiH took longer. This time the OHR was involved, suspending the FBiH constitution to influence government formation.¹¹²

All these delays happen exclusively due to the extensive negotiations and bargaining among the election winners over who will control each ministry at different executive levels, so the negotiating package might be extensive and time consuming.

GOVERNANCE

› INDICATOR 2.2.1 Transparency (law)

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

Score: 50/100

There are regulations in place to ensure some level of transparency of the executive but are predominantly focused on the passive form of transparency, without many basic obligations for proactive transparency.

There are freedom of access to information laws¹¹³ at the state and entity levels that stipulate that “all information in the control of public authorities is a public resource” and as such is available to the public.¹¹⁴ The laws provide for a right to information as a general rule, while exemptions from that rule are being narrowed to the interests of defence, public safety, crime prevention, personal privacy and commercial interests etc. Furthermore, the decision to withhold information must be taken in each specific case following a public interest test that must take account of any harm and any benefit that may arise from the disclosure of the information.¹¹⁵

Access to information, as stipulated in regulations, is predominantly focused on a passive form of transparency, without the obligation of the executive to inform the public of its activities in a proactive manner. An exception to these policies is the Standards for Proactive Transparency,¹¹⁶ a policy adopted by the CoM that applies to proactive transparency among state institutions. However, this policy is not obligatory. In addition, several CSOs urged the Ministry of Justice to withdraw and alter the preliminary draft Law on Free Access to Information.¹¹⁷ The law was adopted in August 2023 at the state level and included some elements of proactive disclosure of information. According to TI BiH, the adopted law represents a decline compared to the existing one in some areas allowing institutions to hide information of public interest.¹¹⁸ It expands the list of exceptions for disclosure of information held by public institutions and it leaves fewer legal options for the Ombudsperson to interject in the process on behalf of citizen demands for information.¹¹⁹ It also granted the Appeals Council of the CoM the power to handle appeals, a move that has been criticised as inappropriate, as it fails to guarantee the independence of the body in charge of the appeals process.

According to the 2021 European Commission enlargement report on BiH the legislative framework is not aligned with international and European standards.¹²⁰ This applies especially to proactive transparency requests, institutional setup and misdemeanour provisions. A non-harmonised legislative framework at the state and entity levels poses a major obstacle to the consistent implementation of this right at

all levels of government. The state-level law meets the requirements for implementation, including sanctions for non-compliance, both for the authority and for the responsible person within the authority while the entity-level laws do not envisage sanctions for non-compliance.¹²¹ Besides publishing adopted acts of the executive in official gazettes, there are no obligations to track the executive activities and publishing them on any level.¹²² Furthermore, overstepping the scope of its constitutionally prescribed competences, the RS government adopted a conclusion establishing that the RS Law on Freedom of Access to Information does not apply to the minutes of the RS government's sessions, that is, that the minutes are not public documents, excluding the access to this information even upon a formal request.¹²³

The budget is passed in the form of a law and as such has to be publicly available and published in official gazettes at the state and entity levels of government.¹²⁴

Under the election law, candidates elected for office at the state and entity levels are required to submit to the CEC the duly filled asset declaration form within 30 days from the day of publication of the verification of mandates in the Official Gazette of BiH.¹²⁵ The obligation to submit asset declaration forms continues after the expiration or cessation of the mandate. However, most of the executive is not under the obligation that derives from the election law, since this law related only to the elected representatives, but not cabinet members, directors and members of boards in public institutions. Their obligations for

asset declaration derive from relevant laws on conflict of interests, as explained in the accountability and integrity sections of this pillar.¹²⁶

› INDICATOR 2.2.2

Transparency (practice)

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

Score: 25/100

Proactive transparency is almost non-existent. It is very difficult for the general public to access relevant information on executive activities since some crucial information is either not available, or not available in time or in an understandable manner.

All government budgets are published in the official gazette, while reports on budget implementation are rarely published on the websites of the governments. However, the presentation of budget implementation still needs to be improved and harmonised since assessing the budgetary and fiscal policy is difficult. Reports are being produced only for internal use and are not understandable to the public. Some progress has been made towards budget transparency, in terms of the publication of citizens' budgets on the websites of the CoM and the FBiH government.¹²⁷ The country has not yet achieved a satisfactory level

of budget transparency, since information on budgets remains incomplete and the data on the overall budget and fiscal policy is difficult to obtain.¹²⁸ There is a common practice that certain important budget documents are not published at all, or are being published too late, without affecting the accountability in the use of the budget.¹²⁹ According to the *Open Budget Survey BiH 2021*¹³⁰, BiH has a transparency score of only 32 out of 100, which puts it in the last place in the region.¹³¹

The executive meetings and other forms of decision-making remain behind the curtain since there is no obligation to publish the minutes and other deliverables. Transparency is limited to publishing only agendas from the meetings on web sites of the executive and short press releases from the meeting, while the meeting agenda offers no access to the materials for the meeting.¹³² TI BiH monitored the decision-making processes of 30 different executive authorities from state, entity and cantonal levels and observed that most fail to publish relevant information past the planning stage, with very few cantons, DB and CoM reporting on the consultative processes and keeping their activity records updated.¹³³

Regarding passive transparency, according to another set of findings of the TI BiH's Advocacy and Legal Advice Centre (ALAC) from 2021, information about public procurement, the privatisation process, budget implementation, public enterprise operations, concession contracts, etc. is particularly difficult to access since the executive is frequently denying the access to this information.¹³⁴ Furthermore, according to the findings of a 2021 TI BiH's

survey into how access to information is enforced in practice, out of 122 requests for access to information sent to ministries at all levels of government and to the largest municipalities only 73 authorities provided information within the statutory deadline and 49 entities responded after the expiration of the statutory deadline.¹³⁵ In addition to the authorities that responded, 24 completely ignored the request and a further 12 refused to grant access to the requested information.¹³⁶ Of particular concern is that public institutions rarely provide information in the form of a decision (administrative act) that is required by law and without which citizens cannot seek further legal recourse. A similar trend was observed in 2022, with a slight improvement in responding within the legal deadline, but still the same issues hold back the overall performance.¹³⁷

Another major hindrance is the very lengthy deliberation by the courts in administrative litigations, with some courts taking as long as four years to hand down a ruling.¹³⁸ There is an abundance of striking examples of purposeful, even systematic, concealment of information that is required by law to be made public, such as that concerning contracts concluded in the process of privatisation of state-owned enterprises, concession contracts, etc. In countless instances, TI BiH has been unable to gain access to information about such contracts (for example, the hydroelectric power plant in Trebinje¹³⁹ and construction of the Banja Luka-Prijedor motorway¹⁴⁰) even after repeated requests or lengthy litigation in courts. Furthermore, public authorities suffer from a distinct lack of understanding and

highly inconsistent use of exemptions for the protection of privacy interests of a third person, application of the public interest test and the form of decision-making employed in handling and responding to requests.¹⁴¹

> INDICATOR 2.2.3

Accountability (law)

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

Score: 75/100

The executive is under obligation to both regularly and upon request of parliaments report on their activities. However, there is no legal deadline for the submission for these reports nor a justification of their executive actions.

The executive at all levels has to report and be answerable for its work to the legislature that decides on its appointment and dissolution.¹⁴²

The work of the executive is also subject to judicial control in that the acts of general application passed by governments are subject to a constitutionality and legality review by constitutional courts, whose competences and rules of operation are governed by constitutions, laws, and the general rules of these courts, whereas individual acts, which

are passed by lower instances of the executive deciding on specific obligations of individuals and legal entities, are subject to judicial control through appropriate administrative litigation procedures.¹⁴³

The laws on governments at all levels require the governments to submit reports regarding the overall activities, including all ministries to their respective parliaments at least annually. However, there is no legal deadline for the submission.¹⁴⁴ The parliaments may also request that the governments submit ad hoc reports and leave a deadline for submitting these reports.¹⁴⁵ These ad hoc reports may be on different topics, such as public debt reports, internal security reports, migration issues, etc. In addition, parliamentary control over the executive is achieved through such mechanisms as parliamentary questions and interpellation. However, there is no obligation of the executive to ration and reason its activities and decisions comprehensively, but rather just to formally specify a legal or budgetary basis, or alignment with certain strategies or other policies, etc.

All ministries and other bodies of the CoM have to conduct public consultations when drafting legal regulations and other acts. Public consultations are open to all natural and legal persons, international organisations and informal groups.¹⁴⁶

All constitutions provide that government has to resign if at any time there is a vote of no-confidence by the parliament.¹⁴⁷ Likewise, under the constitutions, parliaments must approve the decision of the prime minister

on individual dismissals in the composition of the government.¹⁴⁸ Additionally, members of the executive may be accountable for any misdemeanour or criminal act in accordance with respective laws.

In addition to the above, the SAIs are authorised to conduct regular audits, performance audits and other specific audits.¹⁴⁹

> INDICATOR 2.2.4

Accountability (practice)

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

Score: 25/100

Although in place, reporting to the parliaments by the executive and supreme audit institutions (SAIs) does not provide for effective oversight of the executive. There are almost no consequences for the executive when irregularities are identified.

Governments regularly report to the parliaments following the aforementioned regulations.¹⁵⁰ Also, SAIs are regularly conducting annual audits of the executive.¹⁵¹ However, these accountability mechanisms do not have much of an effect.

From the orders of business of parliamentary sessions¹⁵² as well as according to the Auditor General¹⁵³ it is evident that the parliaments

seldom discuss the audit reports of the SAIs. Moreover, after the 2018 elections, the parliamentary commission for the audit of the FBiH Parliament has not met for two and a half years.¹⁵⁴ According to the *2020 Annual Audit Report of the Office for the Audit of BiH Institutions*, there was an increase in the number of BiH institutions that received a qualified opinion in 2020.¹⁵⁵ According to the report, the budget execution of the institutions that received a positive opinion accounts for 48.6 per cent of the total budget execution. Overall, when it comes to audit opinions, there is a positive trend as the number of institutions that received an adverse opinion from the SAI is decreasing.¹⁵⁶ According to reports available on the SAIs websites, there is a downward trend in the total number of recommendations issued by SAIs as well as a decrease in the number of SAI recommendations that remain unimplemented.¹⁵⁷ However, what remains a matter of even greater concern is the fact that some recommendations are repeated year after year.¹⁵⁸ It is particularly worrisome that thus far no disciplinary, misdemeanour or criminal procedures have been initiated to hold to account the individuals heading the institutions that received adverse audit opinions.

There are numerous examples of appointments to the most senior executive positions of individuals who have been sentenced for corruption or are under investigation for corruption or other wrongdoings. Nepotism and clientelism are rife, as evidenced by an example where an appointee explicitly stated that her appointments were politically motivated.¹⁵⁹ However, even though that all

those cases received wide media coverage, no one has ever been called to account.¹⁶⁰

> INDICATOR 2.2.5

Integrity (law)

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

Score: 25/100

Legislation on the integrity of members of the executive is in place but is heavily insufficient regarding the coverage, scope and institutional framework.

The conflicts of interest, incompatibility, rules on gifts and hospitality and other integrity policies of executive officeholders are governed by conflict of interest legislation enacted at different levels.¹⁶¹

The laws on conflict of interest provide that executive officeholders cannot serve on the management board, steering board, supervisory board and executive board, or serve as directors of public enterprises and privatisation agencies. Likewise, they cannot perform these functions in private enterprises where government authorities have invested capital and with which they contract or otherwise do business if the value of the contract or the business exceeds a certain

threshold.

The legislative framework governing the prevention of conflicts of interest is characterised by internal inconsistency and lack of alignment with international standards, as has been elaborated in 1.2.5.

The protection of whistleblowers is regulated by the Law on the Protection of Persons Who Report Corruption in State Institutions and the Law on the Protection of Persons Who Report Corruption in RS. In the FBiH, such a law has not yet been adopted. The state law provides for an administrative model of external whistleblower protection, managed by APIK, while the RS law provides for an external model of protection, managed by relevant courts.

The two existing laws govern a range of issues of relevance for persons who report corruption, including whistleblower protection, the procedure for reporting corruption, the obligations of responsible persons and competent authorities in response to a corruption report and in relation to whistleblower protection, etc. The two laws are fundamentally and conceptually different, most notably in terms of the scope and the model of external whistleblower protection.¹⁶²

The RS law provides a much broader and more comprehensive definition of the term whistleblower, including those who disclose wrongdoing in the private sector and legal entities.¹⁶³ Also, it provides for the judicial model of external protection, where whistleblower protection is provided by ordinary courts in RS.¹⁶⁴ In terms of the subject-

matter of reports, both laws are narrowly focused on corruption and provide protection to whistleblowers who disclose the most serious forms of corruption-related criminal offences, including wrongdoing in public procurement.¹⁶⁵ As a result, the reporting of various less severe but nevertheless harmful actions and practices falls beyond the scope of the law.

> INDICATOR 2.2.6

Integrity (law)

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

Score: 0/100

In practice, preventing conflicts of interest is riddled with even more shortcomings than the regulatory and institutional frameworks. Effective application of legal provisions on conflict of interest is more the exception than the rule.

At the state level, the Committee for Deciding on the Conflict of Interest was not established for more than two years in one parliamentary mandate.¹⁶⁶ However, even when established in July 2020, it took no decisions in 2020, while in the period between January and June 2021, this commission initiated 11 proceedings and adopted sanctions in three cases, including in the case of the head of a ruling political party. Yet, such light sanctions imposed are

not proportionate and have little dissuasive effect.¹⁶⁷ The most common sanction consists of a reduction in salary for a month or two, which is an ineffective deterrent considering the high influence and potential benefit for the officeholder. The data available on the website of the RS Commission for Determining Conflicts of Interest indicates the absence of any acts or sanctions relating to the higher levels of the executive.¹⁶⁸

Moreover, the vast majority of initiated or concluded cases of conflicts of interest relate to officeholders at the local level. A recent example of the former High Judicial and Prosecutorial Council (HJPC) President and now Advisor to RS President Milan Tegeltija who was also in a conflict situation because he was appointed the president of the Banja Luka football club Borac. However, given the report of the conflict of interest that TI BiH initiated with the RS commission, the RS parliament modified the law in late 2023 so it does not apply to Mr. Tegeltija. The new amendments excluded officials engaged in voluntary activities such as sports in parallel to their office holding from a conflict of interest situation and the commission dismissed TI BiH's report, despite it being issued before the amendments.¹⁶⁹

In FBiH rules on conflict of interest are not enforced at all due to the absence of a competent institution.¹⁷⁰ Very few sanctions are imposed on executive officeholders under the conflict of interest laws and even where such sanctions are imposed they are lower than the minimum provided by law.¹⁷¹ The cases of executive office holders moving back and forth between business and government positions

are not frequent but there are some worrisome cases where former ministers became heads of private companies that are being awarded public procurement contracts.¹⁷² Likewise, following a term in ministerial positions, they get appointed to lead large state-owned companies, such as the case of the new BiH Telecom Director Amel Kovačević, who moved to that position in September 2023 after being previously an advisor to the minister of foreign affairs. This too was reported by TI BiH to the BiH Conflict of Interest Commission, as the revolving door situation was not prevented.¹⁷³ It also demonstrated a lack of will of the new FBiH government to break with their predecessors' malpractice. TI BiH continues to report cases of this nature.¹⁷⁴

Whistleblower protection is still in the making. Reporting corruption remains an extremely rare phenomenon in the public sector, and inadequate regulations and broad discretion in deciding whether to grant whistleblower protection engender further mistrust and discourage potential whistleblowers.¹⁷⁵ At the state level, APIK did not grant a single status of protected applicant in 2020 although it received four requests for granting this status compared to only one case of granting the status in 2019. In RS only one request was approved in 2020 and only partially.¹⁷⁶ Furthermore, APIK granted administrative protection to whistleblowers in two cases out of three requests in 2021 while no request for protection of whistleblowers was filed in 2021 in RS.¹⁷⁷ No further protection has been granted since.

As regards asset declarations, about 600 state-level officials (all public office holders, subjects

to the law; not only the executive) are required to submit their financial reports for verification. Of these 600, only 212 submitted their financial reports in 2022, compared to 291 in 2021. In 2022, no proceedings for failure to submit declarations or inaccuracies were initiated, no reports were checked and no sanctions were imposed.¹⁷⁸ In RS, around 4,000 office holders are obliged to submit financial reports, out of whom only 129 submitted financial reports in 2022 (990 in 2021). The RS entity commission established conflict of interest in 13 cases but did not impose any sanctions.¹⁷⁹

➤ INDICATOR 2.2.7

Gender representation

To what extent are women represented in the different levels of the executive (cabinet and other presidential appointments or equivalent)?

Score: 50/100

The policies aiming for equal gender representation in the executive are in place, but still not provide for equal representation of women in the executive.

According to the Law on Gender Equality, state bodies at all levels have to ensure and promote equal gender representation in the process of managing, decision-making and representation.

According to the law, equal representation of women and men exists when one of the sexes is represented with at least 40 per cent.¹⁸⁰

Furthermore, the Election Law formally also requires equal representation. Each list of candidates must include male and female candidates, who should be equally represented. Equal representation of women and men exists when one of the sexes is represented by at least 40 per cent of the total number of candidates on the list.¹⁸¹

Although the state has an internally harmonised legislative framework¹⁸² that is effectively enforced¹⁸³ and adopted a gender action plan,¹⁸⁴ with the exception of the judiciary, women are still underrepresented in public life and decision-making.¹⁸⁵ This is undoubtedly also true of the representation of women in the executive.

Representation of women in prime ministerial and ministerial positions in the CoM and the FBiH and RS governments remains low. Currently, out of 13 prime ministerial positions at the state, entity and cantonal levels,¹⁸⁶ only two are held by women, namely at the CoM level and in the Zenica-Doboj Canton.¹⁸⁷

At the moment of adoption of the 2018-2022 *BiH Gender Action Plan*, the CoM included two women ministers and women made up 25 per cent of ministers in the FBiH and RS Governments. According to the same document the number of women in ministerial positions has decreased in cantonal governments.¹⁸⁸ Two out of three members of the presidency are men. Currently, the position of the FBiH

president is held by a woman and the position of RS president until the last elections was held by a woman (now a member of the joint presidency).

ROLE

› INDICATOR 2.3.1

Public sector management (law and practice)

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

- Score: 0/100

Due to political crisis, the executive is inactive and unsuccessful in developing a public sector that is governed by transparency, accountability, integrity and inclusiveness.

There are solid regulations in place at all levels of governments for management and supervision of the work of the civil service.¹⁸⁹ These regulations regulate clearly the horizontal and material scope for the civil service and also political responsibility of the executive for the civil service. The recruitment and evaluation process for civil servants is envisaged to be transparent and merit-based, with specific policies in place aiming to provide for the integrity of civil servants.

Despite solid policies being in place, the public sector at all levels of government is being managed very poorly, without a focus on the quality of services provided. Recruitment and evaluation of employees are being conducted only to satisfy formal procedures, without a real merit-based approach. There are serious concerns about the politicisation of the entire public sector, with undue political influence in managing it.¹⁹⁰ Existing integrity policies in the public sector are still a “closed box” given the insufficient communication of policies and the absence of reporting on the implementation of integrity and accountability policies. Unending political crises at the state level and FBiH have hampered the formation of governments at those levels, with the situation following the 2018 election, yet again similar to all the previous election cycles. This has slowed down reform efforts, not least considering the huge challenges related to the management of the COVID-19 crisis.

With the exception of the adoption of strategic documents related to the reform of public administration and financial management and control in the period between 2018 and 2021, almost nothing has been done to implement adopted strategic documents and to reform and improve administration. The country is still at an early stage of public administration reform.¹⁹¹

> INDICATOR 2.3.2

Legal system

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

Score: 0/100

Constant downtimes and delays in developing and implementing a policy and a strategic framework for accountability and the fight against corruption clearly indicates that the fight against corruption is not a priority of the executive.

The governments failed to fulfil anti-corruption tasks from the key priorities of the May 2019 EU commission opinion, which hindered progress. TI BiH prepared a breakdown of the integration process and analysed the status of the 14 priorities in June 2023 and concluded that only one priority was fully implemented, related to the functioning of the Stabilization and Association Parliamentary Committee, while implementation of five priorities has partially started. On the other hand, even some regression in the case of human rights and freedoms has been recorded.¹⁹²

In the last five years, there were almost no regulatory or policy proposals regarding accountability and the fight against corruption. The Draft Law on the Prevention of Conflict of Interest in the Institutions of BiH has not been adopted.¹⁹³

With the exception of the RS, the strategies for the fight against corruption have expired and shortcomings in the effective implementation of strategies are present at all levels.¹⁹⁴ The state-level and FBiH strategies for the fight against corruption expired in 2019 and never succeeded by a current one. According to TI BiH's *Overview of implementation of the 2015-2019 BiH Strategy for the Fight against Corruption* report, only 30.54 per cent of the total number of measures envisaged in the strategy and the accompanying action plan were actually implemented.¹⁹⁵

According to the findings of the 2021 Balkan Barometer – a public opinion poll conducted annually by the Regional Cooperation Council – as few as 3 per cent of those polled completely agree with the statement that the government fights corruption successfully.¹⁹⁶ As mentioned above, the World Bank Institute's governance indicators show that the country is actually regressing when it comes to the fight against corruption.

INTERACTIONS

Considering the constitutional principle of checks and balances and the separation of powers, the executive's most important interactions are with the legislature and the judiciary. The constitutions contain sufficient norms regulating the separation of powers and mutual relations between these three branches of government.

Certainly, the position and role of the SAIs are also important, not least in the segment of control of the executive by the legislature. Although firmly established and delineated in the constitutions and laws, in practice the mutual relations between these four pillars are far from separated. As stated earlier in this section, legislative authorities at almost all levels (with the exception of local parliaments) practically ignore the existing accountability mechanisms for the executive, with parliamentary discussions on the work of the executive being reduced to a mere formality and audit reports on the work of governments/ministries rarely discussed by parliaments. Also, there is overt pressures from the executive on the SAIs and the auditors themselves.¹⁹⁷ Examples of governments or individual ministers being called to account for deficiencies or wrongdoings in their work are practically unheard of.

Furthermore, a significant number of decisions of the constitutional courts have yet to be fully enforced¹⁹⁸ and decisions of ordinary courts are also often simply ignored by the executive.¹⁹⁹ Considering the statutory obligation for

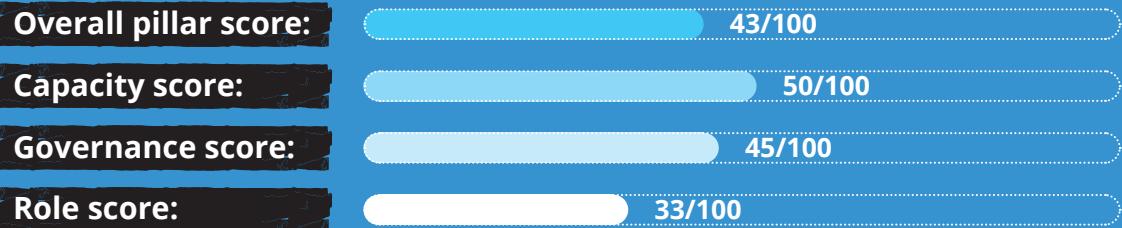
enforcement of court decisions/judgements, this practice of the executive is truly alarming. The foregoing indicates an almost complete lack of accountability on the part of the executive in clear contravention of the constitution and applicable legislation. Against this backdrop, it is unrealistic to expect the rule of law to be established and anti-corruption policies to achieve any meaningful impact.

PILLAR RECOMMENDATIONS

- Adopt a credible legislative and institutional framework for preventing conflicts of interest in line with the Group of States against Corruption (GRECO) recommendations widening the scope of office holders that are under the provisions of the law, establishing independent conflict of interest bodies, providing for all office holders obligation to declare the assets and interests, widening the jurisdiction of conflict of interest bodies to verify data from assets declarations submitted, prescribing harsher sanctions for non-complying with the laws and restricting on the simultaneous performance of several public functions.
- Mutually harmonise the laws that govern free access to information by aligning them with international and European standards through the improvement of provisions on proactive transparency (mandatory publication of information on official websites/or central portals) and the introduction of harsher fines for misdemeanours.
- Ensure credible and systematic oversight by the legislature over the executive by bolstering financial and operational independence of supreme audit institutions at all levels of government by providing for constitutional anchorage for SAIs, consistent application of the audit laws regarding their financing and improve the impact of their work through communication strategies 2021-2025.

- Ensure that the qualified public and relevant stakeholders actively participate in the policy-, budget- and law-making processes by introducing an obligation for the proposers to submit reports on the conducted public consultations on their official websites, with data on the participants, their proposals, objections, as well as data and rationale explaining which proposals were adopted and which were not.

3 > JUDICIARY



SUMMARY

According to the constitutional structure, the judicial system is divided into several tiers that are not interconnected, resulting in four independent judicial systems in terms of organisation and jurisdiction. These include the judicial system at the state level²⁰⁰ as well as the judicial systems of the FBiH²⁰¹, RS²⁰² and BD²⁰³ which are financed through 14 separate budgets.

The executive branch at all levels of governance exerts undue influence on the judiciary through the process of proposing and adopting the budget of judicial institutions, typically by failing to approve sufficient funds or by influencing the drafting, adoption and execution of the budgets.

Despite a comprehensive legal framework that allows the public to access information about the judiciary's operations, the practice of transparency falls short of the principles and provisions outlined by law. According to TI BiH analysis, only 47 per cent of courts have provided full information on the request for access to information according to the law within the deadline.²⁰⁴ However, rules regarding the open court principle and exemptions are fully respected.

There is a concerning trend of a lack of accountability among judicial officeholders, despite their legal obligations and duties,

including cases of political connections, weak process of appointments, low public perception, etc. Additionally, the number of complaints filed against judicial officeholders with the Office of the Disciplinary Counsel (ODC) has been increasing annually.

A system for collecting and verifying asset declarations from judges, prosecutors and members of the High Judicial and Prosecutorial Council (HJPC) has yet to be established, with only a small percentage voluntarily disclosing their asset declarations. Appointments, promotions and career advancement of judges and prosecutors by the HJPC should primarily follow a non-ethnic biased approach and be based on merit, but this is not the case in practice. The problem of an ethnically biased approach in the ranking lists is particularly present in the case of appointments of court presidents and chief prosecutors.

Furthermore, the legal framework for judicial oversight of the executive is incomplete. The current framework is unable to compel the executive branch to comply with court decisions made in administrative litigations because it lacks an enforcement mechanism. As a result, the judiciary has been ineffective in exercising control over administrative acts.

CAPACITY

> INDICATOR 3.1.1

Resources (law)

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

Score: 50/100

While a number of provisions exist, they do not set a minimum transfer from the budget and constitutional provisions requiring the ethnic appointment of judges have led to unfilled positions.

Reflecting the administrative-territorial structure of the country, the judiciary is financed from 14 different budgets, with courts and public prosecutors' offices having 14 different sources of funding. Each administrative level of the judicial system is financed from its respective budget (state, entity and cantonal budgets).²⁰⁵ That proximity of the funding source to the judicial beneficiary is in itself troublesome.

According to the laws that regulate courts²⁰⁶ the courts have to prepare draft budgets and submit them to the relevant ministry of justice and/or finance at their administrative level (state, entity or cantonal level), which then prepares a draft budget for each government's approval.²⁰⁷ The HJPC plays an advisory role in the budget drafting process but has limited

influence on the amount of approved funds for judicial institutions.²⁰⁸ Although courts generate income through court fees, these fees have to go to the general budget. There is no regulation specifying the absolute amount or percentage that must be allocated to financing the judiciary relative to other budget users.

Judges' salaries are governed by separate laws, but these laws only apply to judges and not to administrative staff. In accordance with this law, if there is an increase in the average salary in the country, the salaries of judges are adjusted accordingly. However, in the event of a decrease in the average salary, the salaries of judges are not subject to reduction. The law does not specify a minimum percentage of an administrative level's total budget that must be allocated for the operation of prosecutors' offices.²⁰⁹

All candidates for judges must meet minimum formal requirements in terms of education, passing the bar exam and years of experience.²¹⁰ However, due to constitutional provisions requiring the number of judges in a jurisdiction to correspond to the ethnic structure according to the 1991 census, some courts may not have all positions filled because there are not enough candidates from minority ethnic groups (see 3.1.2).

> INDICATOR 3.1.2

Resources (practice)

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

Score: 50/100

The judiciary has some resources. However, resource gaps in the number of judges appointed and foreseen by the systematisation lead to a degree of ineffectiveness in carrying out its duties.

According to the 2022 *Judicial Effectiveness Index of BiH*, with the exception of 2020, budget allocations for financing judicial institutions have been steadily increasing since 2012.²¹¹

Despite this increase in funding, the number of judges remained similar to 2012. According to the annual HJPC reports, the number of judge positions that were not filled as foreseen by systematisation has been over 10 per cent since 2018 and the highest during 2022 when there was a shortage of 150 judges, with 13 per cent positions remaining unfilled.²¹² This can lead to potential delays in proceedings, overworked judges and inefficiencies in the judiciary. In 2022, 82 per cent of positions were occupied in

☒ **Table 3.1: Budget allocations for financing judicial institutions²¹²**

Year	Amount in BAM	Amount in €	Percentage increase of budget
2022	232 million	118.61 million	14.28%
2021	203 million	103.79 million	2.01%
2020	199 million	101.74 million	-2.92%
2019	205 million	104.81 million	7.32%
2018	191 million	97.65 million	4.94%
2017	182 million	93.05 million	10.30%

☒ **Table 3.2: Human resources of the judiciary**

Year	Number of judges ²¹⁴	Number of judges foreseen ²¹⁵	% of unfilled positions	Number of support staff ²¹⁶
2022	1,000	1,150	13,.04%	n/a
2021	998	1,141	12,.53%	3,401
2020	1,023	1,140	10,.26%	3,777
2019	1,011	1,147	11,.85%	3,535
2018	1,013	1,132	10,.51%	3,316
2017	1,017	1,101	7,.62%	3,474
2012	962	995	3,.31%	3,098

the Court of BiH, while the Supreme Court of FBiH had a fill rate of 77 per cent and the Basic Court in BD had 74 per cent of its positions filled.

Judges' salaries have grown significantly in recent years and they are, on average, 50 per cent higher than the salaries of the rest of the public sector. Basic court judges have a base salary of BAM2,400 (€1,227), second-instance court judges earn up to BAM3,000 (€1,534), supreme court judges earn BAM3,800 (€1,943) and constitutional court judges earn up to BAM4,500 (€2,300).²¹⁷ This makes the position of judge highly competitive. Moreover, these figures represent only the base salary and do

not include the additions based on years of service or other benefits. However, court staff are relatively poorly paid in comparison.

According to the 2021 World Bank report the ratio of computers and technical equipment in courts is satisfactory and all judges and judicial assistants have a computer with access to the internet and a specialised case management system.²¹⁸

As part of the judicial reform process, the implementation of technical assistance projects for the judiciary, financed by bilateral and multilateral international donors, has continued. In 2021, five technical assistance

projects for the judiciary were being implemented, financed largely by the EU, Norway, Switzerland and Sweden. The total amount donated in 2021 was nearly BAM7.5 million (€3.8 million).²¹⁹

At the entity level, there are judicial and prosecutorial training centres.²²⁰ Judges are required to undergo four days of training per year, while the administrative staff in courts do not have a legal obligation to undergo such training.

› INDICATOR 3.1.3

Independence (law)

To what extent is the judiciary independent by law?

Score: 75/100

While a number of laws of judicial independence exist, the independence of the judiciary is not covered by the constitution. The appointments of judges, including those who sit in the High Judicial and Prosecutorial Council (HJPC), are particularly frail and the process is insufficiently protected from undue political interference.

The Constitution of BiH does not explicitly guarantee the independence of the judiciary. However, the High Judicial and Prosecutorial Council was established by the Law on the HJPC²²¹ as an autonomous and independent

body responsible for ensuring an independent, impartial and professional judiciary.²²² Entity laws on courts also provide guarantees for the independence of courts from both legislative and executive authorities,²²³ stating that no one may influence a judge's independence and impartiality in deciding on cases.²²⁴

According to the law, the HJPC consists of 15 members. They are selected from among court judges and prosecutors from the state-level prosecutors' office, judges and prosecutors from the cantonal level courts/prosecution along with those of Brčko District, professional bar associations, and from the Parliamentary Assembly and CoM.²²⁵ This still exposes the institution to political pressures and negotiations.

The appointment of judges is regulated by the Law on the HJPC, outlining the professional criteria for selecting and appointing judges, including their professional qualifications.²²⁶ The Rules of Procedure of the HJPC further detail such criteria.²²⁷ The appointment of judges follows a multi-stage process outlined in the rules of procedure.²²⁸ This process includes receiving and checking applications, conducting a qualifying written examination, interviewing selected candidates, a final ranking of candidates and submitting proposals to the council. According to the Open Society Fund Bosnia and Herzegovina, “[i]n the final stage, after the interview, the ranking list of candidates is submitted to the competent sub-council for proposing candidates for appointment. This sub-council, composed of HJPC members, then submits the ranking list of candidates to the Council along with an

explanation of the nomination proposal.”²²⁹

According to the HJPC law judges are appointed for life or until they meet the legal requirements for retirement.²³⁰ Court presidents are elected for a fixed term and, if not re-elected, continue to serve as judges in the court. Dismissal is possible only through disciplinary proceedings initiated by the HJPC’s ODC based on reports received from interested third parties or on its own initiative by the Office of the Disciplinary Counsel (ODC). Disciplinary sanctions are imposed by a first-instance disciplinary commission within the HJPC. Decisions by this commission can be appealed to a second-instance commission within the HJPC and decisions by this commission can be further appealed to the HJPC as a whole. The final decision of the HJPC on disciplinary sanctions can be challenged through an administrative lawsuit before the Court of BiH.

A question of integrity and independence of the HJPC might arise, for example, when its president Milan Tegeltija was forced to resign under media and public pressure for the trade of judicial positions in December 2020. Only two months later he was appointed advisor to Milorad Dodik, who was a member of the BiH Presidency at the time.²³¹ This goes to show that appointments to the HJPC, including the very top position, might be subject to trade among political parties which then trickles down to the appointment of all judges and prosecutors. It is impossible to determine, without a systemic process, who among the current judges and prosecutors have political parties to thank for their positions.

> INDICATOR 3.1.4

Independence (practice)

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

Score: 25/100

There is widespread interference due to rules of ethnic representation, potential influence by the executive through budget drafting and appointments marked by nepotism, affecting judicial independence.

Domestic and international reports consistently indicate insufficient or no improvement in the independence and impartiality of the judiciary.

The selection process for judges involves a public competition, which is published in official gazettes, the press and on the HJPC website. Candidates who apply undergo a qualification test and an interview before the HJPC makes its appointment decision. According to a 2020 OSCE report on the prosecution of corruption in BiH, “the appointments process reveals an alarming and unexplained inclination towards the principle of ethnic representativeness over competence, with no transparent process for determining which quality is more important for any particular appointment; this renders selection procedures more vulnerable to manipulation for political or personal gain.”²³²

A contributing factor to the lack of judicial independence is the fragmented financing of courts from the budgets of their respective administrative-territorial units. This arrangement creates the potential for inappropriate influence by the executive branch on the judiciary, through the process of budget drafting, enacting and execution, or by not approving a sufficient amount of funds.²³³ Additionally, the Temporary Committee of Inquiry of the Parliamentary Assembly found in 2021 "that 'powerful individuals in society' also exert influence on the judiciary through political appointments of close relatives to high-level positions in governments, ministries, public enterprises or other lucrative positions at all levels of government."²³⁴ This affects judicial independence. The committee's reports provide an example of the appointment of the son of a former prosecutor and member of HJPC Jadranka Lokmić-Misirača as the director of an institution in the same entity and the appointment of the brother of a judge from the Court of BiH, Amela Huskić, as the director of the Privatisation Agency of the FBiH.

According to surveys, eight out of ten citizens maintain they do not have equal access to justice.²³⁵ The country was rocked by two murder cases (David Dragičević and Dženan Memić, both young men in their 20s) that resulted in mass rallies and continued protests from 2018 to 2020 as a result of minimal trust in the judicial, prosecutorial and law enforcement institutions and their political capture. Citizens were often protesting in front of the regional court buildings, because the popular view was that judges were no longer only protecting high-ranked politicians, but

also murderers, while the victims underwent secondary victimisation and those calling for justice ended up behind bars.²³⁶

GOVERNANCE

> INDICATOR 3.2.1 Transparency (law)

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

Score: 50/100

There is a comprehensive legal framework in place allowing the public to access information about the judiciary's operations and court decisions. However, the laws do not require proactive publication of information.

A comprehensive legislative framework allows both the general public and professionals to access information regarding the functioning of the judiciary and rulings made by the courts. General laws on freedom of access to information also apply to the judiciary, while procedural laws, such as the criminal procedure code and civil procedure code, incorporate the principle of transparency of the judiciary's work. There is no legal obligation for verdicts, judicial statistics, or court hearing transcripts to be proactively published.

Public access to all court proceedings is established as a general rule, with legal restrictions in place for criminal proceedings against minors and marital and family

disputes. In late 2022²³⁷ the HJPC adopted a communication strategy aimed at establishing improved, effective and two-way communication to facilitate the flow of information through mutual appreciation and respect among all participants.²³⁸

> INDICATOR 3.2.2 Transparency (practice)

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

Score: 50/100

In practice, the transparency of judicial institutions deviates significantly from their legal obligations. The judiciary has repeatedly denied access to final judgements and the Office of the Disciplinary Counsel (ODC) is not transparent about the names of judges going through disciplinary proceedings or subject to imposed sanctions.

The rules on public access to the trial and their exceptions are generally respected in practice. Courts submit activity reports to the High Judicial and Prosecutorial Council (HJPC). Every year, the HJPC publishes an annual report on its work on its website.²³⁹ Additionally, courts maintain their own websites where they publish selected information.

However, there have been numerous instances in which courts have denied access to final judgments, which are unambiguously public documents, according to the law. A survey conducted by TI BiH and BIRN found that only 47.3 per cent of courts submitted the complete requested information within the statutory deadline, while 18.9 per cent of cases resulted in administrative silence, meaning the courts did not respond to the requests received at all. The survey also revealed that courts take a different approach depending on the profile of the information seeker. For example, TI BiH's requests were fully answered within the statutory deadline in 54 per cent of cases, with only one instance of administrative silence. In contrast, when individual citizens filed requests for access to information, only 40.5 per cent of the requests received a full response within the statutory deadline, while 36.4 per cent resulted in administrative silence.²⁴⁰

Citizens can access information about the work of the ODC via its official website²⁴¹ and annual activity reports.²⁴² These cover disciplinary proceedings and imposed sanctions but do not include the names of judges against whom proceedings were conducted or the specific sanctions imposed on individual judges.²⁴³ Citizens are allowed to attend disciplinary hearings against judges. In practice, citizens do not use this possibility, while CSOs and media sometimes attend disciplinary hearings.

> INDICATOR 3.2.3

Accountability (law)

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

Score: 75/100

There are provisions in place to ensure that judges report to work and are held accountable for omissions. These consist of the appeals process at a higher instance and the High Judicial and Prosecutorial Council (HJCP) oversight. However, the legal ability of the HJCP to influence the work of the Office of the Disciplinary Counsel (ODC) is rather significant, which questions the independence of the ODC.

There are two principal mechanisms for judicial oversight. The first is the appeals process and the use of extraordinary legal remedies in proceedings before the courts. As a general rule in criminal and civil proceedings, without exception, parties may file appeals against decisions with which they are dissatisfied.²⁴⁴ Under certain conditions defined by the laws, like the right to have a case heard within a reasonable time, parties may also file extraordinary legal remedies (case renewal, request for legal review etc.). Once all regular and extraordinary legal remedies have been exhausted, an appeal may be filed with the Constitutional Court of BiH.

The second method of judicial oversight is exercised by the HJPC and relevant ministries of justice. While the ministries of justice have the authority to impact administrative support to court operations, the HJPC has the authority, through the ODC, to conduct proceedings based on received complaints/reports against judges or by independently starting the procedure and imposing disciplinary sanctions against judges found responsible for irregularities. The Law on HJPC²⁴⁵ defines disciplinary offences of judges, which include non-compliance with the code of professional conduct for judges, gross or repeated non-compliance with the performance of judicial duties, mismanagement of assets or resources, and conduct that diminishes trust in the independence or integrity and ability of the judge to perform their duty. Disciplinary sanctions can range from a reprimand to dismissal from duty. The latest amendments to the HJPC law from September 2023 envisage that its members can now also be held legally liable whereas before there was no disciplinary accountability for the HJCP.²⁴⁶

In addition, procedural laws, such as the criminal procedure code and civil procedure code at all levels of governance, prescribe the mandatory content of court decisions. Judges must provide a reasoning for their decisions, explaining the facts established during the proceedings and the application of both substantive and procedural law. The standard of the right to a fair trial and access to court under Article 6 of the European Convention on Human Rights requires judges to provide an appropriate explanation in their decisions.²⁴⁷ This explanation must give sufficient reasons

for the court's decision and serve as a basis for seeking legal redress through regular or extraordinary legal remedies.

➤ INDICATOR 3.2.4

Accountability (practice)

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

Score: 25/100

Despite the existence of a legal framework governing the duties and accountability of judicial officeholders, there is a worrying trend of a lack of accountability. This is evidenced by political interference, weak integrity of the appointment process, low public perception etc.

According to the latest 2021 *Judicial Effectiveness Index in BiH* the average time for resolving cases in the first-instance courts in 2021 ranged from 333 to 396 days.²⁴⁸ In second-instance courts, criminal appeal cases were resolved fairly promptly, on average in 84 days, while other case types took between 552 and 665 days. The backlog of cases stands at 2.1 million, including 1.8 million utility bill cases, which continues to negatively impact efficiency.²⁴⁹ The 2019 Expert Report on Rule of Law Issues states that criminal trials are excessively lengthy, cumbersome and inefficient. Judges are too lenient in the management of trials, allowing for

lengthy gaps between hearings and frequent postponements with little or no justification.²⁵⁰

The number of complaints filed with the Office of the Disciplinary Counsel in 2022 decreased compared to 2021 from 925 to 840 complaints. An average of 34 disciplinary actions have been initiated annually against judges and prosecutors over the past five years. The highest number was recorded in 2019, with 46 disciplinary procedures initiated, while the lowest was recorded in 2017, with 25 disciplinary procedures initiated.²⁵¹

Of the 33 legally concluded disciplinary proceedings against judicial officeholders in 2022, four resulted in written reprimands without publication, four in public reprimands, 23 in salary reductions and two in a demotion from chief prosecutor to prosecutor.²⁵²

Disciplinary actions have not had a significant deterrent effect due to purely penal policy. In 2022, the ODC filed 39 disciplinary actions, including six against chief prosecutors and court presidents. During the same year, a total of 33 disciplinary sanctions were imposed on 23 judicial officeholders, with more than half being token salary reductions.²⁵³

According to reports, the judiciary is in a state of institutional capture.²⁵⁴ External factors have a substantial impact and are in a position to effectively control the functioning of the judiciary. According to the *TI BiH Good Governance Agenda 2025* potential solutions to the problem of the judiciary must consider the depth and the scale of the problem, as well as the negative consequences.²⁵⁵ Given the

environment in which the judiciary operates, suspicions and allegations of partiality, as well as a lack of a detailed vetting procedure which would consider verification of competencies, checking personal background and links to organised crime/corruption and asset verification hampers any possible reforms and perceived improvement.

> INDICATOR 3.2.5

Integrity mechanism (law)

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

- Score: 50/100

The legal framework providing judicial integrity mechanisms does not cover all matters, including the authority of the High Judicial and Prosecutorial Council (HJPC) to verify asset declarations, disciplinary responsibility of HJPC members or a lack of post-employment restrictions.

When applying for a judgeship, candidates are required to submit an asset declaration statement to the HJPC. This statement must include their own and their family assets.²⁵⁶ Elected judges must inform the HJPC of any changes in personal income, personal assets, family assets, financial obligations, as well as changes in the value of all assets during their term of office. This includes changes related

to their spouse and household members concerning any activities in public and private companies. Finally, elected judges must file an annual financial statement with the HJPC by 31 March of each year, reporting “any activities they performed outside their duties as judges, including the remuneration.”²⁵⁷

However, the HJPC lacks the authority to verify judges’ asset declarations, significantly reducing its ability to determine whether a judge has provided false or incomplete information about their financial status. As noted by the 2019 European Commission’s Expert Report on Rule of Law issues in Bosnia and Herzegovina: “The current system of just gathering asset declarations by judicial office holders on paper without carrying out any checks is pointless. There is an urgent need to step it up, as one element of a broader integrity check.”²⁵⁸ Finally, the latest amendments to the HJPC law envisage that judges and prosecutors now must file asset declarations including for their partners and children, but only for those living under the same roof. This allows for so-called creative solutions whereby property can be transferred to family members living in their own homes, for whom no assets need to be declared and any suspect property can be left out of the process.²⁵⁹ Even when the asset declaration is filed, there are no means of verifying the items in the declaration, as other institutions are not mandated to act upon HJPC requests to confirm status.

The HJPC has adopted a Code of Judicial Ethics.²⁶⁰ According to this code, judges must demonstrate independence from other branches of government (executive and

legislative) and impartiality towards parties in proceedings in which they make decisions. Judges are obligated to behave morally and with dignity and perform their duties professionally, thoroughly, diligently and efficiently. The code prohibits judges from receiving gifts or having third parties sponsor private trips or similar activities. If a judge discovers during proceedings that they have a conflict of interest (for example, if one of the parties, an attorney or a third party in the proceedings is a relative or friend) or if other circumstances indicate bias, the judge must immediately cease all actions in the case and request that they be recused by the court president. If a party to the proceedings believes that the judge is biased, they have the right to request that the court president recuse the acting judge. Upon such a request, the judge must stop the proceedings and take no further action until the court president makes a decision. Violations of the principles of the Code of Judicial Ethics which lead to reputational damage or questions about the integrity of the judiciary are listed as disciplinary offences in the Law on HJPC.²⁶¹

Judges face no legal barriers that prohibit them from transitioning to private-sector employment after concluding their judicial tenure.

> INDICATOR 3.2.6

Integrity mechanism (practice)

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

Score: 25/100

Judges score low on perceived integrity as there is an insufficient institutional barrier separating them from the influence of the political elites to whom some high-ranked judges appear accountable instead of being loyal to their profession.

Structures and mechanisms for ensuring the ethical behaviour of judges are in place, but their effectiveness has been a topic of discussion and concerns highlighted by relevant reports from international and non-governmental organisations.²⁶² In a 2021 report, the Open Society Fund states that discrepancies in the enforcement of disciplinary actions and their subsequent impact on the career trajectories of judges are deeply worrying, due to selective applicability.²⁶³ While disciplinary actions or processes have obstructed the nomination or advancement of some judges, others received promotions despite facing disciplinary actions and sanctions.

The 2019 European Commission's *Expert Report on Rule of Law issues in Bosnia and Herzegovina* speaks of notable professional and legal omissions, as well as misuse of procedures and dubious court rulings in high-level corruption cases.²⁶⁴ Moreover, there appears to be a lack

of accountability for these mistakes.

In recent years, one of the biggest scandals involved the former president of the High Judicial and Prosecutorial Council (HJPC), who was accused of being under political influence. In 2019, video and audio recordings were published suggesting that the HJPC president had abused his office and promised to influence the prosecutors' office to resolve a case.²⁶⁵ In December 2020, under significant pressure from both the domestic public and the international community, the HJPC president resigned.²⁶⁶ Although the Office of the Disciplinary Counsel (ODC) brought disciplinary action against the HJPC president following the publication of the recordings, the first-instance disciplinary commission of the HJPC declared itself incompetent and rejected the disciplinary action as inadmissible. This decision was upheld by the second-instance commission. Revealingly, the disciplinary commissions are composed of HJPC members.²⁶⁷

Judges face no legal barriers that prohibit them from transitioning to private-sector employment after concluding their judicial tenure. In practice, many former judges pursue careers as attorneys, notaries, or join corporate entities.

According to 2021 statistics, 239 out of a total of 1,358 judges and prosecutors gave their consent for their annual asset declarations for that year to be published²⁶⁸ as stated in the HJPC's *2022 Annual Report*.²⁶⁹ According to the latest changes to the Law on HJPC which is scheduled to be implemented beginning 23 December 2023, judges and prosecutors

are obliged to submit asset declarations to the HJPC and those reports will be published on the HJPC's website.²⁷⁰ However, the HJPC already adopted the conclusion that letters should be sent to the state-level Ministry of Justice and Parliamentary Assembly proposing the urgent adoption of amendments to prolong the beginning of the implementation of the law.²⁷¹ This is particularly related to the potential possibility of blocking the procedure of submitting and the exchange of information on asset declarations and potentially making the verification process meaningless.²⁷²

> INDICATOR 3.2.7

Gender

To what extent are the Judiciary's mechanisms gender-sensitive?

Score: 50/100

There are no explicit gender-sensitive protocols and guidelines in the judiciary. However, the strategy for gender equality in the judiciary partially covers such issues and includes staff training.

According to the High Judicial and Prosecutorial Council (HJPC) 2022 Annual Report out of a total of 1,000 appointed judges, 648 are women and 352 are men.²⁷³ However, beyond this, official reports produced by judicial institutions do not provide gender-disaggregated statistics such as the number of complaints filed by women or

men or the time it takes to resolve complaints filed by either gender. While internally the segregated data exists, it has never been made publicly available.

When it comes to the front-facing female staff, the Chief Disciplinary Prosecutor is a women. The Office of Disciplinary Council of the High Judicial and Prosecutorial Council is in charge of initiating an investigation against judges or prosecutors based on a complaint that any person or organisation has the right to submit, or on its own initiative, based on knowledge of possible violations of the duties of judges and prosecutors.²⁷⁴

In October 2020, the HJPC adopted the Strategy for improving gender equality in the judiciary of Bosnia and Herzegovina.²⁷⁵ This strategy requires all judicial institutions to prepare their own action plans aimed at improving gender equality. The strategy includes staff training on issues such as gender equality, ensuring equal treatment for all users without discrimination and more detailed analyses of judicial institutions' actions in cases of gender-based violence.

ROLE

> INDICATOR 3.3.1 Executive oversight

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

Score: 0/100

The judiciary is ineffective in providing effective oversight of the executive through judicial control over administrative acts. Even when a court determines that an administrative act is unlawful, it lacks the appropriate legal instruments to enforce compliance by the administrative authority.

According to the state, entity and BD laws on courts, the judiciary is responsible for judicial control over administrative acts by assessing the legality of such executive acts. An administrative lawsuit can only be brought against a final administrative act and only by an interested party who believes that their rights or legal interests have been violated. Therefore, the judiciary can only exercise control over the executive branch through individual cases and only if an administrative lawsuit is brought.

Proceedings in administrative lawsuits are complex and lengthy, often failing to provide citizens with effective protection. According to the 2021 Report of the Parliamentary Assembly, the average time for resolving administrative lawsuits in the first instance

is 393 days.²⁷⁶ Although court decisions annulling final administrative acts are binding for administrative authorities according to the law²⁷⁷ in practice these authorities often fail to comply with court orders and continue to make identical decisions as before the court's ruling.²⁷⁸ In some cases, courts fail to make decisions at all, forcing parties to file a new administrative lawsuit with full jurisdiction. This can mean waiting several years for a court decision, during which time the legal and factual situation may have changed, preventing the party from accessing their rights even if they receive a decision in their favour.²⁷⁹

This in particular occurs frequently in procedures for issuing building permits. While a dissatisfied party pursues legal action against an administrative authority, the authority may issue a building permit and even when the party receives a court decision in their favour against such construction, the building may have already been finished, resulting in new procedures and costs for the party.²⁸⁰ In conclusion, there is no possibility of initiating an administrative lawsuit on its initiative and such lawsuit can only be brought at the request of the parties.

TI BiH's Advocacy and Legal Advice Centre (ALAC) has recorded numerous cases of non-compliance with the final court judgments. One such case involved a lawsuit filed by TI BiH against the RS Ministry of Transport and Communications under the Law on Freedom of Access to Information.²⁸¹ Despite a 2022 judgement by the Banja Luka District Court concluding that the ministry prioritised the protection of foreign companies over the

public interest the RS Ministry of Transport and Communications refused to provide a copy of the concession contract for the construction of the Banja Luka-Prijedor motorway.²⁸² The ministry continued to refuse to provide the contract even after the judgement, prompting TI BiH to initiate a new lawsuit against it.²⁸³

It is not possible to bring an administrative lawsuit against decisions made by the executive branch, but it is possible to initiate a procedure to determine the legality of the executive's acts of general application before competent constitutional courts.²⁸⁴ However, this is a lengthy and uncertain process for the parties involved.

Additionally, there is no effective legal mechanism in place for regular courts to compel administrative authorities to comply with their judgements. The existing mechanism, which involves administrative procedures of so-called full jurisdiction where courts can make decisions that completely supersede those of administrative authorities, is complex and rarely used.²⁸⁵ However, courts avoid this practice because even in such cases, administrative enforcement procedures are carried out by the same administrative authorities that failed to comply with court orders in earlier procedures.

A very specific and prominent problem is the non-enforcement of constitutional court decisions. According to the *2023 Report of the Constitutional Court of BiH*, 8 decisions on constitutionality and 31 decisions on appellate jurisdiction of the court have not been enforced.²⁸⁶ Also, according to the report, the

court adopted a ruling on non-enforcement in 24 requests related to the decisions on constitutionality and delivered rulings to the prosecutor's office. In 11 cases the court was notified that the prosecutor's office had issued an order not to conduct an investigation, while for the other cases no information was provided. Also, the court has adopted a ruling on non-enforcement in 98 cases related to the appellate jurisdiction. In 84 cases the state-level prosecutor's office issued an order on the suspension/no investigation, while for the other cases the court was not informed about the actions of the prosecutor's office.²⁸⁷

An additional problem of breaching the constitutional and legal order in the country by Republika Srpska arose in 2023 with the adoption of two unconstitutional laws: the Law on Non-Application of Decisions of the Constitutional Court of Bosnia and Herzegovina²⁸⁸ and the Law on Non-Publication of the Decisions of the Office of High Representative.²⁸⁹ Despite rulings on the unconstitutionality of these acts, there is no enforcement mechanism of the constitutional order and such behaviour has gone unsanctioned to date.

> INDICATOR 3.3.2

Corruption prosecution

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

- Score: 25/100

The judiciary has been largely inactive and ineffective in combating corruption and prosecuting those who have committed corruption-related criminal offences, particularly in cases of grand corruption. This has to do with political influence, lack of capacities, inadequate inter-agency collaboration, etc.

According to a 2022 survey conducted by TI BiH,²⁹⁰ there was a minor increase in the number of convictions for corruption-related criminal offences compared to 2021.²⁹¹ Still, of 293 convictions for corruption-related criminal offences in 2022, only eight were related to cases of grand corruption.

Punitive sanctions for corruption-related criminal offences can be considered extremely soft. In 2022, 62.5 per cent of convictions for corruption-related criminal offences resulted in conditional sentences, while only 34.6 per cent resulted in prison sentences.²⁹²

In 2022, the courts passed a total of 361 judgements for corruption-related criminal offences, including 293 convictions, 64 acquittals and 4 dismissals.²⁹³ Only eight cases

addressed grand corruption, and of those eight, one was a final prison sentence, four were first-instance prison sentences and three were first-instance conditional sentences.²⁹⁴ This suggests a poor quality in the preparation of indictments by prosecutors and consequently of court decisions.

The HJPC regularly publishes annual reports on the work of the judiciary, which include statistics on its work and performance.²⁹⁵ However, these reports do not provide detailed statistics on the prosecution of corruption-related criminal offences, which would include, among others, the number of prosecutorial rejections, quality of court decisions, etc.

> INDICATOR 3.3.3

Mutual legal assistance

- Score: 50/100

The legal framework regulating international legal assistance is adopted and provides a legal basis for international legal assistance. However, there is a lack of data to assess its effectiveness.

International legal assistance is regulated by the Law on International Legal Assistance in Criminal Matters which provides a solid basis for international legal assistance and it outlines the procedures for providing assistance in criminal matters.²⁹⁶ The state-level Sector for International and Inter-Entity

Legal Assistance at the Ministry of Justice of Bosnia and Herzegovina is designated as the central institution responsible for receiving and sending requests for international legal assistance.

The ministry has not published specific statistics on these cases. However, certain judicial institutions do publish this information, e.g. the state-level Prosecutor's Office, which stated in its 2022 report that a total of 350 cases with international legal assistance and extradition were registered that year.²⁹⁷ Of these, 215 were new cases received in 2022, while 126 were carried over from the previous period.

INTERACTIONS

The judiciary engages in regular cooperation with other institutions, including prosecutors' offices and law enforcement agencies, as well as with the media and civil society.

The interaction with prosecutors' offices and law enforcement agencies is primarily based on legal and binding provisions related to the prosecution of criminal offences, as set out in criminal codes and criminal procedure codes. However, the failure to indict more corruption-related offenders results from a combination of the insufficient integrity of both institutions and poor collaboration in the process of trial preparation.

In contrast, the judiciary's interaction with the media and civil society is based on their role in monitoring corruption prosecution. CSOs and media track these prosecutions and disseminate information to the general public.

PILLAR RECOMMENDATIONS

- The executive at all levels needs to secure timely and unconditioned financing for the judiciary to reduce the possibility of undue influence.
- The legislative branch needs to urgently adopt a whole new Law on the High Judicial and Prosecutorial Council (HJPC) to improve the accountability and integrity of judicial officeholders, in line with recommendations from the European Commission. This in particular means:
 - Ensuring more transparent and merit-based appointment of judges and prosecutors.
 - Ensuring implementation of provisions on conflict of interest of members of the HJPC and all holders of justice functions.
 - Ensuring enforcement of provisions for the submission and verification of asset declarations by holders of justice functions.
 - Strengthening the independence of the Office of the Disciplinary Counsel (ODC) by formally separating it from the HJPC.
- The legislative branch needs to provide legal mechanisms and resources to implement vetting procedures for judicial officeholders independent of the executive in order to examine their assets and links with politics and organised crime. This needs to start with the vetting of all HJPC members.
- The judiciary needs to improve its transparency by regularly and proactively publishing relevant information on the work of courts, including publishing court judgments and enabling regular communication with the public (gender disaggregated to benefit greater transparency).
- The legislative branch needs to change the concept of administrative lawsuits within the laws on administrative procedure at all levels so that court decisions can completely supersede administrative acts, allowing citizens to exercise their rights based on court decisions without pursuing new legal actions.
- The legislative branch must preserve the integrity and independence of the constitutional court by rejecting the proposed legal challenges that look to effectively subordinate the court to the governing political elites and ensure that the rulings of the court are implemented in full through the appropriate parliamentary procedures.

4 > PUBLIC PROSECUTOR



SUMMARY

Prosecutors' offices are independent government institutions. There are four separate prosecution systems, organised according to the level of government: the state-level Prosecutor's Office of Bosnia and Herzegovina, two entity prosecutors' offices (FBiH and RS), the BD Prosecutor's Office, ten cantonal prosecutors' offices in FBiH and six district prosecutors' offices in RS. Within the Banja Luka District Prosecutor's Office, there is a Special Prosecutor's Office for Combating Organised Crime and the Most Serious Forms of Economic Crime (Special Prosecutor's Office), while at the state level within the Prosecutor's Office of BiH, there is Section in the Special Department for Organised Crime, Economic Crime and Corruption.

Despite having a solid legal framework and relatively satisfactory resources for law enforcement within their jurisdictions, prosecutors' offices in BiH continue to face significant obstacles to their functionality and effectiveness. These obstacles include a complex structure and financing from 14 different budgets, as well as undue political influence. Each

administrative level of the judicial system is financed from its respective budget (state, entity and cantonal budgets).

As a result of such challenges, prosecutors have been unsuccessful in effectively managing policies for investigating crime and a systemic approach to prosecuting corruption offences at the level of prosecutors' offices is lacking. Prosecutors exercise considerable discretionary power in deciding whether to initiate criminal proceedings, a key risk with high-level corruption cases. Disciplinary actions have thus far failed to serve as an effective deterrent. In cases involving grand corruption, inexplicable professional errors occur with alarming frequency.

In practice, mechanisms for holding prosecutors accountable are almost entirely non-functional. The entire system of disciplinary accountability functions more as an instrument of intimidation than as a means of achieving its primary objective – ensuring that judges and prosecutors are held accountable for their actions.

CAPACITY

> INDICATOR 4.1.1

Resources (law)

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

Score: 50/100

While a number of provisions exist, they do not set a minimum percentage of the budget for prosecutor's offices.

Given that the judiciary comprises of four subsystems that mirror the administrative-territorial organisation of the country, prosecutors' offices are financed from 14 different budgets (see 3.1.1). This fragmented nature of funding gives rise to considerable disparities in the financing of prosecutors' offices, depending on the source of funding. This results in budgets and resources that are unstable and susceptible to various forms of influence (see 4.1.4).

The existing legal framework does not provide the prosecutors' offices with a sufficient degree of independence in the budgetary process. Competent ministries may seek to exert influence over the work of judicial institutions (see 3.1.4), including public prosecutor offices, through their involvement in the processes of budget preparation, adoption and execution

– for instance, by withholding approval for sufficient funds.

Prosecutor's salaries are governed by separate laws but these laws only apply to prosecutors and not to other administrative staff.²⁹⁸ According to the Law on Salaries and Other Compensations in Judicial and Prosecutorial Institutions at the Level of Bosnia and Herzegovina, the salary of prosecutors at the state level ranges from BAM3,800 (€1,943) to BAM4,400 (€2,250).²⁹⁹ Subsequently, if there is an increase in the average salary in the country, the salaries of prosecutors are adjusted accordingly. However, in the event of a decrease in the average salary, the salaries of prosecutors are not subject to reduction. The law does not specify a minimum percentage of an administrative level's total budget that must be allocated for the operation of prosecutors' offices.

> INDICATOR 4.1.2

Resources (practice)

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

Score: 50/100

The prosecution has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties, which includes the lack of the number of prosecutors foreseen by systematisation.

Budgetary allocations for the operation of prosecutors' offices have increased.

However, these funds are insufficient for investments and improvements of judicial infrastructure, as over 85 per cent of the budget is earmarked for salaries and allowances.³⁰¹ Project activities aimed at advancing judicial reform are financed through donor funds, coming from donors such as the European Union, USAID, Norway, Sweden, Switzerland, etc.³⁰²

The budget of the state-level Prosecutor's Office for 2021 was not adopted. According to the Decisions on Temporary Financing of the Institutions BiH for 2021, approved funds

☒ **Table 4.1: Budget allocations for the operation of prosecutors' offices³⁰⁰**

Year	Amount in BAM	Amount in €	Percentage increase per year
2022	67 million	34..2 million	11.6%
2021	60 million	30.6 million	5.2%
2020	57 million	29.1 million	- 1.7%
2019	58 million	29.,6 million	1.,7%
2018	57 million	29.,1 million	9.,6%
2017	52 million	26.,5 million	23.8%

were based on the budget for 2020, which amounted to slightly more than BAM14 million (€7.16 million).³⁰³ During 2022 and 2023 there has been an increase in the budget for the Prosecutor's Office. In 2022, the allocation was BAM16.04 million (€8.39 million euros) while in 2023 the budget additionally increased to BAM19.2 million (€9,81 million).³⁰⁴ Generally, prosecutor's offices have a solid financial basis for normal day-to-day operations.

According to the *Annual Report of the High Judicial and Prosecutorial Council for 2022*, the number of prosecutors' positions that were not filled, as foreseen by systematisation, has been over 15 per cent (358 prosecutors hired out of 425 systematised).³⁰⁵ This nonetheless does not reveal to what extent the placements have been merit-based and professional, as described below.

At the entity level, there are judicial and prosecutorial training centres.³⁰⁶ Prosecutors are required to undergo four days of training per year, while administrative staff in courts do not have a legal obligation to undergo training.

> INDICATOR 4.1.3

Independence (Law)

To what extent is the public prosecutor independent by law?

Score: 75/100

The Law on the Prosecutor's Office³⁰⁷ and the Law on the HJPC³⁰⁸ contain detailed provisions that aim to guarantee the independence of the Prosecutor's Office. However, that is not referenced in the constitution and the appointment process of judges lacks transparency.

Prosecutors are appointed by the High Judicial and Prosecutorial Council (HJPC) and the rules governing their appointment are based on professional criteria, as prescribed by the Law on the HJPC and its rules of procedure.³⁰⁹ Judges and prosecutors should be professionally impartial, of high moral standing and with the appropriate training and qualifications.³¹⁰ The procedure and criteria for appointing prosecutors are further detailed in the Rules of Procedure of the High Judicial and Prosecutorial Council.³¹¹ Article 46 specifies the criteria for ranking candidates, including their expertise, ability to analyse legal issues, ability to perform their duties responsibly, independently and impartially, professional impartiality and reputation, conduct outside of work, previous work experience, acquired knowledge and competencies, education and training, publication of scientific papers, communication skills, and other activities in their profession.

The appointment of prosecutors follows a multi-stage process and this process includes receiving and checking applications, conducting a qualifying written examination, interviewing selected candidates, a final ranking of candidates and submitting proposals to the council.³¹²

The HJPC law strictly prohibits performance of a duty incompatible with that of a prosecutor, or which may interfere with the fair and impartial execution of prosecutorial function.³¹³ However, the manner in which prosecutors are selected remains a subject of debate and differing interpretations. An analysis of the *Centre for Investigative Journalism* states that the most controversial aspect of the judiciary is the process of selecting and appointing judges and prosecutors.³¹⁴ The lack of transparency, particularly in ensuring political impartiality, prevents the selection of candidates who would stand out for their expertise, ethical standards and personal integrity. There is no regulation safeguarding transparency of all phases of the appointment process, and according to the Open Society Fund BiH analysis, one of the main problems is that the process has not been transparent and it is difficult, if not impossible, to analyse how the selection/appointment criteria have been implemented.³¹⁵

According to the law, the HJPC is the key institution responsible for the appointment, removal, training and disciplinary proceedings against prosecutors.³¹⁶ It plays a central role in ensuring the independence and professionalism of the prosecutorial service.

> INDICATOR 4.1.4

Independence (practice)

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

Score: 0/100

Members of the executive regularly and severely interfere with the appointment of the chief prosecutor and the activities of the prosecution by influencing appointments and asserting pressure via budget allocations.

Domestic and international reports consistently indicate a lack of improvement in the independence and impartiality of prosecutors' offices.

According to the Open Society Fundation report neither the constitutions nor the legislation defines what "independence" is.³¹⁷ Also, the laws do not provide for specific safeguards or measures to ensure the independence of the judiciary and autonomy of prosecution in practice, particularly in relation to the outside pressure that judicial institutions are subjected to. The European Commission's 2023 Report on BiH states that the independence and impartiality of the judiciary did not improve, despite the newly introduced amendments to the HJPC rules of procedure aiming at improving appointments.³¹⁸ Executive and legislative authorities failed to adopt additional safeguards.

The European Commission notes in its 2019 *Expert Report on the Rule of Law*, that this is particularly the case in the appointment of the chief prosecutors which was the situation during the process of appointment of the chief prosecutor of state-level prosecutor's office in 2022.³¹⁹ In that instance, there was only one candidate by the end and the entire process was staged.³²⁰ This was also the case during the process of appointment to the Republika Srpska Prosecutor's Office, where the HJPC appointed a candidate ranked last, on the pretext of ethnic balance.³²¹ The European Commission further notes that "rules on appointments, disciplinary responsibility, career advancement and conflict of interest of judges and prosecutors continue to be applied inconsistently and with overly broad discretion."³²² In July 2022, the US Embassy, the Office of the High Representative, the OSCE Mission to BiH and the Delegation of European Union to BiH sent a letter to the HJPC with concerns regarding the appointment process. According to the letter, the process of appointing the holders of judicial positions by the HJPC is carried out non-transparently and often arbitrarily, ranking lists are not respected and there are no concrete explanations for individual decisions on appointments.³²³

A contributing factor to a lack of independence is the fragmented financing of prosecutors' offices from the budgets of their respective administrative-territorial units (see 4.1.1). This arrangement creates the potential for inappropriate influence by the executive branch on prosecutors' offices. According to the report prepared by Open Society Fund, "There is a general perception among judges and prosecutors that planning and allocation of

budgets are not based on objective criteria. The process depends on informal, even personal relations between the responsible persons in the judiciary and those in the executive authorities."³²⁴

On the other hand, there exists a connection between the executive and judiciary, primarily through political influence on appointments to the highest judicial positions, including appointments of close relatives of prosecutors to political positions, such as the appointment of the husband of the deputy chief prosecutor Diana Kajmakovic of the state-level prosecutor's office as the director of a public enterprise wholly owned by the FBiH.³²⁵

GOVERNANCE

› INDICATOR 4.2.1 Transparency (law)

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

Score: 75/100

There is a comprehensive legal framework in place allowing the public to access information about the prosecutor's operations. However, there is no legal obligation for proactive publication of information.

The right to access information about the work of public authorities is guaranteed by three laws on freedom of access to information.

According to the Law on the Prosecutor's Office of Bosnia and Herzegovina, the office informs the public about relevant issues through the media and other channels of communications.³²⁶ Limits of transparency are defined and considering the procedures' interest, the office can share information about a particular case with the public and relevant stakeholders. Furthermore, all procedural laws are based on the principle of transparency, which serves as a guiding principle for judicial institutions (see 3.2.1.).

In 2018, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC) adopted rules on the submission, verification and processing of asset declarations of judges and prosecutors. However, its application was halted by a court decision that found its adoption illegal. As a result, asset declarations of judicial officeholders, including prosecutors, are only collected without additional verification.³²⁷ At present, judges and prosecutors may choose to publish their asset declarations on the HJPC website.³²⁸ According to the 2022 report, 211 out of a total of 1,358 judges and prosecutors gave consent for their annual asset declarations for that year to be published³²⁹ as stated in the HJPC's annual report.³³⁰

› INDICATOR 4.2.2 Transparency (practice)

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

Score: 25/100

While the public can obtain some relevant information on the activities of the prosecution via its websites, budget data as well as criminal record details are lacking.

Prosecutors' offices inform the public about their work through their websites and spokespersons who communicate with the media based on their requests.³³¹ Additionally, they prepare progress reports that are submitted to the HJPC that are then compiled and published as a summary annual report available to the public.³³²

Despite these efforts, relevant domestic and international reports indicate that the judicial system, including prosecutor's offices, remains insufficiently transparent with an inconsistent application of the Law on Freedom of Access to Information.³³³ Specifically, prosecutors' offices insist that the media file formal requests to access information, rather than responding proactively to media inquiries as part of their regular public relations activities.³³⁴

An analysis by TI BiH shows that 90 per cent of prosecutors' offices do not publish budget-related information on their websites, indicating an insufficient level of transparency. Only half of the prosecutors' offices publish and regularly update annual activity reports. In terms of the availability of information related to criminal cases, 5 out of 15 prosecutors' offices publish information about confirmed indictments either in full or in the form of a statement with the reasoning for the indictment. The remaining prosecutors' offices only publish a statement without providing the reasoning for the indictment on their website.³³⁵

> INDICATOR 4.2.3 Accountability (law)

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

Score: 75/100

Extensive provisions are in place to ensure that prosecutors have to report and be answerable for their actions. However, enforcement mechanisms are weak and inconsistent.

Prosecutors are required to report on their activities whilst being held accountable by the HJPC for any omissions. The Prosecutor's Office has to submit reports on its work to the HJPC. Additionally, the Prosecutor's Office on their own initiative or upon request updates the presidency, Parliamentary Assembly and the CoM on its operation and implementation of the law.³³⁶ At the end of each budget year, the chief prosecutor has to report to the Parliamentary Assembly and provide an overview of crime in the country.³³⁷

The HJPC is authorised to receive complaints against prosecutors, conduct disciplinary proceedings and call prosecutors to disciplinary account. (see 3.2.3)

> INDICATOR 4.2.4

Accountability (practice)

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

Score: 25/100

Despite scores of attempted reforms, accountability mechanisms have been almost completely dysfunctional in practice.

The accountability mechanisms of prosecutors do not function in practice. The Office of the Disciplinary Counsel (ODC) is responsible for investigating allegations of misconduct by prosecutors. Investigations may be initiated by the ODC on its own initiative or in response to a complaint. The most common reasons for complaints against prosecutors are negligent performance of official duties by prosecutors and the length of proceedings.³³⁸

Disciplinary actions have not had a significant deterrent effect. In 2022, the ODC received 840 complaints, including 76 ex officio complaints against judicial officeholders – a decrease of 9 per cent from 2021. Of these complaints, 262 complaints were against chief prosecutors or prosecutors. Out of 262 complaints against prosecutors, 10 resulted in disciplinary procedures launched.³³⁹ Of the 33 legally concluded disciplinary proceedings against judicial officeholders in 2022, 4 resulted in written reprimands without publication, 4 in public reprimands, 23 in salary reductions

and 2 in a demotion from chief prosecutor to prosecutor.³⁴⁰

Despite efforts to increase accountability through strengthening capacity, primarily through projects financed by international donors, numerous cases demonstrate a widespread lack of accountability. According to the 2019 European Commission *Expert Report on Rule of Law issues in Bosnia and Herzegovina*, there are inexplicable professional and legal errors, neglect, procedural misuse and dubious court rulings in high-profile cases with a lack of accountability for such mistakes.³⁴¹ Some of these cases allegedly include arrangements to reduce sentences or drop investigations for high-level drug smugglers and dealers, car thieves, etc., and many parts of the larger organised Balkan mafia networks (caught through Sky communications application only in the past couple of years).³⁴²

According to a 2021 Open Society Fund report, “[c]onsidering both the law and the practice of disciplinary liability, the overall system does not appear to serve their main purpose of ensuring accountability and serving as a deterrent in the daily work of judges and prosecutors.”³⁴³ The report suggests that the judiciary and prosecution are in a state of institutional capture.³⁴⁴ Similarly to the judiciary in 3.2.4, a strong case is made to question the integrity and accountability of prosecutors, which subsequently calls for a systemic review of these appointments.

> INDICATOR 4.2.5

Integrity mechanism (law)

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

- Score: 50/100

The Code of Prosecutorial Ethics outlines the fundamental standards of ethical conduct. According to the code, prosecutors must perform their duties in accordance with the principles of independence, impartiality, equality, integrity, expertise and accountability. While asset declarations are collected from prosecutors, no further verification is conducted.

The Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina defines 23 disciplinary offences for prosecutors subject to disciplinary proceedings. These include using the function of the prosecutor to obtain a benefit for oneself or another person, a breach of an obligation to behave properly with the parties in proceedings, exploiting the position of prosecutor in order to obtain an advantage, accepting gifts, engaging in the activities that are incompatible with the prosecutorial function, etc.³⁴⁵ Also, the HJPC has adopted a Code of Prosecutorial Ethics.³⁴⁶ According to this code, prosecutors must demonstrate independence from other branches of government (executive and legislative) in their work. They must also be impartial and respect the presumption of innocence, not only in their decisions but also in the process

of making them. Prosecutors are obligated to behave morally and with dignity and maintain integrity and proper behaviour in accordance with their function. They must maintain a high level of professional ability and perform their duties professionally, meticulously, diligently and efficiently. Violations of the principles of the Code of Prosecutorial Ethics, which lead to reputational and integrity damage and which are not prescribed as a separate offence, are listed as disciplinary offences in the HJPC law.

When applying for the position of prosecutor, candidates are required to submit an asset declaration statement to the HJPC. (see 3.2.5). According to the European Commission's *Expert Report on Rule of Law issues in Bosnia and Herzegovina*, the current system of gathering asset declarations without any verification is pointless.³⁴⁷ There is an immediate need to enhance this system as part of a more comprehensive integrity assessment

> INDICATOR 4.2.6

Integrity mechanism (practice)

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

- Score: 25/100

There is an absence of actions aimed at ensuring the integrity of prosecutors and misconduct mostly goes unsanctioned.

There is widespread consensus that the judiciary lacks sufficient integrity, as confirmed by relevant reports from international and non-governmental organisations.³⁴⁸ The European Commission's *Bosnia and Herzegovina Report 2023* states that it has amended the Law on High Judicial and Prosecutorial Council in 2023 with the aim of establishing a system to verify the asset declarations of judges, prosecutors and HJPC members. However, the adopted version of the law is not in line with the opinion of the Venice Commission, considering that the system of the verification of assets has been weakened, for example, by excluding the possibility for the HJPC to request additional information from natural and legal persons).³⁴⁹

There are also frequent instances of violations of ethical standards. In October 2021, the Chief Prosecutor of Bosnia and Herzegovina was demoted from his position due to disciplinary violations.³⁵⁰ Specifically, she was found to have intentionally manipulated the allocation of cases. In May 2022, the Chief Prosecutor of RS was also demoted to a lower position for similarly not following the automated process of case allocation in order to ensure the trusted prosecutors deal with selected cases.³⁵¹

However, the disciplinary commissions of the HJPC have a policy of imposing symbolic sanctions, even for the most serious violations of ethical standards. Sanctions typically involve a reduction in salary ranging from 10 to 20 per cent for a period of one to several months. According to the *2022 Annual Report of the ODC*, 23 out of 33 disciplinary sanctions were a salary reduction.³⁵²

While the Law on the HJPC requires judges and prosecutors to submit asset declarations, according to the *2022 Annual Report of the High Judicial and Prosecutorial Council*, 211 prosecutors permitted their asset declarations for 2021 to be published on the HJPC website, out of 1,358 judges and prosecutors.³⁵³

➤ INDICATOR 4.2.7

Gender

To what extent are the prosecution's mechanisms gender-sensitive?

➤ **Score: 25/100**

There are no explicit gender-sensitive protocols and guidelines in prosecutors' offices. Strategy for gender equality in the judiciary partially covers those issues.

According to the *2022 Annual Report of the High Judicial and Prosecutorial Council*, out of 358 appointed prosecutors, 183 are women and 175 are men.³⁵⁴ Beyond this, the official reports of judicial institutions do not provide gender-disaggregated statistics, such as the number of complaints filed by women or men or the time it takes to resolve complaints filed by either gender. Similarly to the judiciary, the disaggregated data exists, but it is not being published or offered in any public report.

In October 2020, the HJPC adopted the Strategy for improving gender equality in the judiciary of Bosnia and Herzegovina.³⁵⁵ (see 3.2.7.)

ROLE

› INDICATOR 4.3.1

Corruption prosecution

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

Score: 25/100

The public prosecutor offices are largely inactive in cases of grand corruption, investigations into corruption-related criminal offences have decreased and remain unsuccessful in penalising offenders.

According to a TI BiH report³⁵⁶ made on the basis of official statistics obtained from the HJPC, there was an increase in the number of indictments for corruption-related criminal offences in 2022 compared to 2022.³⁵⁷ However, out of the 175 confirmed indictments for corruption-related offences in 2022, not a single one is related to cases of grand corruption.

Furthermore, only 498 investigations into corruption-related criminal offences were conducted in 2022, representing a worrying drop compared to the previous year when there were 514 investigations. Of these investigations, 43 were related to grand corruption. The ratio of ongoing investigations for corruption-related criminal offences to the total number of ongoing investigations for all cases remains very low at only 2.9 per

cent. Additionally, the high number of negative prosecutorial decisions in resolving complaints and investigations for corruption-related criminal offences is particularly alarming. Out of 205 indictments for corruption-related criminal offences only 17, or 2 per cent, concern grand corruption.³⁵⁸

Yet, relevant surveys and reports from international organisations indicate the presence of systemic corruption, particularly political corruption.³⁵⁹ The selective willingness of the police, including at the state level, to cooperate with prosecutors in high-level corruption cases raises serious concerns about their independence and professionalism. Differences in views regarding the authority of the state-level prosecutor's office to issue instructions to entity prosecutors' offices hinder the effectiveness of the investigations and proceedings.³⁶⁰ In cases of high-level corruption inexplicable professional and legal mistakes, negligence, abuse of procedures and questionable court decisions have been observed, with seemingly no one being held accountable for these omissions that discredit the indictments (see 4.2.4).³⁶¹ According to an OSCE Report, indictments are unclear, ill-prepared, poorly presented and often incomprehensible.³⁶² Another TI BiH assessment found that indictments lack convincing evidence, that proceedings take too long, that trials are scheduled with extensive gaps between them and that institutions are unwilling to be transparent in the process and to share public documents.³⁶³

INTERACTIONS

According to the Law on The Prosecutor's Office of Bosnia and Herzegovina³⁶⁴ and the Law on Criminal Procedure,³⁶⁵ prosecutors have close cooperation with police structures and courts, as mandated by the laws and due to the nature of their work in combating corruption.

However, there are shortcomings in this cooperation, particularly between prosecutors' offices and law enforcement agencies, resulting in the rejection of indictments or acquittals due to poor or unlawful evidence. According to the European Commission's *Expert Report on Rule of Law issues in Bosnia and Herzegovina*, the relationship between prosecutors and the police is not effective in addressing crime.³⁶⁶ While the criminal procedure codes designate the prosecutor as the head of investigations, the police do not report directly to them.

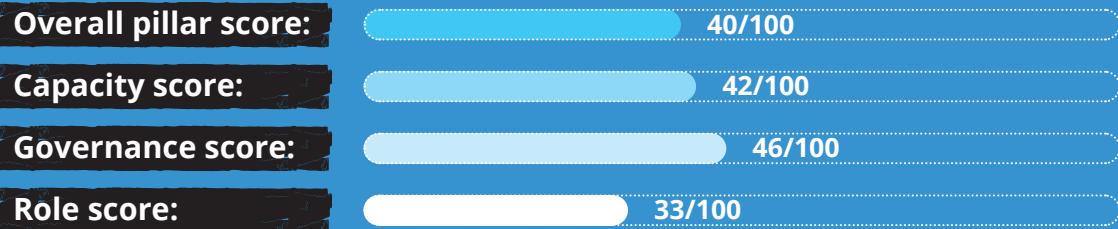
PILLAR RECOMMENDATIONS

Dedication and professionalism are essential during criminal prosecutions, effective investigations and the collection of solid evidence that can be used to sanction lawbreakers.

- The executive at all levels must secure timely and unconditioned financing of the prosecutor's offices to reduce the possibility of undue influence.
- The legislative branch needs to urgently adopt amendments to the Law on the High Judicial and Prosecutorial Council (HJPC) to improve the accountability and integrity of judicial officeholders, in line with the European Commission recommendations. This particularly means ensuring:
 - More transparent and merit-based appointments of judges and prosecutors through a new appointment system (see also vetting below).
 - Appropriate conflict of interest provisions in the new law that apply to members of HJPC and other holders of justice functions and elaborates on the illicit practices.
 - Provisions and procedures for asset declaration and verification of justice function holders, using the same conflict of interest legislation and subordinated internal acts.

- The legislative branch needs to provide legal mechanisms and resources for implementing independent vetting procedures for judicial and prosecutorial officeholders to examine their assets and potential links to politics and organised crime.
- The legislative branch needs to limit prosecutors' discretionary powers by amending criminal procedure law and to introduce monitoring mechanisms over their discretion to initiate or suspend investigations.
- The prosecutors' offices and law enforcement agencies need to improve cooperation in detecting and investigating corruption-related criminal offences by establishing joint investigation teams.
- Ample funding for regular training sessions must be provided in order to strengthen the capacities of prosecutors' offices to conduct complex financial investigations.
- The legislature needs to strengthen the independence of the Office of the Disciplinary Counsel by formally separating it from the HJPC, to increase the level of accountability of prosecutors.

5 > PUBLIC SECTOR



SUMMARY

Due to the complexity of the public sector's organisational structures, it is difficult to provide an assessment of this sector as a whole in terms of the legality, transparency, integrity and accountability of its actions. While the regulation of civil service/servants define the administration framework, public services, which make up a significant portion of the public sector (including public enterprises, public institutions in health care, education, etc.), are governed by a set of sector-specific regulations.

The legislative framework governing the legality, transparency, integrity and accountability of the public sector is relatively sound. However, in practice, there are numerous shortfalls with its implementation. Although public sector structures are generally sufficient for unhampered performance, there is a need to

further enhance integrity, accountability and public procurement. The majority of public sector employees are still not required by law to disclose their personal assets and financial status, making it difficult to prevent conflicts of interest. The freedom of access to information law is still poorly enforced, with one notable problem being a lack of provisions on proactive transparency. Despite recent progress and developments in the procurement system, such as further harmonisation of domestic regulations with the *acquis* and the operationalisation of the state-level public procurement portal, that practice remains subject to numerous abuses. Due to inadequate communication of existing policies and the absence of reporting on their implementation, integrity and accountability of public sector employees remains a grey zone.

CAPACITY

> INDICATOR 5.1.1

Resources (practice)

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

Score: 50/100

The public sector has some resources covering salaries and related costs, but there are still significant gaps and scarce budget resources for infrastructure investments and training.

Budgets at all levels of government in the country are still insufficient to ensure proper functioning and meet the needs of the public sector. This is undoubtedly due to the country's complex constitutional structure, which spills over into the organisation of the entire public sector, expanding it to a great degree. According to the World Bank estimates, BiH had a fiscal deficit of between 1 to 2.5 per cent of GDP in 2020, 2021 and 2022.³⁶⁷ These trends were influenced by pre-election investments and spending and the World Bank predicts that these balances will equalise post-election in 2023.³⁶⁸ Almost 30 per cent of all employees in the country work in the public sector.³⁶⁹

In 2018, the public sector wage bill accounted for 25.3 per cent of overall government expenses, while investments received only

6.8 per cent, which is lower than the Western Balkans average.³⁷⁰ Furthermore, available data for the state level shows that training expenditures in proportion to the annual wage budget were only 0.05 per cent, which is another deterrent for young professionals to join.³⁷¹ Although public sector salaries are still higher on average than those in the private sector, the entire workforce is increasingly unable to meet a decent standard of living, not least due to the aforementioned inflationary trends.³⁷² All in all, considering a high degree of perceived politicisation and partisanship and the pervasiveness of clientelism and nepotism in the public sector, this is not a particularly attractive career choice for young, educated and ambitious individuals (see 5.1.3).

As a result, it appears that the downward trend in public sector service quality documented in the earlier National Integrity System studies continues. There is a marked discrepancy between public sector costs and service quality. According to the *World Bank's Ease of Doing Business Index*, BiH ranks worst among Western Balkan countries in terms of business-related bureaucracy.³⁷³ Furthermore, according to *Gallup World Poll Surveys*, only half of its citizens are satisfied with education and public health care services. The situation appears to be even worse when it comes to public administration service delivery. In 2021, only 30 per cent of citizens were satisfied with the quality of administrative services.³⁷⁴ Furthermore, with the sole exception of the strategic framework for public administration reform, BiH falls far behind Western Balkan countries when it comes to the implementation of public administration principles as part

of the country's EU integration path.³⁷⁵ This is especially true of the quality of services provided by the administration.

> INDICATOR 5.1.2

Independence (law)

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

Score: 50/100

While the civil service legal framework provides for an objective and fair recruitment and promotion process, as well as the appropriate protection of civil servants from undue interference, the legislation either lacks human resources management or defines it poorly.

The status, rights and obligations of civil servants at different levels of government are governed by special regulations of civil service.³⁷⁶ The legal and institutional framework for civil servants provides for an objective and fair recruitment and promotion process, as well as the appropriate protection of civil servants, including senior civil servants, from undue political or other interference. The recruitment of civil servants is based on the concept of public advertising of vacancies and the implementation of competitive procedures by civil service agencies established at different levels, which are statutorily independent and separate from the executive branch. However,

at some levels, the regulations permit the majority of selection commission members to be from the very service/department where the candidates are to be employed, thus defeating the purpose of the civil service agency. Performance appraisals and civil servant evaluations are governed by laws and implementing regulations.³⁷⁷ Unlike civil servants, the status, rights and obligations of employees in public services (health care, education, culture, social services, etc.) are governed by separate, sector-specific regulations that govern the provision of these services to citizens, which fall short of properly addressing important issues such as employee independence, open and transparent recruitment procedures, etc.³⁷⁸

The 2019 enactment of a special regulation on the procedure for public sector recruitment in FBiH, which extended the obligation to implement open recruitment procedures to the entire public sector in FBiH, may be viewed as a positive development.³⁷⁹ Because there is no such regulation in RS, the organisation and implementation of recruitment and promotion of employees in public services in RS are left to the management of these organisations, resulting in a large number of positions being filled arbitrarily, without competitive or systemic recruitment procedures (see 5.1.3).

Procedures for electing and appointing management in public services (directors and members of governing and supervisory boards) require mandatory public advertising of vacancies and selection of the best candidates but leave broad discretionary powers for laying down requirements/criteria and implementing

procedures that reduce public job competition to a mere formality, with positions ultimately filled through coalition agreements of political parties.³⁸⁰

Finally, differences between civil servants and employees in public services also exist in the range of recourse options available for the protection of their rights. In addition to the institutions in which they are employed and the courts, civil servants, unlike employees in public services, may seek recourse before the civil service boards as the second-instance authority. These bodies review the status of civil servants³⁸¹ upon request of a civil servant who participated in a public competition or that of the institution in which the civil servant exercises their functions.³⁸²

> INDICATOR 5.1.3

Independence (practice)

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

Score: 25/100

The government interferes with the activities of the public sector most notably through political interference in recruitment and promotion procedures, especially regarding managerial appointments and dismissing.

Changes in government at the executive levels do not result in major changes in the composition of civil servants and employees in public services who are not in managerial positions. These categories of employees are largely protected by existing regulations (see 5.1.2). However, changes in government at any executive level very often entail changes in management structures in public services (directors, members of governing and supervisory boards), as well as in a large number of advisory and similar positions that are not regulated by law, making these positions effectively available to the election winners. Moreover, there is no secrecy surrounding this practice as the division of political appointments is open and transparent.³⁸³ A large number of dismissed managers have filed lawsuits challenging the legality of their dismissal by the newly formed governments. Such lawsuits are typically resolved in favour of managers, who receive hefty damages for wrongful dismissal.³⁸⁴ (see 5.1.2). Appointments are made without procedures and for brief interim terms, making such appointees extremely susceptible to the influence of the executive.³⁸⁵

In FBiH, while public competitions are required by law for all public services, the problem lies in the definition of criteria for candidate selection, with an overemphasis still placed on the candidate interview as a highly subjective and unreliable means of gauging the candidate's abilities.³⁸⁶ In RS, as there is no legal requirement to hold public recruitment competitions in all public services, the risk of post-election or pre-election reshuffles remains very high.

Political interference in recruitment and promotion procedures is prevalent at all levels of government and there are no protective mechanisms in civil service regulations to prevent "preferred candidates" from being hired.³⁸⁷ Moreover, the very managers of civil service agencies, which are supposed to ensure a legal, impartial and objective selection of candidates, are appointed politically, indicating a lack of independence on the part of these management structures from the political and executive levels. Although mandated by laws and codes of conduct, political impartiality of civil servants has not been attained in practice because the mechanisms for controlling and sanctioning civil servants, and reporting to parliaments and the public have not taken hold within the administration. Undoubtedly, one of the causes of this problem is the politicisation of the entire public sector.³⁸⁸ According to the TI BiH informed estimates, around 90 per cent of civil servants have been hired as part of clientelist networks of the political parties.³⁸⁹ The rationale behind such a selection is the understanding of the ruling elites that the public sector serves the interest of clientelist mobilisation of voters as public resources are offered in exchange for votes (of recruited individuals and their families/friends).³⁹⁰

GOVERNANCE

› INDICATOR 5.2.1 Transparency (law)

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

Score: 25/100

Several laws require general transparency including declarations of assets, but they do not cover all public position holders while at the FBiH level there is no delegated enforcement institution. Freedom of information laws are in place, but lack proactive transparency mechanisms.

Proactive transparency is not comprehensively regulated by freedom of information legislation.³⁹¹ The state-level freedom of access to information law lacks most of the commonly accepted elements of proactive disclosure, so it comes as no surprise that some organisations/institutions take a haphazard approach to this type of transparency (see 5.2.2). Despite the existence of a legal framework, there are no effective institutional mechanisms in place to monitor the implementation of freedom of information laws and to impose sanctions for violations. The legislative framework needs to be aligned with international and EU standards.³⁹² The lack of a harmonised legal framework at the state and entity levels is a

major impediment to the consistent exercise of this right at all levels of government. While the state-level law meets the minimum requirements for implementation, including misdemeanour sanctions for non-compliance for both the authority and the responsible person within the authority, the entity laws do not provide for such sanctions. Furthermore, overstepping its authority, the RS government issued a conclusion declaring that the RS Law on Freedom of Access to Information does not apply to the minutes of the RS government sessions, that is, that the minutes are not public documents.³⁹³

Rules requiring annual activity reports by the public sector institutions (for example ministries, public enterprises, public hospitals, and schools) and their review by the competent authority (for example assemblies, governments, sectoral ministries, and management boards) still apply to the vast majority of public sector institutions.

The transparency of public procurement is regulated by the public procurement law that requires the public sector to conduct public procurement procedures fairly and transparently, and to treat bidders equally and without discrimination.³⁹⁴ The law is partially aligned with the EU *acquis* but in fewer technical details.³⁹⁵ It establishes a reasonably good basis for transparent public procurement procedures by requiring the public sector to publish public procurement plans and procurement notices, including tender documentation and the outcomes of the procedures.³⁹⁶ Also, Article 75 of the law mandates the publishing of the essential elements of awarded contracts and

information on contract execution.³⁹⁷

➤ INDICATOR 5.2.2

Transparency (practice)

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

Score: 25/100

Due to the insufficient regulatory and institutional framework public is not able to obtain relevant information on public sector activities. This especially applies to the decision-making process in public procurement procedures and information on assets, income and financial interests of public sector employees.

The disclosure and then publication of information on assets, income and financial interests of senior public sector employees, except of those who gain mandates in accordance with the election law, is still not common practice for several reasons. Firstly, due to the absence of an enforcement authority, the law in FBiH is not implemented at all in the asset and interest disclosure segment, because the individuals subject to this obligation have no institution to declare their assets and interests to, while in RS the law does not cover all managerial positions in public sector.

At the state level, regulatory and institutional deficiencies also hinder asset and interest disclosure. Specifically, the state-level commission on conflicts of interest is not fully operational, as described in 1.2.6.³⁹⁸ Another problem is the continued lack of public registers of individuals serving in governing and supervisory boards (and recently also audit boards), making it impossible to discover related financial interests within the public sector and the influence of political parties over them. Furthermore, civil servant registers, which should include information on civil servants' assets and interests, have yet to be established and are consequently unavailable to the public. The operationalisation of the public procurement portal in 2014 has somewhat increased the transparency of public procurement but still remains insufficiently transparent. The most oft-cited obstacles to procurement transparency are the failure to publish public procurement plans and low-value procurement plans, and the overuse of negotiation procedures without publication of a procurement notice.³⁹⁹ The minutes and reasonings of the commissions established by the contracting authorities to evaluate bids remain unavailable to the public.

It is still common practice for vacancies in public services to be advertised in local and regional newspapers that are not read in the areas where the vacancies are available, or in official gazettes that are not read by the majority of citizens, indicating an unfair and opaque recruitment process in public services. Vacancies in the civil service, on the other hand, are advertised transparently, including on the websites of the civil service agencies.⁴⁰⁰

› INDICATOR 5.2.3

Accountability (law)

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

Score: 75/100

Extensive provisions are in place which ensure that public sector employees have to report and be answerable for their actions. However, gaps exist in terms of the scope of whistleblower protection laws while auditing requirements for the public sector remain insufficient for effective control from the legislation.

There are specific provisions in place requiring public sector agencies to report to the legislature.⁴⁰¹ Furthermore, in accordance with the laws on public sector audits, the supreme audit institutions are authorised to conduct various types of audits of public sector agencies and organisations.⁴⁰² However, because there is no statutory requirement to regularly audit the entire public sector, many public sector organisations rarely undergo such audits. Also, there is no requirement for legislators to consider and discuss the reports of supreme audit institutions.

Whistleblower protection is governed by the Law on Whistleblower Protection in the Institutions of BiH and the Law on Whistleblower Protection in RS. No such law

exists in FBiH. The legal details are discussed in 2.2.5.

There are mechanisms in place whereby citizens and businesses can report or complain against civil servants if they are dissatisfied with their services or believe that they have been subjected to extortion, abuse of position or other corrupt conduct. These mechanisms range from the right to appeal against individual acts issued by public sector institutions to external models such as reports to inspectorates (administrative, labour, budget, health, educational, etc.) and, ultimately, to the police and prosecutors' offices. Also, many public sector institutions use complaint boxes or complaints books as a means of gauging user satisfaction and these mechanisms are increasingly being implemented online.

› INDICATOR 5.2.4

Accountability (practice)

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

Score: 25/100

Reporting and sanctioning of public sector misbehaviour are rare, including in public procurement.

Cases of public sector employees being held accountable for malpractice with disciplinary or other actions taken and sanctions enforced are highly uncommon. According to the answers to the European Commission questionnaire, in 2016 there was not a single case of a senior or lower-ranked civil servant⁴⁰³ being dismissed from the civil service at all levels as a result of disciplinary action.⁴⁰⁴ Most sanctions are disciplinary in nature, such as salary deductions and suspension. However, even these are very rarely imposed.⁴⁰⁵ The public sector practically never reports on the number of complaints received and the number and outcome of any disciplinary measures taken against public sector employees.

Despite being in place, public sector oversight mechanisms continue to be ineffective. Reporting corruption in the public sector remains extremely rare. At the state level, the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (APIK) granted administrative protection to

whistleblowers in two cases out of three requests in 2021, compared with zero in 2020.⁴⁰⁶ In 2019, APIK approved one such request. In RS no request for protection to whistleblowers was filed in 2021, compared with one request filed and partially upheld in 2020.⁴⁰⁷ From 2013 to the end of 2019, APIK had denied 13 of 24 whistleblower status requests.⁴⁰⁸ The fact that so few individuals have been granted whistleblower status is indicative of an endemic lack of trust in existing protection mechanisms.⁴⁰⁹

> INDICATOR 5.2.5

Integrity mechanisms (law)

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

Score: 75/100

Conflict of interest regulations, including for procurement processes, are in place but the civil service lacks systemic harmonised laws and regulation, while the public sector remains largely without regulation on the integrity of its employees.

Conflict of interest laws govern the prevention of conflicts of interest, accepting gifts, using services, etc. in cases involving elected officials, executive officeholders and advisers in government institutions, whereas laws on civil

service and ethical codes for civil servants spell out their duties and responsibilities as regards prevention of conflicts of interest, political and other neutrality, accepting gifts and other benefits, prohibition of bribery, prohibition of unauthorised use of official property, use of official information, etc.⁴¹⁰ The laws and codes prohibit civil servants from engaging in entrepreneurial or other registered commercial activity. Additionally, specific disciplinary action regulation governs the initiation of disciplinary and other actions against civil servants in cases of suspected violations of the laws and ethical codes, including the imposition of sanctions for civil servants.⁴¹¹

When entering the service, civil servants sign a statement that they are aware of the provisions of the code and these statements are stored in their files. The content of these policies however remains essentially at the level of principles and there are no explicit reporting obligations. Differences between civil servants and employees in public services exist in how applicable laws address their professionalism, objectivity and impartiality, since there is no single piece of legislation governing these in public services, effectively leaving it to the discretion of the management of these services to decide whether to adopt codes of conduct or any comparable regulations.⁴¹²

Sectoral regulation governing the work of public services (for example, laws on public enterprises, health care, education, etc.) do not provide uniform standards defining such prohibitions, nor are there uniform codes for these categories of employees. Also, sectoral laws do not require public services to put their

own policies such as ethical codes in place.⁴¹³ Of particular concern are the imprecise provisions that govern the issues of supplementary – outside working hours – practices in specific professions such as health or educational services.⁴¹⁴

The declaration of personal assets and interests by officeholders in the public sector whose status is not governed by the regulations on civil service is governed by the Law on Conflict of Interest in Governmental Institutions of BiH and the Law on Prevention of Conflict of Interest in Government Authorities of RS.⁴¹⁵ The Law on Conflict of Interest in Government Authorities in FBiH has not been enforced since its adoption due to the absence of an institution charged with its implementation.⁴¹⁶ According to the state-level law,⁴¹⁷ the obligation to submit asset declarations applies to a relatively large number of managerial positions within the public sector, but not all managerial positions.⁴¹⁸ These officials are required to submit regular financial reports to the Commission on Conflicts of Interest. The state-level law lacks clear provisions on the submission and administration of asset declarations, as well as detailed restrictions on ownership of private companies that do business with the government.⁴¹⁹ The conflict of interest law in RS has a very limited reach⁴²⁰, because the obligation to declare assets does not apply to managers of public services.⁴²¹

The public procurement law includes specific provisions that aim to ensure the integrity of public procurement operations and the civil servants involved in them. Thus, Article 52 of the law spells out in great depth the obligations

of contractual authorities and representatives of contractual authorities in connection with the prevention of conflicts of interest in public procurement. Any contract concluded in contravention of conflict of interest provisions is considered null and void. Also, bidders who submit bids in public procurement procedures must submit a verified anti-corruption statement.⁴²²

› INDICATOR 5.2.6

Integrity mechanisms (practice)

To what extent is the integrity of public sector employees ensured in practice?

- Score: 25/100

Public sector employees and especially the general public are underinformed about rights and obligations in upholding integrity, while misuse of public sector employees and official property in election campaigns remains widespread.

Public sector corruption is still perceived as pervasive. The Regional Cooperation Council's study *Balkan Barometer 2020* indicates an upward trend in the general public's perception of corruption in the public sector in Western Balkan countries, including BiH, particularly in the police and health care sectors.⁴²³

The disclosure of information on assets, income and financial interests of public

sector employees, except for those who gain mandates in accordance with under Election Law is still not common practice for the reasons discussed in section 5.2.2.⁴²⁴ In terms of the integrity of public sector employees, there is a marked disparity between statutory rules and what happens in practice. These policies or reports on implementation are rarely found on the websites of public sector institutions. Citizens, businesses and public sector employees thus, are all unfamiliar with integrity policies, as well as their rights and obligations stemming from these policies, because these policies are poorly communicated by the public sector (see 5.3.2). As a result, only very few complaints are filed, actions taken or disciplinary and other sanctions imposed on public sector employees who violate integrity policies.

Although they receive some training on strengthening integrity and preventing corruption, public sector employees are still underinformed about their rights and obligations. In the absence of comprehensive integrity management training courses organised and administered by civil service agencies, training is frequently undertaken by international projects or organisations.⁴²⁵ PPA organises training for public procurement officers following the Public Procurement Law and the Rules on Training for Public Procurement Officers, and these courses are regularly available to the public sector. However, a review of the training content and curricula available on the PPA's website⁴²⁶ reveals that the topics of integrity and accountability in public procurement are not adequately covered, as the training focuses

on the technical aspects of conducting public procurement.

According to the CSOs engaged in election campaign monitoring, there is widespread misuse of public sector employees and official property in election campaigns.⁴²⁷ Effective implementation of integrity policies remains a challenge for many reasons, including a general lack of transparency in the public sector and the fact that public sector employees and organisational units, as well as external oversight mechanisms (e.g. auditors, inspectors) and CSOs, are often uncertain as to what situations or circumstances, for example, constitute a conflict of interest.

› INDICATOR 5.2.7

Gender

To what extent are the Public Service's mechanisms gender-sensitive?

- Score: 25/100

Gender-sensitive protocols and guidelines exist to some extent, with only partial implementation, while gender-disaggregated data are only partially available.

The concept of gender mainstreaming has yet to take hold in policy-making and implementation, including in the public sector. With the exception of the police, health

and social protection sectors,⁴²⁸ and mostly regarding domestic violence cases, other segments of the public sector do not have gender-sensitive protocols, guidelines or other instruments in place.

The collecting and processing of gender-specific data is still in its infancy and the public sector does not typically produce gender-disaggregated data. Gender-responsive statistics, analyses and research are still missing.⁴²⁹

Under rules of engagement and similar policies, some public sector organisations, such as the police, social services and health care, ensure that female officers are available at all times to provide services to women and girls, where necessary (see chapter on law enforcement).

ROLE

› INDICATOR 5.3.1 Public Education

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

- Score: 25/100

The public sector has failed to communicate anti-corruption policies to the general public showing that the fight against corruption is far behind its priorities.

Although the public sector has put in place various mechanisms for reporting corruption, such as complaints offices, hotlines, boxes, anonymous web-based applications, etc., the number of reports remains negligible as stated above.

The public sector only sporadically provides training on integrity and corruption, but these courses are designed solely for civil servants and not for businesses or the broader public. Furthermore, high-level support is inconsistent and rarely brought up outside of election campaigns. As reported in the Review of the Level of Implementation of the Anti-corruption Strategy and Action Plan 2015-2019,⁴³⁰ 7 seven of 45 activities planned under the action plan's strategic fourth objective which focused on raising public awareness and promoting the

need for the participation of the entire society in the fight against corruption were actually implemented and this strategic objective has not been achieved.⁴³¹

> INDICATOR 5.3.2

Cooperate with public institutions, CSOs and private agencies in preventing/ addressing corruption

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

Score: 25/100

Cooperation and coordination within the public sector in fighting corruption are very weak, while cooperation with CSOs and the business community is uncommon, with deterioration trends in recent years due to further efforts to exclude CSOs from the policy-making process.

As is the case with most policies, coordination mechanisms within the public sector are very weak.⁴³² The regulatory and strategic framework for combating corruption continues to be fragmented.⁴³³ The conspicuous lack of participation by high-level public sector officials and political figures in anti-corruption efforts and initiatives continues to be a source of concern.

Examples of successful cooperation between public sector agencies and CSOs are uncommon. The cases of cooperation, such as that between the Public Procurement Agency and CSOs in the public procurement monitoring project *Make Public Procurement Public* are typically initiated by CSOs with financial support from international projects or organisations.⁴³⁴ Once projects are completed, there is no sustainability.

An example of efforts of the public sector to remove CSOs from the policy-making process was in the process of drafting a Law on Special Register and Transparency of Non-profit Organisations by the Ministry of Justice of RS, according to which CSOs financed from foreign sources will be prohibited from any participation in public policy making in the RS.⁴³⁵

> INDICATOR 5.3.3

Reduce Corruption Risks by Safeguarding Integrity in Public Procurement

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

Score: 50/100

Although the law establishes a solid framework for fair and transparent public procurement, mostly aligned with EU directives, authorities continue to ignore public procurement principles and rules due to an absence of accountability and inadequate judicial response.

The Public Procurement Law requires all contracting authorities to act transparently and treat bidders equally and without discrimination in public procurement procedures, in a manner that ensures fair and active competition. In accordance with this principle, the law generally provides that contracting authorities are required to use open or restricted public procurement procedures as default procedures.⁴³⁶ At the same time, the law allows for the use of other, less transparent procedures, subject to fulfilment of the specifically defined legal requirements relating to the estimated value of the contract or other factors that warrant their

use.⁴³⁷

The requirements for participation in public procurement procedures and the selection criteria are defined by contracting authorities, within the framework defined by the law. These are limited to bidder requirements and evaluation criteria regarding the subject-matter of the procurement, in terms of its value, complexity, etc. The law does not regulate the very important matter of contract execution, because it is governed by general rules on contractual obligations, specific technical and financial regulations, etc. Neither the law nor the implementing regulations include specific provisions on the separation of tasks at various phases of public procurement procedures. In practice, particularly with smaller contracting authorities, this results in situations where some of the critical phases of procurement procedures are performed by the same staff, such as participation in the public procurement commission and participation in the implementation of the awarded contract.

The institutional framework for public procurement is made up of the Public Procurement Agency and Procurement Review Body, as autonomous bodies that are independent of contracting authorities. The agency acts as the central procurement agency and is responsible for regulating and monitoring the public procurement system at the central level.⁴³⁸ The review body is the second-instance authority deciding on appeals in public procurement procedures,⁴³⁹ whose decisions can be challenged in administrative litigation before the Court of BiH.⁴⁴⁰ Given the agency's growing role in monitoring public

procurement and the steadily increasing number of complaints received by the review body, there is a need to expand the administrative and personnel resources of these two institutions,⁴⁴¹ as noted in the *European Commission's Bosnia and Herzegovina 2022 Report*⁴⁴² and the agency's and review body's annual reports.

Although the appeals mechanism for public procurement procedures has been put in place, holding managers or other officials in contracting authorities to account is still non-existent. According to the 2021 activity reports of the review body, there has been a steady increase in the number of complaints in public procurement procedures over the years, with the review body receiving as many as 3,868 complaints in 2020.⁴⁴³ The control of activities related to public procurement does not provide effective oversight in practice. The capacities of the agency and the review body are insufficient to ensure timely and effective oversight.⁴⁴⁴ This particularly concerns the exceeding of time limits within which the review body is required to decide on appeals and the implementation of legal opinions presented by the Court of BiH in appeals procedures against review body decisions.⁴⁴⁵

The transparency of public procurement procedures has improved following the launch of the public procurement portal in 2014.⁴⁴⁶ Contracting authorities must use this portal⁴⁴⁷ to implement all public procurement procedures, which include publishing procurement notices, bidding documentation including any clarifications or corrections, as well as posting contract award notices.⁴⁴⁸ The

newly established requirement to publish public procurement plans, minutes of bid openings and other documents on this portal is expected to increase the transparency of public procurement procedures even further.

While the law has laid the groundwork for fair and transparent procurement, the actual practice diverges widely from the proclaimed principles and rules. Supreme audit institutions and CSOs have documented numerous instances of misconduct and wrongdoing in public procurement, including those that occurred during the COVID-19 pandemic.⁴⁴⁹ By laying down discriminatory selection criteria and distinctive technical specifications, contracting authorities blatantly break public procurement principles and rules. Such misconduct rarely receives an adequate judicial response. Notable exceptions include the proceedings taken against the FBiH Government for the procurement of ventilators in 2021⁴⁵⁰ and against the RS Institute of Public Health for the procurement of protective equipment in 2022.⁴⁵¹

Correspondingly, a cause of concern is the consistent drop in the number of open bidding procedures. According to the agency, the average number of eligible bids in open bidding procedures in 2022 was 1.93⁴⁵² down from 3.2 just a few years prior.⁴⁵³ Such data and negative trends confirm the bidders' decreasing trust in the country's public procurement system.

According to the 2023 activity reports of the review body, there has been a steady increase in the number of complaints in public procurement procedures over the years, with

the review body receiving as many as 3,721 complaints in 2022.⁴⁵⁴

INTERACTIONS

The integrity and accountability of public sector employees, as well as their performance, are heavily dependent on public sector recruitment methods, employee performance appraisal and progress review, and public sector employee supervision. As the analysis of this pillar has already shown, throughout the entire public sector these processes are severely hampered by shortcomings in the regulatory framework and even more so by deficiencies in implementation practices (see 5.1.1 & 5.2.2).

For multiple reasons, the executive branch is the most important point of interaction for this pillar within the National Integrity System. First, various executive branch agencies such as civil service agencies, public enterprises, public institutions, etc. are responsible for implementing established policies throughout the public sector. Second, within the framework of the accountability system, the entire public sector informs, reports and is answerable for its work directly to executive officeholders. Third, based on these inputs, the executive develops policies for the public sector as a whole. The level of interaction and communication between the public sector and the executive is reduced to the formal submission of reports and other documents, with no meaningful influence on policy formulation and implementation.

Anti-corruption agencies are another point of interaction for the public sector. This in particular includes the development, implementation and monitoring of the implementation of specific anti-corruption and integrity policies. Regardless of how they are organised, these agencies do not fulfil their coordinating role at their respective levels, resulting in fragmented approaches to the development and implementation of integrity policies in the public sector.

PILLAR RECOMMENDATIONS

The recommendations presented here relate specifically to the public administration/civil service, as the public sector in the larger sense also captures various other institutions such as health, education etc. that have not been examined by this pillar.

- Put in place a credible legislature followed by an institutional framework for the prevention of conflicts of interest, in accordance with the Group of States against Corruption (GRECO) recommendations:
 - Broaden the range of persons to whom the laws will apply.
 - Establish conflict of interest commissions that are independent of the executive.
 - Introduce a requirement for public officeholders to submit asset declarations.
 - Establish effective control by expanding the powers of conflict of interest commissions to check data from asset declarations and introduce dissuasive misdemeanour sanctions.
 - Restrict simultaneous performance of several public functions.
- A joint effort is required between the executive at all levels and the relevant international agencies to conduct a functional top-down review of the public sector, which

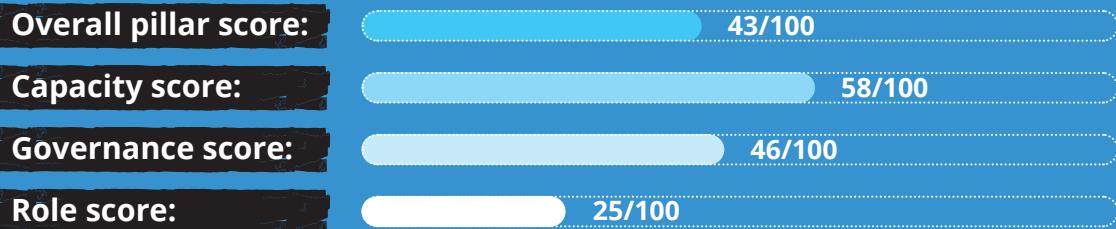
should result in a detailed reform agenda with quick wins and strategic long-term objectives. The aim is to separate the public administration from the tight grip of the political parties.

- CoM and the governments of FBiH, RS and BD should improve the functioning of formal co-ordination mechanisms for both policy planning and policy development.
- Civil service agencies should ensure the interoperability of human resource management systems and prepare periodic reports on the civil service as a means of monitoring and improving the systems in place.
- Parliaments at all levels should adopt amendments to legislation related to the recruitment of civil servants to guarantee the professional composition of selection panels free from undue political influence, the appointment of first-ranked candidates to fill non-senior civil service vacancies and clear rules for positive discrimination when it applies.
- Implementation of integrity measures in the civil service should be enhanced based on risk assessment. It should be monitored. The law in both entities and state-level needs to prescribe the institution tasked with the collection of declarations, their monitoring and reporting. The civil service agency must ensure better communication of accountability and integrity policies within the public sector

and to businesses and the general public to stimulate their demand, and it should provide onboarding to new staff and ongoing training sessions for all on the implementation of these policies and related reporting.

- The parliaments should harmonise the freedom of information legislation throughout the country by improving provisions on proactive transparency (mandatory publication of information on official websites and/or central portals) and introducing deterrent fines for irregular behaviour.
- FBiH should adopt a whistleblower protection law and the laws at the state and RS levels should be updated by broadening the range of offences that can be subject to protected reporting.
- Procurement and contracting should be advertised centrally, using the existing platform, because only a digital system in compliance with the EU procurement standards guarantees sufficient transparency and integrity.

6 > LAW ENFORCEMENT AGENCIES



SUMMARY

The system of law enforcement agencies is complex. At the state level, it includes agencies operating under the Ministry of Security such as the official state police agency of Bosnia and Herzegovina, the State Investigation and Protection Agency (SIPA), the Border Police (BP), the Directorate for Coordination of BiH Police Bodies (DCPB), the Service for Foreigners' Affairs, the Agency for Forensic Examination and Expertise, the Agency for Education and Professional Training, the Agency for Police Support, the BiH Intelligence and Security Agency (ISA), and the Indirect Taxation Authority (ITA). At the entity level, it includes the FBiH Ministry of the Interior (FBiH Mol), the RS Ministry of the Interior (RS Mol) and the BD Police. At the cantonal level, it includes 10 cantonal interior ministries in FBiH that report to their respective cantonal governments rather than the central FBiH Mol. Also, at the entity level, there are tax administrations responsible for levying and collecting direct taxes. The Financial Police, which reports to the FBiH Ministry of Finance, is responsible for overseeing and enforcing tax compliance on the territory of FBiH. Similar is the case in

the RS. Prosecutor's offices are analysed as a separate pillar in this report.

To make this analysis manageable this pillar report focuses on state and entity-level law enforcement.

Corruption persists and political influence on law enforcement agencies appears blatant. Specifically, there is a need to address issues of corruption and organised crime, which can undermine law enforcement efforts and public trust. In addition, inter-ethnic tensions and political divisions pose challenges for maintaining a unified and effective police force. Also, owing to the country's extraordinarily intricate administrative and constitutional structure, collaboration among law enforcement agencies remains limited. Legislative inconsistencies across all levels of government continue to impede substantial progress. Furthermore, the executive and judiciary need to work together in particular to prevent and address cases of grand corruption, which are widespread but rarely sanctioned.

CAPACITY

> INDICATOR 6.1.1

Resources (practice)

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

Score: 50/100

The budget's weaknesses include resource gaps, budget transparency issues and dependence on temporary financing. However, there are positive aspects, such as budget increases and salary stability/improvement, demonstrating some commitment to supporting law enforcement agencies in Bosnia and Herzegovina.

The budget of the State Investigation and Protection Agency (SIPA) has increased overall in the last three years.⁴⁵⁵ However, no information or documents on the SIPA's budget for 2021 are available. Since the beginning of 2021, state institutions have been operating on temporary financing decisions, which only enabled financing of the basic fiscal needs and external debt, but not the implementation of important projects.⁴⁵⁶

At the entity level, according to the FBiH MoI Work Report on 2022, there have been activities left as not implemented, due to insufficient budget.⁴⁵⁷ One such activity was the

implementation of training in the fight against corruption. What is common amongst these reports is that there are certain activities left not implemented as their dynamic depends on the adopted legal solutions or legal procedures as well as on the available financial resources.⁴⁵⁸ While the competences and obligations of law enforcement agencies across the country are nearly comparable, it is safe to argue that due to the aforementioned disparities, the budgets of lower tiers of government are insufficient to enable the agencies to carry out their duties effectively.

Local level case study: As an illustration for the local level, the budgets of two cantons will be examined, specifically the Sarajevo Canton (SC) and the Zenica-Doboj Canton (ZDC). In 2022, SC has an adopted budget of BAM1.2 billion (€614 million). The SC MoI's budget is estimated to be around BAM130 million (€66 million), of which 54 per cent is earmarked for wages and other forms of employee pay (SC MoI and SC MoI Police Administration).⁴⁵⁹ The ZDC budget for 2022, on the other hand, has been set at about BAM477 million (€244 million), with approximately BAM56 million (€ 29 million) earmarked in total for the ZDC MoI and the ZDC MoI Police Administration. A wide disparity in planned expenditures exists between these two agencies, with the ZDC MoI allocating 61 per cent of its budget for employee salaries and the ZDC MoI Police Administration as much as 82 per cent.⁴⁶⁰

At the state level, salaries have increased between 2019 and 2022. Even though the

2020 budget was 4 per cent lower than the 2019 budget, expenditures for employee salaries remained the same in 2020 as it was in 2019. On the other hand, the budget for 2022 increased by about 7.5 per cent, as did the budgeted expenditures for employee salaries. Between 2020 and 2022, an increase, albeit minor, was recorded in law enforcement agencies' salaries at both entity and cantonal levels.⁴⁶¹

For example, in 2020, employee salaries accounted for 72 per cent of the overall SIPA budget. As a result, employee salaries account for 76 per cent of this budget. In July 2022, the average net monthly wage, as reported by the Statistics Agency, was BAM1,134 (€579).⁴⁶² Police officials having the rank of inspector earn about BAM1,500 (€766) per month on average, or about 30 per cent more than the country's average wage.⁴⁶³ However, there have been reports of police officials complaining about their pay.⁴⁶⁴ One of the key complaints raised is the disparity in pay for the same rank at different levels of government in the country (state, entity, cantonal).⁴⁶⁵ As a result, the salaries of law enforcement officials reflect the glaring budget disparities between different levels of government.

In terms of staffing levels in law enforcement agencies, the country has many more police officers per 100,000 population than the EU average. According to a 2020 study conducted by the BiH Centre for Security Studies, the overall number of staff in 16 police agencies has increased by nearly 3 per cent since 2017. In 2020, the country had 508 police officers per 100,000 citizens.⁴⁶⁶ Between 2018 and

2020, EU countries averaged approximately 333 police officers per 100,000.⁴⁶⁷ Despite this, police agencies claim that they are understaffed and that the solution for all law enforcement problems is to increase the number of police officers.⁴⁷⁸

The rationale here does not take into account the insufficient professionalisation of police structures as a result of decades of inadequate staffing. Precisely such an environment leads to ineffective, slow investigations and poor coordination, especially in terms of cooperation and information sharing with other law enforcement agencies.⁴⁷⁹

Law enforcement agencies rely on international donations to an extent, mainly in the form of expertise and otherwise essential equipment that helps the agencies carry out their work more effectively. For example, in 2018, the Federal Republic of Germany donated about €450,000 worth of equipment to the BiH Border Police (BP). In 2020, Germany donated an additional €850,000 in cash. In total, Germany has donated several million euros to the BP. The head of the BP has stressed that the agency's equipment needs to be upgraded, but this should not be financed solely through donations, as this can only help fill some gaps.⁴⁷⁰

Other notable donations include forensic equipment donated by the International Commission on Missing Persons to the FBiH Police Administration (FBiH PA), a genetic analyser donated by the United States to the FBiH PA's Forensic Unit and high-tech forensic equipment donated by Save the Children to

the RS Mol's High-Tech Crime Department.⁴⁷¹ That and recent cyber-attacks against the Parliamentary Assembly as well as on various institutions in the other Western Balkans countries in early September 2022, indicate an ongoing need to invest and/or upgrade and modernise equipment of the law enforcement agencies.

Overall, there is a severe lack of computer equipment in all institutions, including law enforcement agencies.⁴⁷² It underscores the urgent necessity to improve the equipment of these institutions.

> INDICATOR 6.1.2

Independence (law)

To what extent are law enforcement agencies independent by law?

Score: 100/100

The laws seeking to ensure the independence of law enforcement agencies are quite comprehensive.

The appointment of directors, deputy directors and police officers is governed by the framework laid out in the laws on police officials (state, FBiH, RS).⁴⁷³ The laws provide that the selection procedure for the heads and deputy heads of state-level police shall be conducted by the Independent Board, constituted by the

Parliamentary Assembly. The board's specific duties include issuing a public vacancy notice and calling for applications, receiving and reviewing candidate applications, selecting applicants and presenting a finalised list of candidates to the Minister of Security. When it comes to the recruitment of police officials, the responsibility for selection of candidates lies with the head of the police.⁴⁷⁴ In both cases, the law requires that the recruitment process be competitive, transparent and fair.⁴⁷⁵ The director and deputy director of the RS Mol are appointed by the RS government upon the proposal of the Independent Board operating under the RS National Assembly.⁴⁷⁶ At the state level, directors and deputy directors of law enforcement agencies (SIPA, BP, DCPB) are appointed by the CoM upon the proposal of the Minister of Security, from a list of candidates submitted by the Independent Board.⁴⁷⁷

Local level case study: At the cantonal level, according to the cantonal laws on police officials, candidates for the rank of police officer and junior inspector are selected through a public process. Upon the completion of the competitive selection, each police commissioner is presented with a list of successful candidates from which to make their selection.⁴⁷⁸ While specific sections of the laws stipulate that the recruitment process should be transparent, competitive and based on previously established criteria, the laws fail to clarify how the commissioner makes the selection.⁴⁷⁹

When it comes to political interference in the activities of law enforcement agencies, the laws make it clear that the tasks and operations of police agencies are not meant to protect or hurt the interests of any political party.⁴⁸⁰ Furthermore, the laws provide that the heads and deputy heads shall be relieved of their duties if they are found to be members of a political party and that they shall resign if they run for public office. The same applies to members of independent committees, who may not be members of a political party.⁴⁸¹

> INDICATOR 6.1.3

Independence (practice)

To what extent are law enforcement agencies independent in practice?

Score: 25/100

Political interference in the appointment and decision-making processes of police agencies undermines their independence in practice, compromising their ability to perform impartially and uphold the rule of law. This interference erodes the separation between regulation and political interests, leading to biased enforcement of laws and a loss of public trust in the integrity of the police.

In practice, appointments are made following a public competitive procedure and a list of candidates for both heads and their deputies, as well as police officers. Nonetheless, public

opinion polls reveal widespread concern that law enforcement agencies are overly politicised, which poses a serious obstacle to their independence.⁴⁸²

One of the most striking examples occurred in 2021 as an attempt to influence the outcome of an investigation of a politician who attempted to extort a statement from the FBiH parliament inspectors. Initially, the investigation was led by FBiH parliament, however, following the discovery, they were removed from the case.⁴⁸³

Another case of political influence on law enforcement agencies is the State Investigation and Protection Agency (SIPA). The political influence on SIPA is significant. There is a fierce political battle over how SIPA's potential is harnessed, with the agency becoming a matter of national interest. This influence extends to appointing leadership positions within SIPA, which are determined by national/partisan affiliations rather than expertise, potentially undermining the agency's professionalism and effectiveness in addressing security and crime-related issues. Political interests often take precedence over the genuine pursuit of equality and impartiality in SIPA's operations.⁴⁸⁴

The director of SIPA, the director of the Service for Affairs with Foreigners, the deputy director of the Border Police and other high-ranking officials of the police agencies in September 2023 responded to an invitation of a state-level Minister of Foreign Trade and Economic Relations Staša Košarac (SNSD; Serb-led party dominant at all levels, governed by Milorad Dodik). The political gathering claimed to have congregated "Serbs employed in state

institutions.” Contrary to the SIPA’s regulation, its representative Ćulum represented the interests of SNSD and undermined the interests of the state. In his presence, the gathering confirmed the willingness of those present to leave the joint institutions if asked by their party to do so.⁴⁸⁵ In addition, Mr Ćulum initiated investigations into the status of High Representative Christian Schmidt, all at the behest of the RS authorities and BiH Security Minister Nenad Nešić, who by law has no operational authority over the work of police agencies.⁴⁸⁶

Another example of political influence on police agencies was the appointment of a new FBiH PA director. The influence is exemplified by the controversy surrounding the appointment of Vahidin Munjić as the Acting Director of the FBiH PA by the new FBiH Minister of Internal Affairs, Ramo Isak. The process of appointment was cancelled with a vague technical issue explanation. Minister Isak formed a new Independent Board for the director’s selection. Yet, the former FBiH Minister of Interior Aljoša Čampara continued to exert pressure on Minister Isak to appoint Mr. Munjić, which ultimately happened.⁴⁸⁷ In another instance, when the Head of Immigration (service for foreigners’ affairs) was being appointed, the minister did not request a security check for Žarko Laketa, who happened to have been criminally convicted but also has no relevant experience for a state-level Ministry of Security senior position. Despite TI BiH’s pleas to investigate the matter, Mr. Laketa passed the security check at the ministry and remained in his position, as assigned to him by one of the ruling coalition parties.⁴⁸⁸

Local level case study: A recent amendment to the Zenica-Doboj Canton Law on Internal Affairs revised the requirements for appointing police commissioners. The amendment provides that independent inspectors, not just chief inspectors, as previously stipulated by the law, can apply for the position, opening up room for misconduct and more political meddling.⁴⁸⁹ As the Zenica-Doboj Canton needed a new police commissioner, the Independent Board, as part of the process, was formed. However, more than half (four out of seven) board members were influenced by SDA (Party of Democratic Action).⁴⁹⁰

There are several more examples of political interference in the work and organisation of police agencies, with examples in Mol Canton Sarajevo, Mol Una-Sana Canton, and Bosna-Podrinje Canton as well.⁴⁹¹

However, cantons have also taken steps to increase transparency in recruitment procedures. One positive example is the Mol signed between the ZDC Mol’s Police Administration and TI BiH with the aim of maximising transparency in the recruitment of new police officials in the ZDC Mol’s Police Administration.⁴⁹² Another such example is the case of Sarajevo Canton Mol. The Mol of SC has published a list of general knowledge questions for future police officers, as well as junior inspectors, to prevent corruption and increase transparency during recruitment. In accordance with the legal procedure the list of questions for the general knowledge exam can be found on the official website of the Mol and the public call is to be announced accordingly,

alongside a public notice.⁴⁹³ in addition, the MoI states that it considers it mandatory to organise the recording of both video and sound of each stage of the call, including the process of testing the morphological status of the candidate, and after completion, archive the materials in the prescribed manner.⁴⁹⁴

GOVERNANCE

› INDICATOR 6.2.1 Transparency (law)

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

Score: 75/100

Although there are relevant laws and regulations in place, they do not address all aspects of law enforcement transparency. However, there are no provisions on how injured parties can access their case files.

In 2014 the FBiH Law on Internal Affairs was amended so the article governing public information now covers slightly more content than the previous version, providing that the FBiH MoI (and the FBiH PA) informs the public quarterly about events within their remit deemed of public interest, using “media, as well as other suitable channels.”⁴⁹⁵ The information provided in this way cannot include “data classified with a certain degree of secrecy under to the Law on Protection of Secret Data, as well as information about undertaken and planned investigative actions without the approval of the relevant prosecutor’s office.”⁴⁹⁶ The RS Law on Internal Affairs also describes how the public shall be informed on all matters of interest for public safety and security in

general, and that the ministry is open to the public, except in cases where it may harm the operations of a police agency or endangers the safety of citizens, or otherwise as prescribed by law.⁴⁹⁷ The Law on Free Access to Information grants general rights, as discussed in detail in section 2.2.1, is also applicable here. There are no special provisions for victims of crimes to access their case files.

> INDICATOR 6.2.2

Transparency (practice)

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

Score: 25/100

The public is often not able to obtain any relevant information on the organisation and functioning of the law enforcement agencies, on decisions that concern them and how these decisions were made, as evidenced by lack of promptness and consistency in the disclosure of annual activity reports.

The official website of the FBiH Mol makes the 2022 and 2021 activity reports available, while the last available report published before that was for 2017.⁴⁹⁸ Furthermore, the reports that are released often include only the major events and otherwise random information instead of systemic reporting and datasets.

FBiH Mol, within its website, has a section dedicated to daily reports on crime statistics, which is up to date, with minor delays and errors. All relevant press releases and published posts regarding events that include FBiH Mol or FA can also be found on the website. On the other hand, work plans vaguely describe activities and financial statements (budget reports for the previous year) are rarely published in a reasonable time, for example between two and three months after the end of the fiscal year, if they are published at all. The same goes for the overall reports of activities conducted such as implemented work plans that are not available after 2017. When it comes to the website and publications of Mol RS activities, daily criminal statistics are published as well, but they are not fully up-to-date. The reports describe conducted activities inconsistently, such as with the FBiH case.

Local level case study: SC Mol publishes monthly, periodic (half-yearly or quarterly) and annual activity reports.⁴⁹⁹ However, when it comes to work plans, the most recent one available on the SC Mol's website is for 2011. The remaining work plans are those of the SC Mol's Police Administration, but these are also inconsistent as they only exist for 2013, 2014, 2015, 2017 and the most recent one for 2019.⁵⁰⁰

Information about the assets of senior civil servants in law enforcement agencies is not available to the public, as it is not regulated by the law.

> INDICATOR 6.2.3

Accountability (law)

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

Score: 50/100

While a number of laws as well as the Public Complaints Board exist, they do not define the authority of the board to actively investigate complaints as they refer them to internal control departments. Further, the law does not define the timeframe necessary or needed for processing complaints. Therefore, the law's effectiveness may be described as potentially compromised due to a procedural gap or ambiguity.

The Law on Independent and Supervisory Bodies of Police Structure established the Public Complaints Board as an independent body of the Parliamentary Assembly. The competencies of this board include receiving, logging and forwarding complaints against conduct of police officials and "providing the complainant with all information related to their complaint."⁵⁰¹ However, the board does not have the authority to actively investigate complaints, but instead refers them to the internal control departments of respective police agencies.

Officials in law enforcement agencies do not enjoy immunity from criminal prosecution. A police official is subject to disciplinary

action for breaches of official duty occurring as a result of their actions, as prescribed by the laws on police officials (state, FBiH, RS). One common feature of the laws on police officials is that they all provide for a written warning and a fine as disciplinary sanctions imposed for minor breaches of duty and a heavier fine and termination of employment as disciplinary sanctions for serious breaches of duty. However, the laws vary concerning the percentage of fines imposed for minor breaches of duty (10 per cent of the basic monthly salary of a police official in RS and 15 per cent in FBiH and state). Also, the laws on police officials of FBiH and state-level include an additional disciplinary sanction of suspension of promotion to a higher rank. In law enforcement agencies of FBiH and the state, the internal control department conducts internal proceedings for serious breaches of duty and then submits a request to the disciplinary commission to initiate disciplinary proceedings.⁵⁰²

Whether complaints are addressed within a reasonable period cannot be fully assessed because no deadline is established by law. The interview with a Board member reveals that the timeframe is not clearly defined, while the Board's practice takes a rather long time.

> INDICATOR 6.2.4

Accountability (practice)

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

Score: 50/100

While law enforcement agencies have to report and be answerable for performing their duties, the existing provisions are only partially effective, as evidenced by the potential risk of bias during the reporting and investigation.

Whether complaints are addressed within a reasonable time cannot be fully assessed because there is no deadline established in the law (see 6.2.3).

Although the Board for Complaints of Police Officials and the Public Complaints Board operate independently from police agencies, their authority is limited to merely logging, referring and overseeing the handling of complaints. Actual investigations are carried out by the Internal Control Department/Professional Standards Unit of the police agency in question. This ultimately means that the employees in police agencies are tasked with investigating complaints against their co-workers, increasing the risk of bias, whether intentional or unconscious, on the part of investigators.⁵⁰³

In practice, police officials are not exempt from criminal proceedings. One well-known example of criminal proceedings brought against a senior law enforcement official in 2016 concerns a former SIPA director, against whom a criminal complaint was filed for accepting bribes and rigging recruitment procedures after he had been found guilty of criminal misconduct in public office and given a suspended sentence.⁵⁰⁴

There are also several recent examples of BiH Border Police members taking bribes. In 2022 the prosecutor of the Special Department for Organised Crime, Economic Crime and Corruption filed an indictment for corrupt practices in the recruitment process for the Border Police, illegal demand and receipt of large sums of money, as well as other related crimes.⁵⁰⁵ In addition, different crimes among the police structures were the reason behind the arrest of 16 police officers in Kakanj in 2023. The arrested officers were suspected of abusing their position and receiving gifts. After the arrest, of the 15 who spent a month in custody, nine policemen were released.⁵⁰⁶ However, this case, alongside others, shows how police officials are not exempt from criminal proceedings.

> INDICATOR 6.2.5

Integrity mechanisms (law)

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

Score: 50/100

The laws establish the rules to prevent conflicts of interest, restrict police officials from pursuing personal gain and require asset declarations by high-ranked officials. However, there is a potential loophole regarding the acceptance of gifts and while asset declarations are mandated, their public availability may vary between regions, potentially affecting transparency.

Individual law enforcement agencies have developed their own codes of ethics, whereas the rights and duties of officials in these agencies are governed by applicable laws. The codes lay down the standards and rules of conduct for police officials in police agencies. Police officials are expected to uphold the values of legality, professionalism, honesty and impartiality. As stated in the SIPA's code of ethics, police agencies in the country have mutually harmonised their codes.⁵⁰⁷

There are certain post-employment restrictions in place, mainly to do with preserving the confidentiality of secret data and materials.⁵⁰⁸

As concerns rules on conflict of interest for police officials, the applicable laws state that "officials must not be in any relationship of

dependence in respect of persons who might influence their impartiality."⁵⁰⁹ Provisions on the incompatibility of prosecutorial and police functions are laid down separately. According to the BiH Law on Police Officials, the FBiH Law on Police Officials and the RS Law on Police and Internal Affairs, a police official must refrain from any action that is incompatible with or infringes duties as established by these laws. However, while Article 10 of the Law on Conflict of Interests in Governmental Institutions applies to law enforcement officials, paragraph two of this article remains dubious as it states that an official may keep a gift in the amount not exceeding BAM200 (€102) as well as "multiple gifts given by the same donor in the course of one year in the aggregate amount not exceeding the said value."⁵¹⁰

The laws on police officials stipulate that police officials may not "pursue or accept any gain, benefit, service or any other remuneration themselves or for their relatives."⁵¹¹

Also, the applicable laws require that heads, deputy heads and police officials declare their assets and property, which are then made publicly available.⁵¹² All asset declarations are reviewed by the BiH Intelligence and Security Agency and disciplinary action is taken against those found to have provided false information.⁵¹³

According to the RS Law on Police and Internal Affairs, before assuming office, the director and deputy director are required to disclose information on any public offices held by their immediate family members, and to declare their assets and the assets of their family

members, with the latter information being subject to public disclosure. The FBiH Law on Internal Affairs requires that the candidate for police director provide a written statement of their assets which will be made available to the public.⁵¹⁴

› INDICATOR 6.2.6

Integrity mechanisms (practice)

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

Score: 25/100

There is mostly an absence of actions which would aim to ensure the integrity of members of the law enforcement agencies, such that misbehaviour goes mostly unsanctioned.

Every police agency has an internal control department/professional standards unit, however, since these do not operate independently of their respective police agencies, their accountability and integrity may be considered insufficiently regulated and not fully transparent (see 6.2.3). In practice, no staff training programmes on ethical codes/codes of conduct have been documented.⁵¹⁵

The increasing number of arrests of law enforcement officials for various criminal offences suggests that the codes and

regulations are ineffective. An example that illustrates this point includes a 2021 arrest of six SC Mol police officials who were arrested for faking traffic accidents and accepting bribes to overlook traffic offences in SC.⁵¹⁶ Another example is the 2021 arrest of 17 traffic police officials who were arrested for more than a hundred criminal offences during 2020 including acceptance of gifts and other forms of rewards and abuse of position or authority (indictments have been confirmed for all 17 officials).⁵¹⁷ In 2022 a BP's official was also arrested by SIPA for supplying confidential information to the arrested, etc.⁵¹⁸

› INDICATOR 6.2.7

Gender

To what extent are law enforcement mechanisms gender-sensitive?

Score: 50/100

No explicit gender-sensitive protocols and guidelines exist. However, some efforts through training have been observed, especially through creating manuals and guidelines by non-state associations.

Law enforcement mechanisms cannot be described as gender-sensitive since no explicit gender-sensitive protocols and guidelines exist in the country's police agencies, nor is there an express provision requiring that women should be part of the front-facing staff of complaint

and investigation mechanisms. Nevertheless, the Policewomen's Network Association has shared one of its manuals with the Civil Service Agency on its own initiative.⁵¹⁹ The manuals *Gender Equality in Police Structures in BiH – Training Curriculum and Guidelines for Handling Cases of Sexual Harassment and Gender-based Harassment in the Police* were developed to raise awareness and promote gender equality and a non-discriminatory working environment in police agencies. The two manuals are part of the association's publications on gender equality and the fight against gender-based discrimination and violence but are ultimately not a mandatory part of the law enforcement's mechanisms.⁵²⁰

The appointed advisors for the prevention of workplace sexual harassment in the SIPA and BP have received training from the Gender Equality Agency. However, it appears that no gender-disaggregated data is produced, at least when it comes to filing complaints, as the online form for registering a complaint against police officials, obtained from BP's website, does not offer the option to indicate the complainant's gender.⁵²¹

ROLE

> INDICATOR 6.3.1

Corruption prosecution

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

Score: 25/100

While law enforcement agencies do investigate corruption cases, their work is generally reactive, focused only on a small number of cases and rarely results in charges and successful convictions. There is immense political influence on investigations of corruption cases, but corruption is present within the prosecution, that is within the judicial system itself.

Police officials have legal powers to apply proper investigative techniques in detecting cases of corruption, as well as other criminal offences. The FBiH Law on Criminal Procedure stipulates that in certain cases, special investigative measures may be ordered in order to obtain evidence. These special investigative measures are often employed in conjunction with the use of undercover investigators and informants who can solicit a bribe aimed at obtaining a certain benefit, which they will subsequently report to the police agency.⁵²² Given the quality of the evidence often submitted, police might be missing capacities for financial audits of corrupt

cases. It is not clear from the interviews or the materials analysed to what extent each police administration is equipped with such expertise.

However, in 2022 the prosecution in BiH received not one corruption report from the law enforcement agencies for grand corruption and organised crime. Yet the screening of the use of the Sky app revealed that several senior law enforcement staff kept in close contact with the members of criminal gangs.⁵²³ This sheds light on the likelihood that the police administration has no technical capacities to undertake appropriate investigations and/or that there are political- and private-interest driven motives not to undertake these tasks diligently and following with professional standards.

INTERACTIONS

The key actors that law enforcement agencies have interactions with are prosecutors' offices, courts and the BiH Intelligence and Security Agency (OSA). One piece of evidence of interaction among the agencies, the OSA and the Prosecutor's Office, is the existence of two task forces at the Prosecutor's Office. The first is the Task Force for Combating Terrorism and Strengthening Anti-Terrorism Capacities, supervised by the state-level Ministry of Security, which facilitates collaboration and coordinates the work of agencies/bodies responsible for counterterrorism that includes the OSA as a state agency charged with gathering and analysing data about threats to national security, and other key law

enforcement agencies at the remaining levels of government in the country.⁵²⁴ The second is the Task Force for Combating Human Trafficking and Organised Illegal Immigration which is comprised of "representatives of prosecutors' offices, internal affairs authorities, tax authorities, state border service" and others.⁵²⁵

In June 2005, the key actors in the security sector signed the Agreement on Coordination of Institutions in the Field of Intelligence, Security and Police Activities.⁵²⁶ Also, in the same year, the Prosecutor's Office and SIPA signed a memorandum of understanding to strengthen cooperation in criminal investigations.⁵²⁷

Collaboration among these agencies is critical for their efficiency. Annual meetings are held to discuss ways to enhance collaboration, identify and address major concerns in the partnership and advance cooperative work on a wide range of topics. However, 2022 in particular shows that the interactions among the aforementioned actors are unsatisfactory. This also allows the parties to conveniently shift responsibility away from themselves to another agency in the process.

PILLAR RECOMMENDATIONS

➤ The executive, through amendments to the rulebook on the internal organisation of the ministries of internal affairs, police administrations and other police agencies needs to increase the independence of disciplinary mechanisms in police agencies to ensure more effective investigation and prosecution of corruption cases and other criminal offences by detaching internal investigative mechanisms in police agencies to avoid the risk of bias due to disciplinary procedures conducted by a department in the same agency.

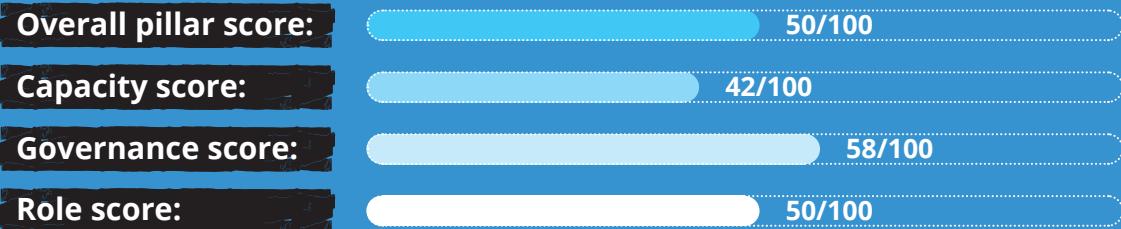
➤ Law enforcement agencies need greater transparency in the recruitment of new cadets by following successful initiatives at the canton level. These should include:

- Publishing a list of questions for the general knowledge test for future police officers, as well as junior inspectors.
- Making it mandatory to record both the video and sound of each stage of the call, including the process of testing the morphological status of the candidate, and after completion, archive the materials in the prescribed manner.
- Increase transparency by ensuring regular disclosure on the official websites of the institutions of in-depth, accurate work plans and activity reports of law enforcement agencies, asset declarations and financial

statements which should be available a maximum of three months after the year's end for which the information is being declared.

➤ Law enforcement agencies need to establish gender-sensitive protocols as such do not exist within police agencies and raise awareness of the positive contribution women make to the field of law enforcement, in particular among police agency leadership.

7 > ELECTORAL MANAGEMENT BODY



SUMMARY

The Central Election Commission of BiH (CEC) is responsible for conducting elections, gathering candidates' assets declarations, and implementing the Law on Party Financing and the Law on the Council of Ministers of Bosnia and Herzegovina (CoM).

The CEC is facing numerous challenges. These include insufficient capacity to fulfil all of its responsibilities on time and a lack of political will to improve the laws falling under the responsibility of the CEC. There have been legislative changes imposed by the High Representative on the eve of the 2022 general elections but these have not had a positive impact on the integrity, transparency and efficiency of the election process or the administration.

The past three years have been marked by the CEC falling under increasing pressure and threats coming from political leaders, including attempts to strip it of the necessary financial resources to conduct elections, questioning its legitimacy, insults and threats

to individual members, as well as initiatives to remove members from office. The 2022 general elections show gross irregularities, sanctioned by the CEC, thus demonstrating that little or nothing has been done to prevent election engineering and the procedural problems that have existed in past years.

The CEC attempts to regulate candidate and political party finance, but systemic deficiencies persist, including late audit reports of campaign spending and regular finances of political parties, due to missing time limits. In terms of ensuring the electoral process's integrity, there are issues with the accuracy of voter registrations, the late publication of results and delays in the electoral process mainly due to staff shortages. The general elections keep demonstrating that the entire election process faces serious fraud at the level of the local election management. The promotion of women's political participation also faces challenges as gender quotas do not always translate to increased female representation in elected positions.

CAPACITY

> INDICATOR 7.1.1 Resources (practice)

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

Score: 25/100

The electoral management body has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties, as seen through threats of resource restrictions to exert political control, as well as the refusal of the executive to approve additional human resources.

The funds for financing electoral activities, as well as for the Central Election Commission's (CEC) regular operations, are provided from the budget of state institutions and various international donors. However, the period leading up to the last general elections of 2 October 2022 has seen attempts to exert pressure on the CEC through refusals to approve necessary funds for the CEC budget to finance elections. During the 2022 general election year, there were numerous postponements to the adoption of the budget, followed by the allocation of insufficient funds through decisions on temporary financing.⁵²⁸ That brought into question the ability of the institution to organise elections.

Despite numerous warnings by the CEC and official requests, the CoM has prolonged the procedure, even after elections were officially announced. At the same time, high officials were sending open political messages that the allocation of funds for elections is conditioned on the adoption of specific amendments to the election law proposed and promoted by one of the ruling political parties.⁵²⁹ This has not been the first time the allocation of the budget for elections and the CEC was brought into question – even the budget for the 2020 local elections came very late. The Parliament refused to adopt the budget in time and for the first time representatives of the parties who were against the adoption of the budget emphasised that their decision was based on the fact that they did not approve of the constitution of CEC members at the time.⁵³⁰ Initiatives submitted by the CEC to amend the legislation in order to avoid future possibilities for politicians to manipulate the procedure of financing elections were refused.

The CEC Secretariat is organised through five units, and 74 positions are envisaged by the CEC Rulebook on Internal Organisation. For years the CEC has been struggling with insufficient human resources, especially within the department that audits political parties' financial reports, which currently operates with only four auditors and is in charge of auditing reports of more than 100 political parties. There are other positions within its Rulebook on Internal Organisation that have not been filled, while the CEC has requested the CoM to approve the amendments to its internal systematisation, which are still pending at the time of writing this text.⁵³¹ The Group

of States against Corruption (GRECO) also emphasised this in their latest addendum to the *Second Compliance Report*. Although activities were underway to draft amendments to the Rulebook on Internal Organisation of the Secretariat of the CEC, which were expected to strengthen the personnel responsible for audits of political parties' regular finances, as well as the Service for Auditing the Financing of Political Parties, the recommendation related to strengthening the capacities of the CEC to timely and efficiently monitor campaigns and political party finance is still not implemented, while there are significant delays in publishing audit reports due to the lack of resources.⁵³²

When it comes to equipment, archives and necessary software essential for the submission and review of financial reports, managing elections and coordinating between local election commissions and committees, as well as training and capacity building of its permanent and temporary staff, the CEC is heavily dependent on donations from international donor organisations.⁵³³

› INDICATOR 7.1.2

Independence (law)

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

Score: 75/100

There are strong regulations to ensure the independence of the Central Election Commission of BiH (CEC), however, the fact that CEC members are appointed by the Parliamentary Assembly (that is, the ruling majority) leaves space for political influence.

For the reasons outlined above, the High Representative imposed the decision on allocating necessary funds for elections,⁵³⁴ which was accompanied by the decisions to impose the amendments to the Election Law of Bosnia and Herzegovina⁵³⁵ and the Law on Financing of the Institutions of BiH⁵³⁶ that prescribe obligations of the relevant authorities to ensure timely financing of elections and are supposed to avoid future attempts to exert political pressure through manipulations with budget adoption. However, these developments showed that the financing of the CEC and the elections are not necessarily guaranteed and that the allocation of resources is used for political and other pressure on the CEC, as well as the stability of the election system.

The Election Law⁵³⁷ provides that the CEC is an independent body which derives its authority from and reports directly to the

Parliamentary Assembly. The members of the CEC must be legal experts with experience in the administration of elections and/or electoral experts, and may not hold any office in the bodies of a political party, association or foundations organisationally or financially related to the political party, and may not be involved in any political party activity.⁵³⁸ However, the fact that, under the law, the CEC members must be appointed by the Parliamentary Assembly (that is, the ruling majority of political parties) may pose obstacles to the CEC's independence given that the appointment of its senior management depends entirely on the parties and officials to whom the laws that this institution implements apply.

Members of the CEC are protected by the Election Law, which provides that they cannot be held criminally or civilly liable for any acts carried out within the scope of their duties and obligations. The statutory seven-year term is also aimed to ensure a divergence between the term of the CEC members and the terms of the executive and the legislature. Also, CEC members cannot be removed from office except in cases provided for under the law, that is if the members are no longer able to perform their duties.⁵³⁹

Local election commissions are appointed by local parliaments, based on a public competition, subject to the approval of the CEC. The Election Law provides for the independence of members of election commissions and polling station committees by defining the incompatibility of functions for these persons.⁵⁴⁰ However, the members of the polling station

committees are delegated by political parties and are subsequently selected through the process of drawing the lots. Thus, the polling station committees are fully controlled by political parties, despite the long-pending OSCE/ODIHR and civil society recommendations to strengthen the independence of polling station committees by introducing public selection and at least a certain number of non-partisan seats.⁵⁴¹

The secretariat's staff are mainly civil servants employed by the Civil Service Agency and their rights and obligations derive from the Law on Civil Service in the Institutions of BiH, which provides for independence in their work and defines situations that can lead to termination of the civil service office.⁵⁴²

> INDICATOR 7.1.3

Independence (practice)

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

Score: 25/100

The independence of the Central Election Commission of BiH (CEC) is compromised due to other actors' interference in the activities of the electoral management body. Even though the existing constitution of the CEC is perceived to be more independent since that there is a distribution of power and no party or coalition can currently exert complete control, the pressures and attacks by ruling political parties on the work of the institutions are ever more visible and greatly undermine its authority amongst the public.⁵⁴³

Pressures on the work of the CEC, its legitimacy and operations have increased since the appointment of the members of the CEC in 2020. Due to the failure of the authorised parliamentary committee to initiate the procedure of appointment of four members of the CEC within the proscribed deadline, the Election Law left the option to the House of Representatives to appoint the new members directly. In March and May 2020, the House of Representatives appointed five members, three of whom were new to the CEC. Although they have previously been directly or indirectly connected with political parties, these parties did not belong to the ruling majority or those who previously exerted control over the work

of CEC.⁵⁴⁴

This caused an outrage among the two ruling political parties, leading to the public denial of the legitimacy of the procedure, and the very constitution of the CEC⁵⁴⁵ even though the Court of BiH confirmed that the appointment was undertaken according to the law.⁵⁴⁶ This later turned into direct pressure in the form of obstruction of funding of the CEC (see 7.1.1), as well as threats, insults and attacks on CEC members⁵⁴⁷ as a consequence of CEC decisions related to election irregularities, which led to one of the members receiving personal police protection.⁵⁴⁸

The decisions of this body are constantly questioned by the highest legislative and executive officials, who publicly use every opportunity to dispute the authority of the CEC. These pressures emerged in the form of the ruling coalition announcing the initiative to remove the existing members of the CEC from office, even though that the causes for removal are strictly proscribed by the law.⁵⁴⁹

Local election commissions and polling station committees are additionally prone to political influence, considering they are appointed by municipal parliaments, which means the members of the polling station committees are appointed directly by political parties. This is especially troublesome given the continuing practice of trading seats in polling station committees between political parties, in order to establish full control of the committees on election day. Despite the amendments to the Election Law imposed before the 2022 general elections which introduced provisions

banning this trade of seats in polling station committees there were no proper mechanisms to monitor compliance. The independent observers identified a prevalent practice of seat trading and indicated that some local election commissions manipulated their membership by appointing party members to polling station committees as representatives of the local election commission (see 7.2.6.).⁵⁵⁰

GOVERNANCE

› INDICATOR 7.2.1 Transparency (law)

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

Score: 75/100

Provisions are in place which allow the public to obtain information on the organisation and functioning of the electoral management body. However, legal provisions do not prescribe firm deadlines and the scope of information to be published.

Transparency of the Central Election Commission of BiH (CEC) is ensured by regulations within the CEC's remit as well as the Law on Freedom of Access to Information in compliance with the provisions of the Law on the Protection of Personal Data.⁵⁵¹

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

The law also provides that the CEC has to enable public access to all financial reports of political parties and take appropriate actions

to ensure that all citizens have easy access to the information contained in the reports. Some progress has been made since the amendments of the bylaws regulating the forms of the annual and pre- and post-election financial reports, in terms of the level of detail and itemisation of reporting of parties' expenditure, but they still do not prescribe the publication of full reports with itemised expenses.

Information on the implementation of the laws under the authority of the CEC and all its activities are detailed in the CEC's annual report submitted to the Parliamentary Assembly, which is a public document.

› INDICATOR 7.2.2

Transparency (practice)

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

Score: 75/100

The public can readily obtain relevant information on the organisation and functioning of the Central Election Commission of BiH (CEC), however, issues remain, including significant delays in publishing and determining election results.

Generally, the CEC informs the public of its official decisions and activities regularly and on time, mainly through press releases, and when necessary special press conferences.

Also, the CEC meetings are open to the media. Significant progress has been made in the past three years with broadcasting all CEC sessions online through the CEC website and YouTube channel where the public can observe live or watch recordings of the sessions.⁵⁵² In the same period, the CEC also started providing regular updates on the election process through its official social media profiles. The CEC website contains CEC's announcements of sessions, press releases, decisions, activity reports and relevant regulations. Before and after the general elections of 2022, the CEC also introduced its own podcast with discussions on relevant aspects of the election process.⁵⁵³

During election years, special telephone lines as well as online and SMS applications are set up for voters to get information on their polling stations and their rights. The website also provides guides and manuals for election administration as well as election results. Some progress has been made in regard to informing voters who live outside BiH about the process of registration, verification and voting through the online e-izbori (e-elections) portal.⁵⁵⁴ The same portal is also used for the registration of candidate lists, the accreditation of election observers, the registry of assets declarations, etc.

However, the relevance of the available information, including annual reports, financial reports and audit reports of political parties is dependent on the internal capacities and other authorities in charge of the adoption of the CEC reports, which includes the dynamics of the parliament schedule for adoption of the reports. In the case of the parties' financial

reports,⁵⁵⁵ the CEC publishes the reports only once they are submitted, collected and published. However, due to the lack of capacities of the CEC Audit Department, the audit reports are published more than two years after the submission of the financial reports. Similarly, the annual reports are published at the time they are discussed and adopted by parliament.

Due to the complexity of the election administration, inefficient communication of polling station committees and local election commissions, as well as the non-existence of electronic voting and counting, there are significant delays in publishing and determining election results, even the preliminary ones. The frequency of press conferences on election day and proactiveness are not satisfactory.⁵⁵⁶

At the local level, contrary to the Election Law, as reported by OSCE's Office for Democratic Institutions and Human Rights (ODIHR) related to the latest 2022 general elections, most local commissions did not announce formal sessions in advance but rather held informal work meetings. Additionally, complaints and subsequent decisions of the election commissions were not made public, thus diminishing transparency, while local municipalities in some instances also failed to publish and/or display voter registry lists. The ODIHR observer mission also states that many previous recommendations remain unaddressed, including increasing the transparency of the election dispute resolution and the formation of Polling Station Commissions (PSCs).⁵⁵⁷

› INDICATOR 7.2.3

Accountability (law)

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

Score: 75/100

Numerous provisions are in place to ensure that the electoral management body has to report and be answerable for its actions. Appeal mechanisms exist, but the deadlines prescribed for submitting appeals against the Central Election Commission of BiH (CEC) decisions are very short (two days) and can deter actors from appealing.

In addition to the annual activity reports which are submitted for adoption to the Parliamentary Assembly⁵⁵⁸, the CEC has the obligation to produce annual financial reports which are submitted to the Ministry of Finance and Treasury.⁵⁵⁹ Local election commissions submit their annual activity reports to their respective local parliaments, at the request of the CEC.⁵⁶⁰

The Audit Office of the Institutions of BiH conducts audits of the CEC's financial operations. Audit reports, alongside recommendations, are submitted to the Parliamentary Assembly and published on the Audit Office website. The law also provides that the CEC has to establish an internal control and audit system.⁵⁶¹

Candidates and parties to whom the decisions of the CEC apply have the right to appeal to the Appellate Division of the Court of BiH, which may overrule a CEC's decision and order that the case be revisited. They can also appeal against the decisions of local election commissions, where the CEC is in charge of acting on appeals.⁵⁶²

> INDICATOR 7.2.4

Accountability (practice)

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

Score: 50/100

While members of the Central Election Commission of BiH (CEC) have to report on certain actions, the existing provisions are only partially effective/applied in practice, especially regarding local election commissions and polling station committees.

The CEC's annual activity reports are made publicly available as part of the parliamentary session materials when discussed by both parliament houses and upon approval by the Parliamentary Assembly, or even when they are not adopted.⁵⁶³

When it comes to audits and financial accountability, the CEC generally receives an unqualified opinion of the supreme audit

institution, along with accompanying comments and recommendations. Referring to the latest available audit report, the CEC has, out of seven outstanding recommendations, implemented three recommendations, while two more are in the process of implementation. The recommendations to refer to market research for procurement of election materials and to finalise a geo-location system have not been implemented.⁵⁶⁴

The CEC has initiated the practice of publishing information on individual reports and complaints received with indications of their progress and the phase of their handling.⁵⁶⁵ Discussions and voting on individual decisions can be watched live. During 2022, almost 700 reports/complaints/requests were received related to the general elections.⁵⁶⁶ Based on the TI BiH experience with the requests directed at the CEC regarding the observed irregularities in the pre-election period, the CEC acts on the reports and informs the complainants of their decisions, although sometimes with delays.⁵⁶⁷

A total of 467 appeals related to the 2022 general elections were submitted to the Appellate Department of the Court of BiH by parties and candidates in the period between May and December 2022 against the CEC. The court rejected most appeals and 96 per cent of the decisions of the CEC were confirmed.⁵⁶⁸ A similar trend of more than 90 per cent of CEC decisions being upheld by the court was also observed in the previous five years.⁵⁶⁹

The sanctions that the CEC imposes on individuals including public officials, members of polling station committees, etc. are

implemented by force of law. The fines to political parties for violations of the Law on Financing of Political Parties are imposed with delays, due to the lengthy audits (see 7.1.1.).⁵⁷⁰ Moreover, some political parties are allowed to pay the fines through multiple instalments.

Finally, the parliament has refused to adopt CEC reports for 2020⁵⁷¹ and 2021⁵⁷² as well as the *Report on the Implementation of Local Elections in 2022*⁵⁷³ and the *Report on the Audit of Financial Reports of Political Parties for 2020*.⁵⁷⁴ However, considering the lack of explanations and justifications for the refusal to adopt the reports, this can be seen as another form of political pressure and denial of the legitimacy of the current management of the CEC.

> INDICATOR 7.2.5

Integrity (law)

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

Score: 50/100

While several laws/provisions exist to safeguard the integrity within the Central Election Commission of BiH (CEC), there are no proper safeguards for the integrity of members of local (municipal and city) election commissions.

Although there is no code of conduct for members of the CEC, the Law on Conflict of Interest in Governmental Institutions of BiH also applies to the CEC members. The law defines the incompatibility of functions as well as the rules on gifts and services. Also, the Election Law provides that "no member of an election commission or a polling station committee shall participate in the decision of a case in which the member and/or a close family member has a personal or financial interest or other conflict of interest, which may raise doubt as to the ability of the member to act impartially."⁵⁷⁵ These regulations apply only to CEC members, while persons employed in the CEC Secretariat, who have the status of civil servants, are subject to the Law on Civil Service in Institutions of BiH, which also contains provisions on conflicts of interest (see public sector pillar).

In 2020 the CEC adopted its *Strategy and Action Plan for Improvement of Integrity, Transparency and Effectiveness of the Election Process in BiH*, which covers a five-year period and is aimed at strengthening the CEC's capacities to address previously identified risks within the administration of elections.⁵⁷⁶

The CEC also has a set of rulebooks and internal regulations that govern the issues of internal reports of corruption and internal protection mechanisms for whistleblowers,⁵⁷⁷ an integrity plan⁵⁷⁸ (both are obligatory for all state-level institutions), and anti-harassment policies.⁵⁷⁹ However, there are no proper safeguards for the integrity of members of local (municipal and city) election commissions, while the appointment of polling station committees is

left to political parties, meaning that there are no integrity or independence standards.

> INDICATOR 7.2.6

Integrity (practice)

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

Score: 25/100

There are serious concerns about the integrity of election administration processes, especially at the local level.

There have been no conflict-of-interest allegations against the Central Election Commission of BiH (CEC) members or their staff in recent years. There have, however, been allegations of their connections to political parties and political affiliations (see 7.1.3.) which, combined with the perceived inefficiency and irregularities within the election process, is the most significant factor for the general lack of trust in the institution's integrity.⁵⁸⁰

At the same time, there are serious integrity issues with the members of the polling station committees, who are nominated directly by political parties and appointed by local election commissions, and members of those commissions. After the local elections in 2020, the CEC filed reports to prosecute

647 members of polling station committees, whereas the prosecutors indicted only a few.⁵⁸¹ Several members of polling station committees have been convicted of election fraud and manipulation of voters' personal data.⁵⁸² Moreover, local elections were repeated in 2020 in two municipalities, Doboj and Srebrenica, due to large-scale fraud by the polling station committees and manipulation of voter data and ballots. In the case of the Doboj elections, 54 indictments were raised against 256 persons, mostly members of polling station committees.⁵⁸³ This practice has continued over the years, leading to a large number of CEC sanctions for members of polling station committees, mostly fines and bans from performing their role in the next election cycle, and in case of potential criminal offences, reports to competent prosecutors' offices.⁵⁸⁴

Independent observers reported in the analysis of the 2022 general election that of the 4,337 members of polling station committees analysed from almost all the municipalities, 747 (over 17 per cent) were connected to the trading of seats in polling station committees.⁵⁸⁵ The observers also warned of collusion between local election committees and political parties in order to manipulate the distribution of seats in polling station committees.⁵⁹⁶

ROLE

> INDICATOR 7.3.1

Campaign regulation

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

Score: 50/100

While the electoral management body seeks to regulate candidate and political finance, there are numerous shortcomings in campaign finance regulations, including a lack of prescribed oversight of expenditures, inadequate provisions to prevent abuse of state resources, a lack of capacities for timely audit of financial reports, etc.

The financing of political parties and election campaigns is regulated by the Law on Party Financing, Election Law, and regulations issued by the CEC (rules, instructions, forms, and other implementing regulations).⁵⁸⁷ The laws set spending limits and determine the allowable sources of funding.⁵⁸⁸ They set the allowed amounts and ceilings for funding from private sources.⁵⁸⁹ They also set obligations to report donations and do financial reporting, audit and control of financial statements, sanctions and other issues.⁵⁹⁰ The laws also prescribe the obligation of submission of pre- and post-election financial reports for parties and candidates, giving the CEC the authority to monitor and audit income, but only limited

authority to audit campaign expenditure. The CEC is also in charge of sanctioning so-called early campaigning, that is paid advertising in the period between the election announcement and the official launch of the election campaign.⁵⁹¹ CEC regulations provide for the publication of the campaign finance reports within 30 days after the deadline for their submission, but there is no deadline for the CEC to audit the campaign finance reports or publish the audit conclusions. Due to a lack of resources, the CEC cannot monitor the actual campaign expenditures and largely relies on reports from citizens and civil society organisations to detect possible violations. The effectiveness and timeliness of its review, control and audit procedures are severely challenged by the limited financial and human resources of the CEC.⁵⁹²

The shortcomings of the campaign finance regulations are discussed in more detail in the chapter on political parties. Some progress has been made on the reporting requirements related to the campaign and regular expenditure (a more detailed itemisation of campaign costs, that now also includes online campaigning), as well as instructions issued by the CEC on the use of designated bank accounts for election campaign finance. The amendments to the Election Law imposed by the High Representative in July 2022 introduced provisions on the abuse of state resources for election campaigns, leading to a constant increase in the recorded abuse of public funds for campaign financing, or for indirect buying of votes.⁵⁹³

The CEC as well as its internal departments responsible for the implementation of specific laws, can initiate procedures independently and have the authority to conduct audits and investigations on its own initiative as well as based on reports/complaints received, and can independently impose sanctions for violations of the law.⁵⁹⁴

depends on the accuracy of data provided by other institutions responsible for updating the civil register. Due to inefficient updating of registries and cooperation between the institutions (municipalities, police and the CEC), in previous election cycles, there were concerns expressed by observers and media related to the timely updating of voter registries, especially concerning deceased citizens.⁵⁹⁵

> INDICATOR 7.3.2

Election administration

Does the electoral management body ensure the integrity of the electoral process?

Score: 50/100

The Central Election Commission of BiH (CEC) is somewhat active in seeking to ensure free and fair elections, although there have been issues with voter registration and late publication of election results, among other things.

All citizens aged 18 years or older have the right to vote unless convicted of serious crimes, including war crimes, or deprived of legal capacity by a court decision, including on the grounds of intellectual and psychosocial disability.⁵⁹⁶ BiH has a passive voter registration system (the citizens who possess an ID are automatically registered for voting), and the CEC has the overall responsibility for the integrity and maintenance of the Central Voter Register (CVR), but the accuracy of the CVR

In recent years some progress has been made on efforts to enable citizens to verify their registration data, as well as on new rules introduced to verify voters who reside in other countries. This came as a result of previously identified irregularities during the 2020 local elections and 2018 general elections where thousands of voters' data was abused⁵⁹⁷ (voters mostly from Serbia and Croatia registered to vote by post).⁵⁹⁸ Despite CEC efforts to publish voter lists for citizens to report if their data has been abused and thus prevent election fraud at the time, the Agency for Protection of Personal Data ordered the CEC to remove the excerpt from the voter registry from its website. Thus, the CEC introduced new instructions related to electronic registration to vote from abroad and multiple verification mechanisms, which led to a significant reduction in the number of postal voters.⁵⁹⁹

Election observers are generally allowed at all polling stations and local election commissions, including political parties' and independent observers. However, there have been instances where pressure was exerted on these independent observers. The opposition parties also report instances of their observers being prevented from observing all phases of the

process.⁶⁰⁰

When it comes to the calculation and publishing of results, each election cycle shows significant delays due to inefficiencies of the polling station committees and local election commissions, which impacts the ability of the CEC to aggregate the full results.⁶⁰¹ The *ODIHR Election Observation Mission Final Report* on the 2022 general elections found that the CEC administered the electoral preparations efficiently and in line with legal deadlines, despite initial delays caused by the late disbursement of funds required to organise the elections. However, observers emphasised the shortage of qualified staff, which impacted the operational capacity of most CEC departments, and led to delays in complaint resolution and the review of campaign finance reports.⁶⁰²

> INDICATOR 7.3.3

Gender

To what extent does the electoral body promote the political participation of women?

Score: 50/100

Legal provisions on gender equality exist but do not ensure representation of women in practice, since the gender quota on election lists does not correspond to the number of women elected.

The Law on Gender Equality⁶⁰³ and the Election Law⁶⁰⁴ make it mandatory for political parties to include 40 per cent of underrepresented gender in election/candidate lists and this is taken into consideration when validating the applications for candidacy at the elections.

In practice, the parties must respect the minimum provisions, but, as explained under the political parties pillar (see 11.2.7), women do not have the same positions on the candidacy lists resulting in much lower chances of being elected. During the latest elections, only 43 of the 613 candidate lists (7 per cent) exceeded the minimum number of women required by law, while women headed 135 lists (only 22 per cent), with more than half of these being one-person lists. Several major parties had no women leading their lists.⁶⁰⁵ Consequently, according to ODIHR, “the gender quota on candidate lists and placement requirements did not translate into a comparable number of elected women: only 19 per cent (8 of 42) of the newly elected members of the BiH HoR, 28 per cent (27 of 98) of the FBiH HoR and 25 per cent (21 of 83) of the RS NA are women.”⁶⁰⁶

INTERACTIONS

The three pillars that the Central Election Commission of BiH (CEC) has the most interactions with are the political parties, the executive and the legislature.

The Election Law and Law on Political Parties, as well as the CEC bylaws, regulate both the authority of the CEC and the rights and obligations of political parties. The CEC is at the same time in charge of enforcing legislation regulating the parties' participation in elections, as well as oversight of their finance and is in charge of imposing sanctions on political parties. The CEC also undertakes activities to inform and educate parties on their rights and obligations. Political parties also present a source of malign influence on the work of the CEC, both through direct pressures and threats, but also initiatives to influence its decisions, constitution and operations.

The executive, that is the Council of Ministers of Bosnia and Herzegovina (CoM), has a direct impact through the allocation of resources for the work of the CEC which has become more problematic recently due to the refusal to approve funds for elections on time, as well as the refusal to approve necessary resources for the Audit Department within the CEC.

The legislature is in charge of the oversight of the work of the CEC and reviewing its annual and audit reports. At the same time, the CEC is in charge of the enforcement of election results related to the members of parliament, as well as the direct implementation of results related

to the distribution of seats in the House of Peoples. The parliament is also in charge of the appointment of the members of the CEC and in that sense can directly influence its work and enable potential undue political influence. The interactions change over time, depending on the attitude of the ruling parliamentary majority towards the constitution or decisions of the CEC. For example, the CEC was not included in the Interdepartmental Working Group for the Amendments of the Election law because of the dissatisfaction with the appointment of the new members of the CEC which also led the ruling parties to question the legitimacy of the CEC.⁶⁰⁷

PILLAR RECOMMENDATIONS

- For the Central Election Commission of BiH (CEC) to perform its tasks and duties efficiently and on time it is necessary to strengthen its capacities and ensure that all the vacant positions envisaged in the internal staffing regulation are filled. This is especially true for the audit department for the financial operations of political parties.
- Once capacities are strengthened, time limits for performing financial audits should be introduced, particularly in connection with the election campaign timeline, given that delayed audit reports might have an impact on the election results.
- The legal framework regulating the election process and political party finance should be improved in order to strengthen the integrity of the election process, including the election administration.
 - The appointment, independence and efficiency of local election commissions and polling station committees should be addressed by increasing the transparency of appointment procedures and independence requirements for members of municipal election commissions, and introducing non-partisan members in polling station committees.
 - The prevention of abuse of state resources to gain election support, vote-buying and pressures on voters should be dissuaded with clear provisions on the types of abuse from the position of power and guidance for the CEC on determining abuses, limitations to public expenditure and distinguishing between institutional and public office behaviour and expenditure and political party/candidate activities.
 - Electronic voting and vote counting should be introduced.
- Political pressures and delegitimisation of the CEC should be prevented through the strengthening of legal provisions, clearly defined procedures for the appointment and dismissal of CEC members, and more robust independence requirements.

8 > OMBUDSPERSON



SUMMARY

Under the constitution and the international treaties appended thereto, the Institution of Human Rights Ombudsman was created as an independent institution with the mission of advancing good governance and the rule of law and defending the rights and liberties of natural and legal persons.⁶⁰⁸ The institution is headquartered in Banja Luka and has regional offices in Sarajevo, Mostar and the BD, as well as a field office in Livno.⁶⁰⁹ The institution consists of three ombudspersons appointed by both chambers of the Parliamentary Assembly from among the three constituent peoples, though an appointment from among “others” is not precluded.⁶¹⁰

The ombudsperson’s effectiveness in dealing with public complaints is limited to a primarily reactive approach and a significant backlog of cases. The institution initiates investigations in response to complaints or on its own initiative but lacks consolidated data on investigations instigated on its initiative. In 2021, the institution received 2,946 complaints, but 39 per cent of these were carried over from previous years. This is also due to a lack of human resources with the appropriate expertise in human rights and freedoms.

The ombudsperson seeks to raise awareness about ethical standards within the government through its recommendations, but in

2021, 42.6 per cent of the recommendations remain unimplemented or not responded to by the government.

The website of the Institution of Human Rights Ombudsman is kept up to date with relevant information. However, the ombudspersons’ engagement with the media is limited to presenting annual and special reports, and they often remain quiet when the media reports on human rights violations.

The legal framework is missing mechanisms to keep the ombudspersons accountable. Even though they have to report on their activities to parliament, those reports do not have to get debated and the ombudsperson cannot be held to account for late submissions because of a lack of legal deadline. Also, the election process of the current ombudspersons was marked by a lack of transparency and failed to include civil society organisations and international organisations throughout the whole process, as was the case in previous appointment rounds. There is also no restriction for re-appointments in the law, which enabled two ombudspersons to serve their third consecutive term.

The institution currently has no code of conduct and misses protocols for gender sensitivity in its work.

CAPACITY

> INDICATOR 8.1.1 Resources (practice)

To what extent do ombudspersons have adequate resources to achieve their goals in practice?

Score: 75/100

The Institution of Human Rights Ombudsman has an adequate financial, resource base to meet its goals. However, some human resources to handle complaints in time are missing.

In 2023, BAM2,554,000 (€1.30 million) of the total budget went towards salaries and benefits for 63 employees and BAM687,000 (€351,000) towards other current expenses which does not represent good practice and does not leave much room for improvement of the work of the institution.⁶¹¹

In 2017, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) accredited the institution with status 'A', with recommendations that included, among other things, ensuring financial independence and financial security for the institution's operation.⁶¹³ The accreditation for 2022 is delayed for 2023.

In the period from 2016 until 2019, the

institution received in-kind donations from the Organization for Security and Cooperation in Europe – Mission in Bosnia and Herzegovina (OSCE)⁶¹⁴ and monetary donations from the Embassy of the Republic of Bulgaria for the implementation of the project Enhancing the Capacity of the Ombudsperson Institution to Implement the National Preventive Mechanism Mandate in BiH.⁶¹⁵ Data on donations has not been included in reports after 2019.

From 2018 to the end of 2021, the Ombudsperson Institution had 17 permanent contract employees and 11 fixed-term contract employees, with 15 staff leaving the institution to retire at the end of a fixed-term employment contract or through a mutual agreement on the termination of employment. However, a backlog of unsolved complaints (see 8.3.1) shows that the institution does not have sufficient staff. This is further confirmed by human resources data that shows a significant percentage of unfilled positions.

The staff of the institution do not have civil servant status. The recruitment process is carried out following the Labour Law in the Institutions of BiH and the accompanying implementing regulations.⁶²⁰ There is a need to adopt internal regulations or modernise the existing ones, which would regulate the staff admission process in more detail. According to the data in the annual reports on the number, structure and type of professional education of the employees in the institution, it can be assumed that the staff have the necessary qualifications. However, it cannot be concluded with certainty whether they possess specific skills and relevant experience.

☒ **Table 8.1:** Budget of the Ombudsperson, 2019-2023

Year	Total budget in BAM	Total budget in € ⁶¹²	Percentage increase per year
2023	3.24 million	1.65 million	16.62%
2022	2.78 million	1.42 million	11.96%
2021	2.48 million	1.26 million	0%
2020	2.48 million	1.26 million	-4.39%
2019	2.60 million	1.32 million	

☒ **Table 8.2:** Number of staff of the Ombudsperson Institution, 2019-2022

Year	No. of staff positions according to systematisation	Filled positions	Unfilled positions	Percentage of unfilled position
2022 ⁶¹⁶	90	59	28	31.1%
2021 ⁶¹⁷	90	61	29	32.2%
2020 ⁶¹⁸	90	63	27	30.0%
2019 ⁶¹⁹	90	63	27	30.0%

> INDICATOR 8.1.2

Independence (law)

To what extent do ombudspersons have adequate resources to achieve their goals in practice?

Score: 75/100

There are comprehensive laws seeking to ensure the independence of the ombudsperson. However, loopholes exist in terms of missing restrictions for re-appointments and the requirement of appointing three ombudspersons based on ethnicity.

The Ombudsperson Institution was established by the constitution, and it began operations in 1996.⁶²¹ The Law on the Human Rights Ombudsman of BiH⁶²² (hereafter “ombudsperson law”) also ensures independence by stating that the ombudspersons should be under no orders or instructions from authorities within the scope of their constitutional and legal powers.⁶²³

To appoint the three ombudspersons, the Parliamentary Assembly has to form a special ad hoc commission that issues a public call and compiles a list of eligible candidates.⁶²⁴ The ombudspersons must be appointed from among the three constituent peoples (Serbian, Bosniak and Croatian), though appointment from among other ethnicities is not precluded.⁶²⁵ The weakness of the current legal framework is that there are no restrictions on reappointment or multiple consecutive terms

under the current law.

The personnel of the Ombudsperson Institution do not fall under the category of civil servants. The Labour Law in the Institutions of BiH stipulates that the recruitment of new employees is subject to the employer’s decision and that, following this decision, an open competition is advertised in at least one high-circulation daily newspaper disseminated throughout the country.⁶²⁶

The ombudspersons are not allowed to hold any representative office or to be politically active to ensure independence and neutrality.⁶²⁷ The three ombudspersons have a fixed term of six years and there are no restrictions on reappointment or multiple consecutive terms.⁶²⁸

The ombudspersons’ salaries are comparable to the salaries of high-level officials (the deputy auditor general, the director of the Communications Regulatory Agency and the general director of the Intelligence and Security Agency).⁶²⁹ The ombudsperson’s salaries appear sufficient to ensure their independence, the monthly net salary of an ombudsman is around BAM7,000 (€3,579), while the average net salary remains BAM1,275 (€652). Salaries of advisers, assistant ombudspersons and other employees in the Ombudsperson Institution are set in parallel with those of civil service employees in the institutions.⁶³⁰

Only the Parliamentary Assembly is authorised to remove an ombudsperson and only in the event of the inability to perform duties, failure to give up an incompatible position or the conviction and final sentencing for an

intentional offence.⁶³¹ If an ombudsperson is charged, the decision to prosecute can only be taken for criminal offences punishable by a term of imprisonment of more than five years and only after both the House of Representatives and the House of Peoples of the Parliamentary Assembly have decided so.⁶³² The ombudspersons cannot be subjected to investigation or prosecuted for opinions or decisions associated with their duties.⁶³³

Activities taken by the ombudsperson are not subject to review by the courts. While an ombudsperson will not interfere in the court's decision-making process, they can instigate legal proceedings or intervene during an ongoing case whenever they determine such an action is necessary in the performance of their duties.⁶³⁴

> INDICATOR 8.1.3

Independence (practice)

To what extent is the ombudsperson independent in practice?

Score: 25/100

Political party interests have interfered in the appointment process of the ombudsperson due to a lack of transparency and civil society participation in the process, similar to the previous procedures in 2008 and 2015.

In November 2021, the term of office expired for all three ombudspersons. However, an open competition for appointing new ombudspersons was not announced until May 2022. The interim joint commission of both chambers of the Parliamentary Assembly adopted rules of procedure but did not make them public. The rules of procedure are not in line with international standards, and Article 7, which refers to consultations, was deleted. As a result, international and domestic CSOs had no advanced warning or knowledge of the dates of the commission's first two sessions. Because participation in the process was hampered, multiple international institutions and organisations, as well as local CSOs, cautioned the authorities that the process of electing the state ombudspersons lacked transparency.⁶³⁵

Civil society organisations had an advisory role in the process of appointing the ombudsman in 2008 and 2015. In the last round, state parliamentarians allowed representatives of international and domestic civil society organisations to attend the third and following sessions of the Temporary Joint Commission in the current procedure. This followed criticism from international partners and domestic institutions. Their proposals for publicity of that work were also rejected. One stated that the commission should invite the international organisations OSCE, OHR, the Office of the Council of Europe in BiH, the Delegation of the European Union in BiH, the Office of the UN Resident Coordinator to its sessions, and the other calls for representatives of civil society organisations to attend the sessions.

In the end, two ombudspersons got re-appointed from the Bosniak and Croat communities, both serving their third consecutive terms. The new ombudsperson from the Serbian community was the president of the Council for Political and National Affairs of the Banja Luka City Committee of the Party of Independent Social Democrats (SNSD).⁶³⁶ He also made statements in the media in which he supported Milorad Dodik, the political leader of this party, even as he was “blacklisted” by the United States. Before his appointment to the position of ombudsperson, he never spoke about topics related to human rights and freedoms in his media appearances.

GOVERNANCE

> INDICATOR 8.2.1 Transparency (law)

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

Score: 75/100

Overall comprehensive provisions are in place that allow the public to obtain information on the organisation and functioning of the ombudspersons, on decisions that concern them and how these decisions were made. However, the law does not specify how the ombudspersons should make their recommendations available to the public, and there are no binding provisions that all recommendations (even if anonymised) should be published, for example, on the institution's website.

The Ombudsperson Institution is required to inform the complainant of the outcome of its investigations and the response by the government body concerned unless the response is classified.⁶³⁷ According to the Law on Protection of Confidential Data, this is decided by the authority that issued the document.⁶³⁸

All other recommendations made by an ombudsperson have to be accessible to the

public, unless classified as confidential, or the complainant has specifically requested confidentiality.⁶³⁹ The Law on Human Rights Ombudsman does not prescribe deadlines for the publication of recommendations. The Ombudsperson Institution may choose to publish its general recommendations in the Official Gazette of BiH, but the law does not require this and fails to prescribe how the public can access recommendations.

The Ombudsperson Institution is required to communicate annually the results of its activities in a report to the Presidency and to the House of Representatives and the House of Peoples of the Parliamentary Assembly.⁶⁴⁰ The institution may produce special reports, in cases of public prominence or urgency.⁶⁴¹ The Ombudsperson Institution further has to publish an annual and all special reports. However, the law does not specify how they should be published or by when.

The annual report cannot contain personal data that would allow for the identification of individuals involved in investigative procedures.⁶⁴² Information about specific cases, including pertinent decisions and reports, have to be available to the public through the media, the institution's website and print publications.⁶⁴³

Ombudspersons are not obliged to publish their asset declarations nor are the employees of the institutions. Ombudspersons are, under the Law on the Conflict of Interest, required to submit a financial report to the Commission for the Prevention of Conflict of Interest.⁶⁴⁴

> INDICATOR 8.2.2

Transparency (practice)

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

Score: 75/100

The public has relatively transparent access to relevant information on the organisation and functioning of the ombudspersons, on decisions that concern them and how these decisions were made. However, ombudspersons do not publicly speak in all situations in which the state acts as a violator of human rights and freedoms.

The official website of the Ombudsperson Institution offers information about the institution's activities, recommendations made in specific cases, as well as its annual and special reports for the years 2017-2022.⁶⁴⁵ The institution's recommendations, along with information regarding their implementation by the relevant government bodies, are published in annual reports and some are also made available on the institution's website.⁶⁴⁶

However, all three ombudspersons failed to appear in the media in response to human rights violations that have sparked widespread public indignation in the country in recent years. This is particularly evident in instances involving systematic human rights violations by public authorities. The ombudspersons' mandate is to point out violations of human

rights, and there are legitimate expectations from citizens that they publicly react to certain violations of human rights, especially those that disturb the general public.

For example, in 2022 the ombudspersons did not react when Zoran Čegar, head of the FBiH Uniformed Police Sector, physically attacked a parking maintenance and collection worker on the territory of the City of Sarajevo⁶⁴⁷, nor in 2022 when he threatened a journalist from the Center for Investigative Journalism that he would rip out her throat.⁶⁴⁸ Both videos of the violent behaviour of this high-ranking police officer were made public, however, the Ombudsperson Institution did not make a statement at the time.

Cooperation between ombudspersons and CSOs consists of the participation of the ombudspersons in conferences and round tables organised by NGOs as well as periodic meetings between civil society representatives and the institution.⁶⁴⁹ The institution's annual and special reports do not reveal if independent experts and CSO representatives are involved in its activities in practice.⁶⁵⁰

Due to missing legal obligations the asset declarations of the ombudspersons are not public.⁶⁵¹

> INDICATOR 8.2.3

Accountability (law)

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

Score: 50/100

Extensive provisions are in place to ensure that the ombudsperson has to report its actions in its annual report to the legislature. However, there are no legal deadlines for this reporting, the provided information does not necessitate analysis or discussion and the ombudspersons' decisions cannot be challenged in court.

The Ombudsperson Institution is primarily accountable to the legislature and reports to it at multiple levels. It must annually communicate the results of its activities in a report to the Parliamentary Assembly, the FBiH Parliament, the RS National Assembly, and also the presidency.⁶⁵² This report must be made public.⁶⁵³

The law does not require, but rather allows the Ombudsperson Institution to include in its annual report the number and nature of the complaints received, not pursued (and the reasons why), the number of investigations and their results, and accepted suggestions or recommendations by the government.⁶⁵⁴

The Ombudsperson Institution is required every year to present a proposed financial plan to the BiH Ministry of Finance and Treasury which serves as the basis for approving the budget funds.⁶⁵⁵ The annual report also has to include an appendix for the presidency that details the institution's budget expenditures during the period covered.⁶⁵⁶

There is no legal requirement for the bodies that receive annual reports to analyse the data and provide feedback, nor are there any deadlines imposed for preparing and sending return reports. The decisions of an ombudsperson or the institution are final and cannot be challenged in court.⁶⁵⁷

The Rules on Internal Reporting of Corruption and Whistleblower Protection allow all staff to report corruption within the institution.⁶⁵⁸

> INDICATOR 8.2.4

Accountability (practice)

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

Score: 50/100

While the Ombudsperson Institution submits its annual report regularly, the reports do not include information on accountability processes within the institution. Also, due to the missing legal obligations, the reports are not debated by parliament.

In practice, the ombudspersons fulfil their duty to report annually on the results of their activities to the presidency, the Parliamentary Assembly, the FBiH Parliament and the RS National Assembly on a regular and detailed basis, and make these reports available on their official website.⁶⁵⁹ Publications about the presentations of the institution's annual report can be found in the media. There is no mention in the ombudspersons' reports or on the website of disciplinary actions or other accountability processes taken against employees.

Every year, the Audit Office of the Institutions of BiH (see Pillar 9) releases a report on the audit of the Ombudsperson Institution. Between 2016 and 31 December 2022, the office issued 13 recommendations to the Ombudsperson Institution.⁶⁶⁰ The institution was given the opportunity to leave its comment on circumstances that led to the recommendations.⁶⁶¹ In the last six years, the Ombudsperson Institution has only submitted one comment, namely on the *Draft Audit Report for 2018*⁶⁶² disputing the auditor's finding that a member of staff had been promoted without a competitive recruitment process.⁶⁶³ The comment, however, not influence the auditor's findings and recommendations because no corroborating evidence was presented to the auditor.⁶⁶⁴ According to the Audit Report for 2022, the Ombudsperson Institution has implemented one out of three recommendations from 2021.⁶⁶⁵

According to the latest available report of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption

(APIK) which is in charge of providing whistleblower status for the employers of the institutions at the state level, in the period from 2014 to 2019 there were no reports from the Ombudsperson Institution.⁶⁶⁶

› INDICATOR 8.2.5

Integrity mechanisms (law)

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

Score: 50/100

No provisions such as codes of ethics are in place to ensure the integrity of the ombudspersons. Only the ombudsperson law covers some aspects of integrity.

A review of the Ombudsperson Institution's internal acts, which are available on the institution's website, reveals that there are no special rules in place to ensure the integrity of ombudspersons, such as restrictions on political engagement, conflict of interest rules, rules on gifts, rules on asset declarations, etc. The ombudspersons are covered by the state-level conflict of interest regulation.⁶⁶⁷

The ombudsperson law only mentions that the ombudsperson candidates should have high moral standards and restricts political engagement but does not elaborate on how

in detail.⁶⁶⁸ The Law on the Ombudsperson prescribes that the position of ombudsperson is incompatible with the performance of any representative functions, or with any form of political engagement or role in promoting a particular agenda etc. and in case of such incompatibility arising, the ombudsperson needs to leave that public posting on the day the conflict was determined, before or during their term in office. (see 9.1.3).⁶⁶⁹ The staff of the institution are regulated according to the public sector laws in terms of their rights and obligations.

› INDICATOR 8.2.6

Integrity mechanisms (practice)

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

Score: 25/100

There is almost a complete absence of actions aimed at ensuring the integrity of the ombudsperson, so misconduct stays mostly unsanctioned.

There is no information available on how the integrity of the ombudspersons and other institution personnel is ensured in practice. The Ombudsperson Institution's 2022-2024 Medium-term Work Plan provides that the ombudspersons will devote special attention and additional material resources to developing

and increasing the capacities of personnel through regular and/or specialised training.⁶⁷⁰

appointed head of department.⁶⁷²

> INDICATOR 8.2.7

Gender

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

Score: 25/100

No explicit gender-sensitive protocols and guidelines exist, but presently two out of three ombudspersons are women.

The complaint form, which is available on the institution's website, is written in gender-neutral language and allows complainants to indicate their gender.⁶⁷¹ However, there are no explicit gender-sensitive protocols and guidelines, and no gender-disaggregated statistics on complainants are provided in the institution's annual reports.

Nonetheless, two of three ombudspersons are presently women. In terms of gender structure, according to the institution's *2021 Annual Report*, female employees outnumber male employees by a 2:1 ratio (41 to 20). Out of ten departments within the institution, women are appointed to five department head positions, while two departments are headed by men. The remaining three departments have no

ROLE

> INDICATOR 8.3.1

Investigations

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

Score: 50/100

While the ombudsperson does seek to deal with complaints from the public, its approach is largely reactive, and its success is limited due to a significant backlog of cases.

Every citizen can file their complaints to the Ombudsperson Institution in writing, delivered either in person or by post.⁶⁷³ E-mail submissions are also accepted as they meet the written form criterion.⁶⁷⁴ To facilitate communication with citizens, the Ombudsperson Institution developed a complaint form, which is available on its website.⁶⁷⁵

The institution keeps track of complaints filed and actions taken in response and publishes the statistics in its annual reports. In 2022, the Ombudsperson Institution received 2,850 complaints from citizens. The institution faces a considerable backlog of cases.⁶⁷⁶ In 2022, for instance, a total of 1,663 cases were carried over from earlier years, accounting for as much as 36.8 per cent of all cases in that year.⁶⁷⁷

Between 2016 and 2021, the Ombudsperson Institution received 18,283 complaints, 473 fewer than between 2010 and 2015 when the total was 18,756. The number of cases carried over from previous years in the period between 2016 and 2021 was 11,187 which is 684 more than during the period between 2010 and 2015 where the total was 10,503.⁶⁷⁸

Typically, the Ombudsperson Institution initiates an investigation in response to a complaint or on its own initiative.⁶⁷⁹ However, statistics on investigations/procedures initiated on its initiative are not available in the institution's *2021 Annual Report*. Multiple investigations/procedures initiated on its initiative between 2016 and 2021 are detailed on the institution's website, but the data is not consolidated.⁶⁸⁰ Ombudspersons are also authorised by law to institute or participate in court proceedings.⁶⁸¹ However, no aggregate statistics on instituted court proceedings are available in the institution's annual reports.

In 2021, the Ombudsperson Institution submitted comments on the Preliminary Draft Law on Freedom of Access to Information.⁶⁸² This law would have significantly reduced the institution's mandate by reducing the role of the ombudsperson to a minimum point where public authorities provide the ombudsperson with data on appointed information officers and contacts of the institutions and the information officers periodically inform the ombudsperson of the number and type of requests for access to information and statistics of proceedings.

The Ombudsperson Institution, with the support of several cities and municipalities and

the OSCE Mission to BiH, organises outreach days every two weeks to facilitate citizens' access to this institution as a mechanism for protecting their rights.⁶⁸³ The number of complaints received annually, particularly those that are admissible and well-founded, is a good indicator that the general public is aware of the institution's existence.⁶⁸⁴

> INDICATOR 8.3.2

Promoting good practice

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

Score: 50/100

While the ombudsperson does seek to raise awareness within the government and public awareness about standards of ethical behaviour, its efforts are generally limited, reactive and considered to be ineffective.

Government bodies must provide the institution with appropriate assistance in its investigations and inspections.⁶⁸⁵ Government bodies include all institutions, authorities, agencies and all other governmental departments (state, entity, BD, cantonal and municipal, as well as private institutions performing public functions).⁶⁸⁶ During an investigation, the ombudspersons have

access to any government agency to verify information, conduct interviews and examine relevant files and documents.⁶⁸⁷

When initiating an investigation/procedure in response to a complaint or on its own initiative, ombudspersons are required to seek a statement from the party identified as responsible for human rights violations and to inform both the complainant and the government body concerned of the actions taken.⁶⁸⁸

In its annual reports, the Ombudsperson Institution provides a breakdown of all recommendations made during a given year and how they were implemented.⁶⁸⁹ On its official website, the institution occasionally posts recommendations made in specific cases.⁶⁹⁰ Regarding the implementation of the recommendations, of the total of 2,349 recommendations issued between 2016 and 2021, 836 were fully implemented by the government bodies concerned, 64 were partially implemented, and cooperation with the government bodies concerned was achieved in 520 cases.⁶⁹¹ In 553 cases, the government bodies did not respond to the institution's recommendation, and in 504 cases the recommendation was not implemented at all. It is disturbing that as many as 45 per cent of the recommendations of the Ombudsman Institution, in which human rights violations were determined, remain unimplemented or the other institutions do not respond to them at all.⁶⁹² When it comes to 2021 and 2022, the Ombudsperson Institution issued 759 recommendations, out of which 241 were fully implemented, 20 partially implemented, in 135

cases cooperation with the government bodies was achieved, while 189 recommendations were not implemented. In 174 cases institutions did not respond to them at all.⁶⁹³

The Ombudsperson Institution's annual and special reports are available on its website, where the general public can also learn more about the institution's activities.⁶⁹⁴

The Ombudsperson Institution has a legal responsibility to recommend general and individual measures.⁶⁹⁵ In contrast to the above, the Institution remains noticeably absent from public awareness raising regarding ethical norms of government conduct and violations of human rights and freedoms.

INTERACTIONS

The ombudsperson institution has the most interaction with the legislature, the executive and civil society.

Cooperation with legislative authorities at both the state and entity levels is critical for the Ombudsperson Institution. The Law on the Human Rights Ombudsman of BiH requires the Ombudsperson Institution to present the results of its annual activities to the House of Representatives and the House of Peoples of the Parliamentary Assembly, the FBiH Parliament and the RS National Assembly.⁶⁹⁶ Cooperation consists mostly of ombudspersons attending sessions of parliamentary chambers and working bodies, as well as the relevant parliamentary committees considering the institution's special reports.⁶⁹⁷

In addition to reporting to the legislative authorities, the Ombudsperson Institution reports annually to the executive on the results of its activities. The ombudspersons meet with representatives of executive authorities at all levels in order to maintain cooperation and share experiences.⁶⁹⁸ Additionally, to ensure the implementation of their recommendations, the ombudspersons organise working-cum-consultative meetings with government bodies to reach consensus on specific actions to be taken to implement the recommendations.⁶⁹⁹

The Ombudsperson Institution's cooperation with civil society is not defined in the ombudsperson law. However, there are internal documents that govern this interaction, like

the Platform for Human Rights Ombudsperson Institution's Cooperation with the NGO Sector.⁷⁰⁰ According to this platform by the end of each calendar year, the ombudspersons will issue a public call for cooperation with NGOs, outlining the areas and forms of cooperation.⁷⁰¹ There is no mention of any public calls held or CSOs selected for cooperation in the institution's annual reports produced between 2016 and 2021. The annual reports, however, include information on the participation of ombudspersons and other personnel in CSO-organised conferences, round tables and other events.⁷⁰² In May 2022, the Ombudsperson Institution adopted an internal act entitled Criteria of the Institution of Human Rights Ombudsman of BiH for Cooperation with NGOs that specifies the priority areas of cooperation, the modalities of establishing cooperation and partnership, the evaluation of received applications and the criteria for establishing cooperation.⁷⁰³

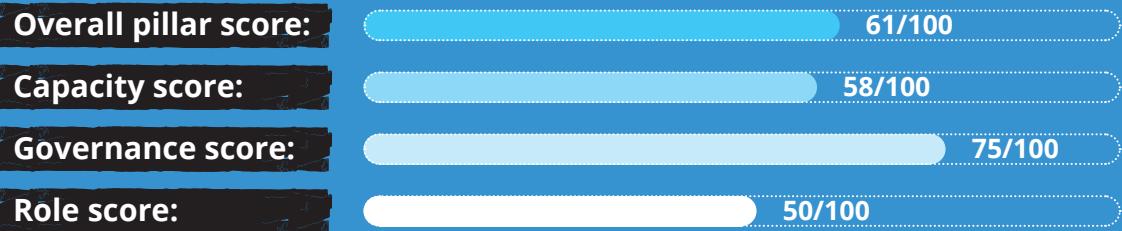
PILLAR **RECOMMENDATIONS**

- The Ombudsperson Institution needs to develop and implement a code of conduct and other internal policies governing conflicts of interest, rules on gifts, rules on asset declarations, restrictions on political engagement, ethical and other issues surrounding officials' obligations, failure to perform services, etc.
- The Ombudsperson Institution needs to hire staff with suitable experience in the area of protection of human rights and freedoms.
- The Ombudsperson Institution should exercise its authority to institute court proceedings and intervene in judicial and administrative proceedings.
- The ombudspersons' media engagement should go beyond presenting annual and special reports and the marking of important dates by regularly voicing opinions on human rights issues that get reported on in the media.
- The Ombudsperson Institution needs to work with gender issue specialists and consult with women's rights CSOs to introduce gender-sensitive protocols into the complainants and investigation of the Ombudsperson Institution. These protocols and guidelines should introduce front-facing female staff, gender-disaggregated statistics on complainants published in the institution's annual reports, training for officials and staff,

and produce awareness-raising material for optimal implementation of gender-sensitive mechanisms.

- The Government/Parliament need to amend the Law on the Ombudsperson:
 - To introduce deadlines for annual report submission to the legislature.
 - To introduce the obligation to discuss the results in parliament.
 - To limit the possibility of re-appointments to two consecutive terms.

9 > SUPREME AUDIT INSTITUTIONS



SUMMARY

There are four supreme audit institutions (SAIs), the Audit Office of the Institutions of Bosnia and Herzegovina, the Audit Office of the Institutions in the Federation of Bosnia and Herzegovina, the Supreme Audit Office of the Republika Srpska Public Sector, and the Audit Office of Public Administration and Institutions in the Brčko District of BiH.⁷⁰⁴ The mutual coordination and cooperation among the four SAIs takes place through the SAI Coordination Board. The board comprises of the auditors general and deputy auditors general of the four SAIs. Representatives of the Audit Office of Public Administration and Institutions in the BD participate in the activities of the Coordination Board as observers.⁷⁰⁵

The independence and the SAIs' status, including in particular adequate legal protection before a supreme court against any interference in their independence and audit mandate, is not included under their respective constitutions (of state and entities) and, therefore, not in accordance with generally accepted international standards and conventions.⁷⁰⁶

The sole exception is the BD, where the Statute recognises the status of the Audit Office of Public Administration and Institutions in the Brčko District, albeit without explicitly mentioning the independence of the Auditor General or the Office.⁷⁰⁷

In terms of the SAIs' operational activities, there are still shortcomings related to insufficient human resources, notably for performance audits, as well as the need to enhance collaboration with other relevant actors, particularly those from the judiciary and the civil sector. In recent years, the financing of SAI operations has been subject to numerous pressures. Most notably financing of the Audit Office of the Institutions of BiH where the budget was constrained in recent years by the CoM's decision on the temporary financing of the institutions of BiH, the COVID-19 pandemic and restrictions on capital expenditures imposed in 2020 and 2021, all of which have undoubtedly impacted the work of this audit institution.

CAPACITY

> INDICATOR 9.1.1 Resources (practice)

To what extent do the audit institutions have adequate resources to achieve its goals in practice?

Score: 50/100

The SAIs have some resources, however, significant human resource gaps in relation to the number of entities covered lead to a certain degree of ineffectiveness in carrying out their duties.

SAIs have full autonomy in the control and management of their resources.⁷⁰⁸

As Table 9.1 illustrates, the budget of the supreme audit institutions increased during 2020, and especially during 2023 which saw a rise of 23 per cent compared to 2022. Similarly, the budget of the FBiH Audit Office, after the budget reduction in 2021, has grown constantly in the last two years, while the budget of the RS Audit Office in 2021 shrank as much as 39 per cent compared to 2020, and despite some improvement in the last two years, it has not yet reached its 2019 level.

Even though there are special procedures designed to safeguard the SAIs' financial independence from the executive branch, in 2020 there have been instances where budget

requests were scaled back or constraints were imposed on specific budget items.⁷¹⁰ The FBiH Government took advantage of a legal deficiency, a delay in the establishment of the parliamentary committee responsible for approving the budget of the FBiH Audit Office for 2020, which firstly reduced the budget from BAM5.5 million (€2.81 million) to BAM5.2 million (€2.66 million), and during the budget rebalance by an additional BAM647,000 (€330,806) to BAM4.65 million (€2.38).⁷¹¹

Several examples, such as restrictions in the financing of operations of the Audit Office of the Institutions of BiH and the Audit Office of the Institutions of FBiH, indicate that the SAIs' financial independence as established by the regulatory mechanisms is not always respected in practice.⁷¹² One of the examples is the lack of harmonisation of other regulations with the SAI. For instance, the Law on Financing of the Institutions of BiH⁷¹³ disregards the specific position of SAI BiH concerning to budget preparation and approval.⁷¹⁴

In terms of human resources, all four SAIs consistently struggle with human resources and the Audit Office of the Institutions in FBiH and the Supreme Audit Office of the RS Public Sector remain particularly understaffed. According to the most recent data from the 2021 activity report, the Audit Office of the Institutions in FBiH employs only 72 people, of whom 57 are auditors, even though its Regulation on Internal Organisation and Staffing envisages a staff of 144.⁷¹⁵

☒ **Table 9.1: Annual budget of the SAIs, 2019-2023**

Year	Total budget in BAM	Total budget in €	% increase per year	Total budget in BAM	Total budget in €	% increase per year	Total budget in BAM	Total budget in €	% increase per year
2023	6,094,000	3,115,812.72	23.53%	5,821,741	2,976,608.90	6.76%	5,273,900	2,696,502.25	11.12%
2022	4,933,000	2,522,202.84	-2.52%	5,452,903	2,788,025.03	13.37%	4,745,800	2,426,489.01	15.62%
2021	5,061,000 ⁷⁰⁹	2,587,648.21	0%	4,814,055	2,461,387.23	-7.53%	4,104,400	2,098,546.39	-39.43%
2020	5,061,000	2,587,648.21	4.65%	5,206,183	2,661,879.09	1.07%	6,777,100	3,465,076.20	13.33%
2019	4,836,000	2,472,607.53		5,150,928	2,633,627.62		5,979,800	3,057,423.19	

According to the Supreme Audit Office of the RS Public Sector's staffing regulation, a total of 94 posts are envisaged, however, according to the latest available statistics from the 2021 annual report of the agency, only 85 are filled.⁷¹⁶ This does not take into account the skills and the appropriate background of the employed staff.

The number of auditors remains insufficient to accomplish all tasks, especially financial audit tasks and especially performance audit tasks.⁷¹⁷ According to the *2022 Annual Report of the Audit Office of the Institutions in FBiH* in addition to the auditor general and their deputy, 75 were employed, out of which 59 auditors, out of 145 employees foreseen by the internal acts.⁷¹⁸

The Audit Office of the Institutions in FBiH and the Supreme Audit Office of the RS Public Sector are tasked with a very wide range of functions, covering over 2,000 subjects that are being audited in FBiH and about 900 in RS.⁷¹⁹

> INDICATOR 9.1.2

Independence (law)

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

Score: 75/100

There are comprehensive laws seeking to ensure the independence of the supreme audit institutions, however, the removal procedures for the auditor general in Brčko District, based on "audit quality" leaves ample room for manipulation.

The state and entity laws ensure the independence of the country's supreme audit institutions.⁷²⁰ However, the SAI and its independence is not established in the constitution.

Oversight over the SAI's is exercised by the competent parliamentary committee/commission, typically in the form of a budget and finance committee/commission and/or the audit committee of the state and entity legislatures (assembly/parliament).⁷²¹

The SAIs are headed by the auditor general and their deputy. At the state level and BD, the representatives of the legislature, specifically the selection committee, are responsible for proposing the appointment of the auditor general and their deputy.⁷²² This differs from the laws in FBiH and RS, which provide that the proposal for appointment comes from the president of the entity based on the ranking

list compiled by the selection committee.⁷²⁸³ By law, the auditor general and their deputy have a fixed seven-year term of office without the chance of re-election.⁷²⁴

The auditor general and deputy auditor general are protected from removal without relevant justification by law. The sole exception to this rule is BD, where the auditor general and their deputy could be removed from office if the audit quality does not meet standards, leaving ample room for manipulation. This was changed by amending the law in 2022 and harmonised with other laws at the state and entity level.⁷²⁵

Under the present legislation, auditors are immune from criminal and civil liability and are entitled to protection by state authorities from any attack, insult or unwarranted action linked to the performance of their duties.⁷²⁶

> INDICATOR 9.1.3

Independence (practice)

To what extent are the audit institutions free from external interference in the performance of their work in practice?

Score: 50/100

Other actors occasionally interfere with the activities of the supreme audit institutions. These instances of interference are usually non-severe, such as threatening verbal attacks, without significant consequences for the behaviour of the SAI.

For example, in 2017, the then-RS Auditor General and his deputy resigned under political pressure from the RS president and the leader of the largest political party in RS, SNSD. They tendered their resignations in accordance with the provisions of the RS Law on Public Sector Auditing. The reason was that the Supreme Audit Office of the RS Public Sector published a consolidated financial report for RS budget users for 2016 stating that the uncovered budget deficit of RS was at least BAM175.6 million (€89.8 million) and that budget users had created at least BAM118 million (€60.3 million) more liabilities than there were funds available.⁷²⁷ In response to the findings of this financial report, the then-RS president stated that the report was biased and disputed its conclusions. He publicly demanded that the auditor general resign or face removal from office,⁷²⁸ which is precisely what transpired shortly afterwards, in the autumn of 2017,

when the RS National Assembly removed him from office.⁷²⁹ The then-assistant minister in charge of the Fiscal System Department at the Ministry of Finance was appointed to serve as acting auditor general. Despite the immediate public outcry over the appointment of an assistant minister from the recently audited finance ministry as acting auditor general, in early 2018 the RS National Assembly formally appointed Mr Jovo Radukić as Auditor General for a term of seven years.⁷³⁰

In 2021 officials from several ministries in the FBiH Government attacked the Audit Office of the Institutions in FBiH, calling its reports biased and accusing its auditor general, Mr Nekić, of being unprofessional.⁷³¹ The audit reports in question state that funding allocations to vulnerable companies in the hospitality, industry and economy sectors hit by the COVID-19 pandemic were fraught with irregularities.⁷³² However, aside from a public debate about the reports' findings, there were no significant repercussions in this case.⁷³³

GOVERNANCE

> INDICATOR 9.2.1 Transparency (law)

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

Score: 100/100

Comprehensive provisions are in place which allow MPs and the public to obtain information on the organisation and functioning of the audit institutions, on decisions that concern them and how these decisions were made.

Article 3 of the state and entity laws on public sector audit, as well as corresponding law in BD, defines the goals of the SAIs as well as their obligation to inform the responsible authorities and the public about their findings and recommendations through the timely publication of audit reports.⁷³⁴

According to the relevant legislation, which is consistent with international standards, SAIs are required to prepare and submit all reports, including audit reports, performance audit reports and special audit reports to the parliamentary committee, and to make all reports available to the public through their official website.⁷³⁵ The legal framework on

audits sets the deadline for delivery of final reports to every institution audited and the competent Ministry of Finance. Specifically, the SAIs are required to deliver reports within 90 days of the filing of an annual report by a budget user. Also, the laws require that the audit report be submitted to the legislature within 90 days after receipt of the government's consolidated annual report on budget execution.⁷³⁶ The interested public (citizens, journalists, etc.) can obtain any information not contained in activity reports using the Law on Freedom of Information.

> INDICATOR 9.2.2 Transparency (practice)

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

Score: 75/100

MPs and the public are able to readily obtain relevant information on the organisation and functioning of the SAIs. However, the published audit reports lack user-friendly elements such as easy-to-understand executive summaries of key findings and data visualisations.

During 2021 and 2022 all four SAIs provided information about their financial operations on their websites.⁷³⁷ Furthermore, although the applicable auditing laws do not require it,

each of the four SAIs has made their activity reports for 2021 and 2022 publicly available and categorised the information to make the contents more transparent and accessible to the public.⁷³⁸

In addition to annual activity reports, the websites of all four SAIs include their audit plans and programmes, allowing for a straightforward comparison of actual audits performed versus those planned.⁷³⁹ The SAIs' websites also contain all other relevant documents, ranging from primary and secondary legislation to strategic documents and internal organisation and staffing regulations.⁷⁴⁰

All audit reports, whether financial, performance or compliance, are now accessible on the websites of all four SAIs. Most SAIs make their reports searchable by year, type and subject of the audit.⁷⁴¹ Also, each of the four SAIs maintains an online public registry of recommendations resulting from completed financial and performance audits, allowing any interested party to read the recommendations issued to audited institutions and judge the extent to which they have been implemented.⁷⁴²

In terms of the content of audit reports, however, there is room for improvement as they need to be prepared in a more user-friendly way. This entails providing an easy-to-understand executive summary of the key findings, using data visualisation (charts, graphs and infographics) and creating informative materials for other relevant actors (target audiences).

> INDICATOR 9.2.3

Accountability (law)

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

- Score: 75/100

Extensive provisions are in place to ensure that the SAIs have to report and be answerable for their actions. However, there is no mechanism to appeal the SAI decision for audited entities.

The regulatory framework governing the operation of the SAIs requires the audit institutions to demonstrate accountability by following the adopted audit standards in the performance of audits, specifically the International Organization of Supreme Audit Institutions (INTOSAI) auditing standards.⁷⁴³ The Prerequisites for the Functioning of SAIs lay forth the principles of transparency and accountability as well as the code of ethics.⁷⁴⁴ These require each SAI to communicate audit reports to the appropriate institutions and the general public promptly, detailing the audit's findings and recommendations. The SAIs are required to submit a draft audit report and after the deadline for responding to the audit report, the final version of the report is presented to the relevant legislature.⁷⁴⁵ The SAIs are further required to submit an annual report to the relevant parliamentary committees, as well as quarterly, semi-annual and annual financial reports under the laws on

budget at all levels.⁷⁴⁶ In addition to information on the SAIs' financial operations, annual reports should include the key SAI financial indicators.⁷⁴⁷

According to the SAI laws, before the competition of the final audit report, the SAI prepares a draft of the audit report that is submitted to the audited institution for comments, with a deadline of 15 days for submitting comments.⁷⁴⁸

For peer-assisted reviews of the SAIs, a special working group composed of auditors from other countries is formed.⁷⁴⁹ The OECD's SIGMA peer review of the SAIs undertaken in 2019-2020 found that the audit practices are generally well developed, but there are still areas where further improvement is needed, such as strategic and management practices, monitoring and reporting, management of human resources, communication, and interaction with the public.⁷⁵⁰

➤ INDICATOR 9.2.4

Accountability (practice)

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

Score: 75/100

Existing provisions are effective in ensuring that the SAIs have to report and be answerable for their actions in practice. However, there is evident political pressure on the work of the SAIs.

In 2021 and 2022, the SAIs provided annual activity reports, as well as quarterly, semi-annual and annual reports on financial operations, to their respective parliamentary commissions, within the legal deadlines (see 9.2.5).⁷⁵¹

The annual activity reports and financial statements are published regularly on the SAIs' respective websites. Similarly, the SAIs comply with legal provisions that require them to develop annual work plans and publish reports on audits conducted in institutions at all levels.⁷⁵²

However, the accountability of SAIs is partly jeopardised due to a lack of independence from political pressure. The example given from 2017, resulted in the RS auditor general and his deputy being pressured to resign, following the release of their findings on the 2016 Consolidated Financial Report for RS

Budget Users, uncovering budget deficits (see 9.1.3). Also, in 2021 the Government of FBiH discussed the audit reports for four ministries at the government thematic session after they received negative opinions from the SAI FBiH. Even though the government is not supposed to discuss the reports, it was one of many ways for the government to exert pressure against SAI FBiH.⁷⁵³

> INDICATOR 9.2.5

Integrity mechanisms (law)

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

Score: 75/100

There are comprehensive provisions in place to ensure the integrity of officials of each SAI. These include codes of conduct, rules on conflicts of interest, rules on gifts and hospitality. However, there is a lack of post-employment restrictions.

Mechanisms that ensure the integrity of audit institutions are incorporated in a series of codes of professional ethics and defined rules of conduct for public sector auditors.⁷⁵⁴ Accordingly, public sector auditors are obliged to follow ethical codes and rules of conduct in their work, which are an integral part of the International Standards of Supreme Audit Institutions developed by INTOSAI.⁷⁵⁵

The auditing laws require the SAIs to adopt a code of ethics for their employees based on internationally recognised INTOSAI standards, which must outline the values that employees are expected to uphold.⁷⁵⁶ The employees are required to read the code, take an oath and affix their signature to affirm their commitment to abiding by the obligations stemming from the code of ethics.⁷⁵⁷ Additionally, SAI employees are required by law to be impartial and, in particular, to refrain from any action or inaction that is inconsistent with or conflicts with the responsibilities established by law, as well as to refrain from publicly expressing their political or religious beliefs. Finally, they may neither seek nor accept any form of gain, benefit or compensation in money, services or in any other form for themselves or their relatives.⁷⁵⁸ The law does not regulate post-employment restrictions but compels former employees to keep confidential information from the public even after the termination of their work in the SAI.⁷⁵⁹

Auditors should not associate themselves with any report, response, press release or any other information if they believe that it contains a material misstatement or misleading statement or if they believe that it contains a statement or information that was obtained in a negligent manner. It is forbidden to omit or conceal information if that would mislead the user.⁷⁶⁰ Additionally, formal integrity mechanisms mandate that during the recruitment process due attention be paid to the integrity of each candidate by developing a set of general and special requirements that candidates must meet in order to be employed in the SAI.⁷⁶¹

> INDICATOR 9.2.6

Integrity mechanisms (practice)

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

- Score: 50/100

There is a piecemeal and reactive approach to ensuring the integrity of members of the SAIs, including only some of the following elements: enforcement of existing rules, inquiries into alleged misbehaviour, sanctioning of misbehaviour and training of staff on integrity issues.

There have been no documented instances of wrongdoing or major code violations by the employees of the four SAIs.

However, some have raised concerns and objections over instances of non-compliance with the existing formal integrity mechanisms. This in particular regards the appointment of the current auditor general and his deputy in RS in 2017-2018, given that the person appointed as auditor general, initially in an acting capacity and later permanently, was an assistant minister in the RS Ministry of Finance at the time. The public argued that the appointment was in breach of Article 6 of the Law on Auditing the RS Public Sector, which provides that the auditor general and the deputy auditor general may not participate in or make decisions regarding audits of the institutions in which they held management

positions within the two years before the appointment.⁷⁶²

> INDICATOR 9.2.7

Gender

To what extent are the audit institutions' mechanisms gender-sensitive?

- Score: 25/100

The SAIs have some gender-sensitive mechanisms in relation to staff training, but are missing gender-sensitive complaints mechanisms that produce gender-disaggregated data.

The SAI complaint and investigation mechanisms do not have explicit gender-sensitive protocols and guidelines. The complaint and investigation mechanisms do not include front-facing female staff. Three, out of four Auditor Generals are men, and only in the SAI Office of BD the auditor general is a woman.

SAI offices do not produce a gender-disaggregated data, including data on the number of complaints filed by women or men, the processing time of complaints filed by women or men, or complaints solved or disregarded by women and men.

SAI office staff have gone through a gender-related training with UN Women in 2022.⁷⁶³ Also, SAI institutions have signed agreements on the implementation of parallel performance audits in the field of gender equality, together with SAI institutions in Serbia and Montenegro in 2023.⁷⁶⁴

ROLE

› INDICATOR 9.3.1

Effective financial audits

To what extent do the audit institutions provide effective audits of public expenditure?

Score: 50/100

While the SAIs are somewhat active in auditing public expenditure, their effectiveness is limited due to a lack of human resources.

According to the law, the SAIs have to undertake financial and compliance audits, performance audits and other types of audit procedures as needed.⁷⁶⁵ In 2022, efforts have been made to increase the frequency of performance audits from 11 in 2018 to 18 in 2022.⁷⁶⁶ The activity reports for 2021 and 2022 show an average of five to six performance audits conducted each year at the state and entity levels.⁷⁶⁷ This is a notable improvement since 2018. Nevertheless, the entity SAIs' inability to respond to the challenge of performing a higher number of audits annually given nearly 3,000 entities that are subject to audits remains a significant obstacle.⁷⁶⁸

Since 2018 the SAIs have carried out two performance audits related to environment protection, the Performance audit of the protection of rivers in FBiH⁷⁶⁹ prepared by SAI FBiH and the Performance audit on the

protection and preservation of natural goods prepared by SAI RS.⁷⁷⁰

According to the OECD *SIGMA Peer Review Report* although reports are in line with standards, existing financial audit and compliance reporting is not consistent, concise and easily understandable.⁷⁷¹ Reports do not clearly state the significance of the findings and contain redundant information that is not necessary for effective reporting.

Audit reports are carried out regularly and presented to the legislature and public.

Although the SAIs have improved their capacities in the last three years, including the adoption of updated methodologies and the recruitment of additional auditors (see 9.1.1), there is still a significant gap between the SAIs' needs and capabilities when it comes to financial audits and performance audits, particularly among entity SAIs due to a high number of subjects to audit.

> INDICATOR 9.3.2

Detecting and sanctioning misbehaviour

Do the audit institutions detect and investigate misbehaviour of public officeholders?

Score: 50/100

The SAIs' track record in detecting is high, however, the SAIs lack the mandate for investigating and sanctioning misbehaviour and there is insufficient coordination with public prosecution and law enforcement agencies.

SAIs have a mandate and professional procedures in place to successfully identify any financial activity that deviates from applicable regulations. The Law on Audit of Institutions of Bosnia and Herzegovina provides SAI with authorisation for gathering information and access to premises and documentation, and foresees penalties if access to auditors is not allowed.⁷⁷² The same authorities are prescribed by the entity and BD audit laws. However, the SAIs lack the capacity and mandate to exercise a private sector audit similar to that performed by the financial police.

Although the audit reports of all four SAIs consistently uncover violations of the applicable laws and regulations, most notably in public procurement, the sanctioning of such transgressions is virtually non-existent or inconsistent at best.⁷⁷³ According to the report of SAI FBiH during the period between

2016 and 2022, the SAI sent 115 reports to the relevant prosecutors' offices for information and competent response.⁷⁷⁴ In 58 cases prosecutors' offices decided not to conduct investigations based on those reports.⁷⁷⁵ This indicates that there is insufficient cooperation (communication) between the SAIs and the competent prosecutors' offices and investigative bodies.

> INDICATOR 9.3.3

Improving financial management

To what extent are the SAIs effective in improving the financial management of government?

Score: 50/100

Recommendations by the supreme audit institutions on how to improve financial management are included and tracked. However, ineffective audits by the SAIs on the entity level and the lack of follow-up have led to ineffectiveness in improving the financial management of the government.

The SAIs place a particular emphasis on improving financial management policies in audited institutions by providing comprehensive, practical and implementable recommendations. All four SAIs have a special registry in place of recommendations for the elimination of irregularities found, accessible

via their websites.⁷⁷⁶

Despite the existence of a clear formal mechanism to implement and comply with audit report recommendations the degree of practical implementation of audit report recommendations remains low. According to the annual report of SAI BiH, in 2022, 35 per cent of recommendations were implemented, 17 per cent were in progress, 37 per cent were not implemented, and 11 per cent were not evaluated.⁷⁷⁷ During 2021, 32 per cent of recommendations were implemented, 25 per cent were in progress, 33 per cent were not implemented and 10 per cent were not evaluated.

The annual report of SAI FBiH states that it has analysed the level of implementation of 1,379 recommendations from previous years and concludes that 38.7 per cent were implemented, 16.8 per cent were partially implemented, 36.9 per cent were not implemented and 7.6 per cent were not evaluated.⁷⁷⁸

There is an absence of actions by the SAIs to hold authorities in audited administrative bodies accountable for identified irregularities and for failing to implement audit report recommendations. However, the parliamentary commissions for budget and finance have put in place their own procedures for acting on financial audit reports of public institutions, which require them to seek explanations for audit findings from audited institutions.⁷⁷⁹ The audited institutions are required to provide such explanations, which may involve management hearings.⁷⁸⁰ Unfortunately,

this does not happen in practice. Instead, the institutions to which recommendations were given turn a blind eye to the audit report findings, which is why SAI findings are repeated every year and institutions that have misappropriated public funds continue to operate without change and with impunity.⁷⁸¹

At best, audit report findings and recommendations attract media attention typically followed by public condemnation and debate. However, these rarely result in any tangible repercussions that would lead to the implementation of audit report recommendations.⁷⁸²

to exert additional pressure on prosecutors' offices and other relevant institutions to follow up on audit reports.⁷⁸⁴ There is a lack of an established practice of holding regular meetings with CSOs and the media. The media and CSOs could play a role in making the parliamentary budget and finance commission hearings more transparent and accountable by pressuring them to consistently use their internal procedures for acting on financial audit reports, such as those that require seeking explanations for audit findings and opinions from audited institutions.

INTERACTIONS

Given the modest number of investigations and court proceedings initiated as a result of adverse audit reports, there is a lack of communication and collaboration with prosecutors' offices.⁷⁸³ Although adverse audit reports are automatically forwarded to prosecutors' offices, the follow-up action in such situations, as well as the prosecutors' offices' responsibilities and obligations, are not clearly defined, particularly with regard to the obligation of audited institutions to provide feedback to SAIs on actions taken in particular cases.

There is also a lack of cooperation with CSOs. CSOs seem more likely to pursue such cooperation, as evidenced by multiple instances where they leveraged audit institutions' findings

PILLAR

RECOMMENDATIONS

- The governments and legislatures need to define the status of the supreme audit institutions in the state and entity constitutions to effectively assure their financial independence and equip them with the necessary financial and human resources to perform all types of audits in the public sector.
- The SAIs need to step up inter-office coordination, led by the state-level office, to enhance the overall efficiency of financial management and improve control of government spending.
- The prosecutors' offices, the executive and the SAIs need to collaborate to define clear procedures and rules for acting on audit reports, as well as to mandate the disclosure of information on the status of such cases and the rationale behind decisions made. Their consolidated aim must be to enhance the efficiency of financial management and improve control of government spending.
- The legislative branch needs to formally establish protection mechanisms (via the special role of the parliamentary commissions responsible for the SAIs) and/or special criteria for the selection of members of those commissions that would ensure the independence and expertise of the members of commissions for situations where the governing bodies of the SAIs are faced with political pressure or where their professional and personal integrity, or the SAIs' institutional integrity, is threatened.
- The parliaments need to further improve and standardise parliamentary procedures for considering audit reports and establish mechanisms for remedial actions that are taken based on these reports, to enhance the effectiveness of oversight over government spending.
- All SAIs need to make the content of audit reports more understandable to the general public through data visualisation and the inclusion of executive summaries of the key findings and recommendations, to maximise transparency.

10 > ANTI-CORRUPTION AGENCY

Overall pillar score:



Capacity score:



Governance score:



Role score:



SUMMARY

The Agency for the Prevention of Corruption and Coordination of the Fight Against Corruption is an independent and autonomous administrative organisation, which reports to the Parliamentary Assembly.⁷⁸⁵ The agency is primarily a preventive body and institution in charge of coordinating anti-corruption activities with other institutions and authorities involved in anti-corruption at all levels of governance.

Although the legal framework allows for the agency's formal independence, the Council of Ministers of Bosnia and Herzegovina (CoM) has a strong influence on the agency's organisational and financial independence as evidenced by the process of providing human and technical resources or the agency's operation.

The agency has put in place proactive transparency mechanisms and information on its activities are available on its website. Although accountability and integrity processes have been strengthened by gradual capacity building there are still issues such as direct political party interference in the process of appointing the agency's leadership or the appointment of US-blacklisted individuals to the agency's Selection and Monitoring Committee.

During the last five years, the agency engaged in strengthening its operational capacities and concentrated its efforts on the implementation, monitoring and coordination of strategic anti-corruption documents, as well as the development of a new strategy and accompanying action plan for the period between 2019 and 2022 (not yet adopted).

CAPACITY

> INDICATOR 10.1.1

Resources (law)

To what extent are there provisions in place that provide the anti-corruption agency with adequate resources to effectively carry out its duties?

Score: 50/100

While several provisions exist, they do not cover all aspects. Current provisions do not allow the agency to seek additional funding and the government has complete influence in determining the budget of the agency.

The agency has its budget which is financed from the budget of the state institutions.⁷⁸⁶ The agency, and more specifically its director, has to prepare a budget proposal and submit it to the Ministry of Finance through the usual approval procedure.⁷⁸⁷ Following the budgetary allocation of funds for its operation by the Parliamentary Assembly, the agency can spend its funds following its annual work plan.

Additionally, according to the Law on Financing of the Institutions of BiH, the agency has the legal right at any time to request from the Ministry of Finance restructuring of its budget, or exceptionally a redistribution of funds among budget beneficiaries, which has to be approved by the CoM.⁷⁸⁸ However, to do so, the

agency must present proper justification that must be supported by an analysis of planned expenses, cost-benefit analysis, analysis of priorities, as well as analysis of various aspects of expected results and objectives (exactly as when proposing the institution's annual budget).⁷⁸⁹ There is no legal basis for the agency to receive further funding, for instance, from the confiscation of illicit proceeds.⁷⁹⁰

The current legal framework allows for some degree of governmental influence over personnel matters and the agency's overall operations via the budget approval and revision process. Furthermore, the agency law does not specify the procedures to be followed for illicit activities or refusing cooperation with the agency. The current legal framework allows the government to exert influence on staffing issues and the overall work of the agency through the procedure for approving and revising the budget.

> INDICATOR 10.1.2

Resources (practice)

To what extent does the anti-corruption agency have adequate resources to achieve its goals in practice?

Score: 50/100

The agency has sufficient financial resources, which increased over time to cover the current number of staff. However, significant human resource gaps (APIK has 33 employees, out of 41 prescribed by the rulebook on internal systematisation) lead to ineffectiveness in carrying out its duties.

In accordance with the Law on the Budget of BiH Institutions and International Obligations, the yearly budget of the agency has increased constantly since 2019.

In addition to its regular budget, since 2015 the agency has received support for implementing anti-corruption strategies through an EU-funded project⁷⁹¹, the Strengthening the Capacity of the Agency for Prevention of Corruption and Coordination of the Fight against Corruption (Phase 1 and 2) project financed by the British government⁷⁹², and the Strengthening anti-corruption capacities and CSO networks in the area, also financed by the EU⁷⁹³, and other donor projects to enhance its capacity and improve the implementation of anti-corruption policies.⁷⁹⁴

☒ **Table 10.1: Budget of the anti-corruption agency, 2019-2023**

Year	Budget allocation in BAM	Budget allocation in €
2023	1,998,000	1,021,561
2022	1,528,000	781,254
2021	1,346,000	697,492
2020	1,346,000	697,492
2019	1,382,000	706,605

In 2021, the agency only had 33 of 41 staff positions filled or approximately 80 per cent⁷⁹⁵ of the statutory staffing level.⁷⁹⁶ This number of staff allows the agency to perform its core functions according to Article 10 of the law governing the agency.⁷⁹⁷ However, to advance its work in terms of development of the strategic documents, monitoring of effects of the implementation of the laws and regulations, and collection and analysis of statistics on corruption activities, it needs more analysts, legal experts and ICT specialists.⁷⁹⁸

The agency does not have an adequate office space, equipped with the necessary technical resources to ensure that staff are able to perform their tasks effectively. However, the agency's website is up and running.

The agency is set up as an autonomous and independent administrative authority that reports solely to the Parliamentary Assembly.⁷⁹⁹

To safeguard the agency's independence from political interference, the agency law established a special committee as an interlocutor with the Parliamentary Assembly. The committee has the authority to monitor the agency's work and report its findings to the parliament. It does not have the authority to interfere in the agency's day-to-day operations or to request any case-specific information held by the agency.⁸⁰⁰ The law lays out the procedure for selecting and dismissing members of the Committee for Agency Selection and Monitoring and gives the committee a mandate to oversee the agency's work, without the authority to influence its day-to-day operations. In addition, the law specifies the procedures for appointing and dismissing the agency's director and deputy directors.

The director and their two deputies are selected in an open competition based on professional criteria. The Parliamentary Assembly appoints the director as proposed by the Committee for Agency Selection and Monitoring. The director has a fixed term of five years with the possibility of one reappointment.⁸⁰¹ The procedure and reasons for dismissal of Director and Deputy Directors of the Agency are prescribed by the law, and a proposal for dismissal has to be filed by the committee.⁸⁰² Procedures for the removal of agency employees are defined by the Law on Civil Service in the BiH Institutions.⁸⁰³ However, the agency's director has to obtain approval from the CoM before enacting the agency's

> INDICATOR 10.1.3

Independence (law)

To what extent are there provisions in place that provide the anti-corruption agency with adequate resources to effectively carry out its duties?

Score: 50/100

Despite several laws envisaging it, the agency is not independent in its staffing decisions, having to seek approval from the Council of Ministers of Bosnia and Herzegovina.

Rules on Internal Organisation and Staffing.⁸⁰⁴ This enactment procedure gives the CoM a direct influence over the agency's staffing policy and undermines its independence.

> INDICATOR 10.1.4

Independence (practice)

To what extent is the anti-corruption agency independent in practice?

- Score: 25/100

In practice, the Council of Ministers of Bosnia and Herzegovina (CoM) exerts substantial influence on the agency influencing its organisational and financial independence. This is particularly evident through the staffing process or providing material conditions for the agency's operability. Also, the influence of ruling parties in filling the top three positions based on ethnicity remains an issue for the agency's independence.

The law governing the agency makes it an independent and autonomous administrative organisation, which reports solely to the Parliamentary Assembly.⁸⁰⁵ However, the process of appointing the agency's director and deputy directors is the most contentious and has the greatest impact on the agency's independence. Because the agency's top three positions – the director and two deputies – are filled on ethnic grounds, the ruling parties each get to fill their own ethnic quota

thus undermining independence. The last competition for the appointment of the director and two deputy directors was advertised on 27 April 2021 by the Committee for Agency Selection and Monitoring.⁸⁰⁶ As early as 14 June 2021, the media speculated that the former chief of staff of Bakir Izetbegović, the then vice-speaker of the House of Peoples of the Parliamentary Assembly and the president of the Democratic Action Party, would be appointed as director of the agency.⁸⁰⁷ More than a year after the article came out this rumour proved correct and on 27 June 2022 the Parliamentary Assembly indeed appointed him director of the agency.⁸⁰⁸

The agency's director has to obtain approval from the CoM before enacting the agency's Rules on Internal Organisation and Staffing.⁸⁰⁹ In 2017 the agency sent a request to the CoM for additional employment but without any response to date.⁸¹⁰ This situation significantly affects the work of the agency due to incomplete systematisation and lack of human capacity.

The agency's cooperation with other law enforcement bodies is solid. However, it lags in the area of cooperation with prosecutors' offices. Some initiatives to improve cooperation have begun, for example through USAID's "Judiciary Against Corruption" project.⁸¹¹ Also, in order to increase cooperation with law enforcement bodies, the agency has signed memorandums of understanding with the Border Police, governments at the cantonal level and a myriad of other institutions.⁸¹²

None of the agency's management (including the director and deputy directors) have been dismissed since the establishment of the agency in 2011 and there are no records of dismissal of agency staff. According to the law, the agency has no investigation authority.

GOVERNANCE

› INDICATOR 10.2.1 Transparency (law)

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

Score: 75/100

The public can obtain information on the organisation and functioning of the agency, its reports, reviews and decisions including how these were made. However, there are no legal deadlines for this.

According to the law on the agency, transparency and public scrutiny are important principles of its operations (along with legality, equal treatment, continuity, etc.).⁸¹³ The agency has to report to the public on all aspects of corruption, and to publish reports, analyses and other acts. These need to either be published on the agency's website or through other means, not further elaborated in the law.⁸¹⁴ However, the law does not define any deadlines for making such information publicly available.

Public access to information is also ensured through the Law on Freedom of Access to Information, as discussed in 2.2.1 in detail.⁸¹⁵

> INDICATOR 10.2.2

Transparency (practice)

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

Score: 25/100

The agency's website is well structured but the most recent annual reports (2020 to 2022) are not available and also other important documents like the anti-corruption strategy and action plan were only published with delays.

The website is accessible to all interested parties. On the website, information about the agency's structure and responsibilities is mostly kept up to date and published promptly.⁸¹⁶ However, the agency's 2019 Activity Report is the most recent annual report available on the site.⁸¹⁷ The subsequent reports are not available due to parliamentary obstruction and the Committee for Agency Selection and Monitoring's failure to meet to review and adopt the reports. Only a handful of reports have been published in the last three years, prior to this publication's release.

The website allows users to report corruption anonymously and includes application forms for requesting protected whistleblower status. The agency has implemented the appropriate internal procedures to ensure the required level of transparency in its work, through the Policy and Standards of Proactive Transparency,

adopted by the Council of Ministers of Bosnia and Herzegovina (CoM) in 2018.

However, the lack of transparency was substantial in 2020 during the drafting of the 2020-2024 *Strategy for the Fight against Corruption* and the related action plan. After seven sessions of the interdepartmental working group for the development of the strategy and action plan, the agency drew up a final draft and forwarded it to the CoM for adoption. However, the agency did not make this document available for public viewing or consultation. Since the strategy was not adopted during 2022, it was only after the appointment of the new management that the agency in July 2022 revised the strategy and action plan, and the revised documents were made accessible and public for consultations in November 2022.⁸¹⁸ On a general note, the agency's website is not a go-to resource for anti-corruption and it remains very poor when it comes to the materials on any level of anti-corruption efforts in the country.

> INDICATOR 10.2.3

Accountability (law)

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

Score: 75/100

The laws envisage the agency's accountability to the parliament, which is politicised. Its formal framework protects whistleblowers and allows citizens to file complaints but the implementation mechanisms are legally missing.

The agency is accountable to the independent Committee for Agency Selection and Monitoring.⁸¹⁹ The agency has to report to the committee twice a year but it is not required by law to make these bi-annual reports publicly available. All committee sessions have to be open to the public, creating an indirect means for accessing the agency's reports, though still cumbersome for the public to gain relevant information. Also, the agency must make its annual reports public (see 10.2.1).⁸²⁰ The committee has a varied membership made up of representatives of both chambers of the Parliamentary Assembly, academics and an NGO representative. As members of parliament make up the committee's relative majority, there is only a partially established mechanism of citizen oversight over the agency's work.⁸²¹

The agency is not required to file reports on its investigations of individual corruption cases. These investigation cases are strictly protected under the law, which states that not even the Committee for Agency Selection and Monitoring may request information about individual cases.⁸²²

As a budget user, the agency is subject to regular audits by the Audit Office of the BiH Institutions.⁸²³

Following the adoption of the Law on Whistleblowers Protection at the state level in December 2013,⁸²⁴ the agency developed and adopted its own internal rules for whistleblower protection and for handling corruption reports by 2015.⁸²⁵ However, the whistleblower protection law neither establishes procedures for granting whistleblower status nor authorises the agency to do that.⁸²⁶ According to the Agency's Code of Conduct (see 10.2.5), citizens and legal entities may file complaints against agency personnel.⁸²⁷

Except for the reasons listed in the agency law to dismiss its director (see 10.1.3), there are no explicitly established procedures or mechanisms of judicial review of the agency's work.

> INDICATOR 10.2.4

Accountability (practice)

To what extent does the anti-corruption agency have to report and be answerable for its actions in practice?

Score: 50/100

While the agency has to report and be answerable for its actions, the existing provisions are only partially effective, because of the indirect pressure exercised by the ruling parties making it primarily accountable to the executive and later only to the general public.

The agency presents its annual reports regularly to the Committee for Agency Selection and Monitoring. Prior to 2019, the reports were routinely published on the agency's website following approval by the Parliamentary Assembly.⁸²⁸ Since then, however, no new reports have been made available. The reason for this is that during the parliamentary term of 2018-2022, the committee was not formed until April 2021, more than two years after the 2018 elections. Therefore, the reports were not reviewed by the committee and not adopted by the Parliamentary Assembly, creating a major accountability gap for the agency. The accountability practice was further put into question by the appointment of Nikola Špirić to the committee.⁸²⁹ Špirić was blacklisted by the United States in 2018 for involvement in major corruption.⁸³⁰

The SAI published all the findings of the financial controls carried out in the agency since 2011 on the official website of the audit office.⁸³¹ The agency keeps the public updated on its activities through its website, press releases, public appearances by agency officials and other appropriate channels.⁸³²

According to the 2021 agency audit report issued by the state-level SAI, the agency carried out appraisals of civil servants and submitted the appraisal reports to the BiH Civil Service Agency.⁸³³ The report notes that, as requested, the agency had prepared the documents required for the establishment of the financial management and control system.

To ensure the confidentiality of whistleblowers, the agency has an online report form and a dedicated hotline⁸³⁴ with two designated staff who have sole access to the content of these reports.⁸³⁵ When communicating with the relevant institutions, particularly prosecutor's offices, the agency protects whistleblower anonymity.⁸³⁶

According to statistics provided by the agency to TI BiH, 24 requests for whistleblower status have been received since the law became effective in 2014. The agency turned down 13 of the requests on the grounds that good faith could not be proven.⁸³⁷ A 2020 report by TI BiH shows that the agency considers factors beyond the definition of good faith in the law, such as complex interpersonal relations in institutions, the length of time between reporting corruption and applying for the protected whistleblower status and whether the applicant waited for the completion of other procedures

before applying for the status.⁸³⁸

› INDICATOR 10.2.5

Integrity mechanisms (law)

To what extent are there mechanisms in place to ensure the integrity of members of the anti-corruption agency?

Score: 75/100

Integrity provisions are in place for the agency members. These include a code of conduct, rules regarding conflicts of interest and rules on gifts and hospitality. However, post-employment restrictions are missing in the code.

Since 2012 the agency has established a code of conduct for its employees.⁸³⁹ It outlines general management behaviour guidelines and standards, general principles of communicating with citizens, conflict of interest restrictions, rules on gifts and hospitality, and channels for registering complaints against agency staff. The code of conduct requires all employees to apply the principles of civil services, anti-corruption, as well as principles defined in Articles 7 and 8 of the law governing the agency.⁸⁴⁰ However, the code does not include post-employment restrictions. Article 21 of the code states that the agency's director is in charge of overseeing its implementation.

The agency also adopted an integrity plan, documenting the results of the self-control and self-assessment procedures implemented by the agency based on the methodology for preparing integrity plans developed for public institutions.⁸⁴¹ It includes improvement targets and a list of preventive actions to reduce the risk of corruption, as well as a list of responsible individuals and implementation timeframes.⁸⁴²

› INDICATOR 10.2.6

Integrity mechanisms (practice)

To what extent is the integrity of members of the anti-corruption agency ensured in practice?

Score: 50/100

There is a piecemeal approach to ensuring this, including an integrity plan and training of staff on integrity issues. However, it is unclear how the agency enforces the existing rules and whether it is investigating and sanctioning misbehaviour.

In 2023, the anti-corruption agency adopted its integrity plan, which includes improvement targets and a list of preventive actions to reduce the risk of corruption internally. It also outlines implementation responsibilities and timeframes.⁸⁴³ The report on the implementation of the agency's previous integrity plan is not available on the official website.

The agency has adopted and is enforcing a code of conduct, but there have been no officially recorded cases of its violation and no sanctions imposed for non-compliance. Still, the media reported that one of the agency's employees allegedly violated the election law during the October 2022 election.⁸⁴⁴ When asked by the media, the agency did not provide a clear response on whether it would take action against the employee.⁸⁴⁵ In another instance, one of the agency's deputy directors Mr. Dragan Andelić left the job to take a new one managing a state-owned enterprise, not complying with the six-month prohibition rule for work in senior SOE positions on exiting a public sector post.⁸⁴⁶

Given that the agency does not conduct the selection of its civil servants which is done by the Agency for Civil Service, there is a lack of robust mechanisms and rules for the integrity screening of applicants during agency recruitment.⁸⁴⁷

The agency provides continuing education to its employees, while also serving as an ethics and integrity training resource for employees of other institutions. In 2021, 16 agency employees participated in 42 training workshops organised by the Civil Service Agency, following the training plan and employee needs.⁸⁴⁸

› INDICATOR 10.2.7

Gender

To what extent are the anti-corruption agency's mechanisms gender-sensitive?

Score: 0/100

There are no explicit gender-sensitive protocols and guidelines, nor gender-disaggregated data.

The law governing the agency does not provide for special gender-sensitive protocols and guidelines for the agency's complaint and investigation mechanisms.⁸⁴⁹ There is also no regulation or definition regarding front-facing female staff for these mechanisms. Also, the agency's employee code of conduct does not address this issue.⁸⁵⁰

The agency also does not release or make available gender-disaggregated statistics in its reports, including gender-disaggregated data on the reports and complaints received and how they were resolved.

There is no evidence that the agency provides officials with special training and awareness-raising material for optimal implementation of gender-sensitive mechanisms. Furthermore, no woman has been appointed director of the agency since its establishment in 2009. For the first time, a woman was appointed to the position of deputy director following the last round of recruitment.⁸⁵¹

ROLE

> INDICATOR 10.3.1 Prevention

To what extent does the anti-corruption agency engage in preventive anti-corruption activities?

Score: 50/100

The agency is somewhat active in preventative anti-corruption activities, but its efforts are generally unsuccessful and it has not been successful in bringing about legislative or policy change.

According to the law governing the agency, it is responsible for preventing corruption by creating an anti-corruption strategy and action plan, supporting public institutions to develop integrity plans, coordinating the work of public institutions in preventing corruption, monitoring conflicts of interest, the collection and analysis of data, etc.⁸⁵²

In early 2020, an interdepartmental working group chaired by an agency representative that consisted of representatives of relevant institutions from all levels of governance including representatives of CSOs and media prepared a draft Strategy for Combating Corruption and its associated Action Plan for the period 2020-2024 and sent it to the Council of Ministers of Bosnia and Herzegovina (CoM) for adoption.⁸⁵³ However, the CoM has not yet

adopted the document, leaving the agency without a strategy and an action plan.

In 2019, the agency developed a methodology and guidelines for all public institutions to prepare their own integrity plans.⁸⁵⁴ The integrity plan is a preventive anti-corruption mechanism with an aim to reduce the risk of corruption and other irregularities. The agency assists institutions in developing such plans by providing expert opinions. It also regularly monitors and coordinates the implementation of these plans and conducts consultative meetings with representatives of institutions and anti-corruption authorities from all levels of government.⁸⁵⁵ There are no examples of the agency making submissions to parliamentary and government offices working on anti-corruption issues.

In terms of human resources, the agency still lacks the personnel required to perform countrywide anti-corruption studies and other complex analytical and research work (see 10.2.2). For a while, no staff were appointed to deal with citizen reports of corruption. Moreover, the fact that the staff supporting the work of the Commission for Conflict of Interest has been administratively placed within APIK, led to overlapping roles of these institutions and the staff.

> INDICATOR 10.3.2

Education

To what extent does the anti-corruption agency engage in educational activities regarding fighting corruption?

Score: 50/100

The agency is active through training workshops and online courses in educating the public sector on corruption. However, there is no follow-up on those tools and the agency does not assess the effectiveness of its educational programmes. There is no systemic educational outreach to the public.

One of the main functions of the agency is to develop anti-corruption education programmes and oversee their execution.⁸⁵⁶ In addition, with the assistance of international institutions and donors as well as CSOs, the agency routinely provides training on corruption prevention at seminars, workshops and round tables.⁸⁵⁷ Furthermore, it offers an online training course on ethics and corruption prevention for all civil servants who seek to expand their knowledge, as well as a course on how to prepare integrity plans.⁸⁵⁸ It also provides training for other civil servants at all levels.⁸⁵⁹ However, there is no follow-up to assess the impact of such training sessions. The agency has signed memorandums of cooperation with several NGOs and its leadership often attends events organised by the CSOs in the country and abroad.⁸⁶⁰ It also communicates key messages designed to encourage the public to take an

active role in the prevention of corruption but these efforts are not systemic and targeted.

> INDICATOR 10.3.3

Investigation

To what extent does the anti-corruption agency engage in investigation regarding alleged corruption?

Score: 0/100

The agency is inactive in investigating corruption-related cases because it does not have the legal mandate to do so.

When the agency receives a report alleging corrupt behaviour, it has to pass the information to the relevant law enforcement agency or prosecutor's office in charge of criminal prosecution.⁸⁶¹

According to the agency's latest available activity report from 2019, the agency received a total of 107 reports alleging corrupt behaviour in 2019 via post, email, telephone and in person, and forwarded all the reports to the relevant institutions for further action.⁸⁶² During this period, the agency received five follow-up notifications about the actions taken in response to the reports, without details on the actions taken.

The agency lacks the authority to impose legally binding orders for the implementation of law enforcement actions and cannot direct criminal prosecution authorities to undertake law enforcement measures against individuals.

INTERACTIONS

Institutions and agencies at all levels, as well as public services and other offices, are required to cooperate with the agency and provide all the required data and information at the agency's request.⁸⁶³

Due to the nature of its work, the agency collaborates closely with the judiciary, law enforcement agencies and other anti-corruption authorities at all levels of government. To further improve that cooperation, in 2015 the agency signed an agreement with the High Judicial and Prosecutorial Council (HJPC) on cooperation in matters related to the fight against corruption, intending to coordinate anti-corruption activities among all national actors in the justice sector.⁸⁶⁴ Furthermore, in 2017, the agency signed memorandums of understanding and cooperation with the Border Police and other law enforcement agencies, including on drafting of strategic anti-corruption documents and the improvement of cooperation in the fight against corruption.⁸⁶⁵

Since 2017, the agency has signed memorandums of cooperation with governments and anti-corruption authorities at entity and cantonal levels of government with the aim of enhancing bilateral collaboration.⁸⁶⁶ These memorandums establish the forms and methods of cooperation and ensure uniform action by all levels of government in preventing corruption.

In practice, this form of cooperation has improved the collaboration of all key actors, primarily through increased coordination among institutions prosecuting corruption. However, there is still room for improvement, particularly in the area of institutional actions taken in response to the reports forwarded by the agency, considering that the agency often does not receive information on the results of their reports, as well as more direct agency involvement in handling reports sent by the agency to the relevant institution.⁸⁶⁷ The current legal framework obliges institutions and agencies at all levels to cooperate with the agency and provide it with all the information it requested, but there are no sanctions for not providing information.⁸⁶⁸

PILLAR RECOMMENDATIONS

- Improve the Agency Law in the section on mandatory cooperation of all institutions with the agency, specifically introducing response mechanisms as well as liability for non-compliance with the institutional obligation to cooperate with the agency. This is particularly important for requests to grant a whistleblower status, where all other public institutions must act on the agency's requests as a matter of highest priority.
- Increase the agency's analytical and research capacities by streamlining, clarifying and completing the systematisation with skilled employees and working out the internal division of labour with other agencies, particularly the conflict of interest commission.
- Improve collaboration with all institutions charged with fighting corruption, most notably anti-corruption teams at lower levels of government, by setting up compulsory collaborative mechanisms for both sides and providing necessary resources to the agency for such coordination.
- Improve the mechanisms for monitoring and evaluation of the implementation of strategic documents that fall within the agency's purview by hiring experts. Aim to engage the public at large and collaborate closer with CSOs and media in monitoring and reporting.

11 > POLITICAL PARTIES



SUMMARY

At the state level there is still no single country-wide law on political parties, therefore the establishment and registration of parties takes place at the level of entities, under the relevant entity laws on political organisations. The legislations treat the issue of registration of parties differently which leads to very different requirements towards the political parties. The laws on political parties do not contain any provisions related to internal democracy, integrity or accountability standards. The number of registered political parties is disproportionately high compared to those participating in elections or the government. The legal framework and environment are conducive to the establishment and functioning of political parties. The resources are allocated for all political parties participating in parliaments at all levels, however, the legal framework still suffers from deficiencies and loopholes that do not enable a sufficient level of transparency and accountability, or public oversight.

There is no sufficient oversight or transparency of parties' expenditures. Internal and external integrity mechanisms of political parties are insufficient, while the influence of political parties on all other sectors is overwhelmingly negative, leading to political capture, as well as political corruption. This also stems from the lack of any regulations pertaining to prevention of abuse of public funds, institutions and resources for the purpose of gaining election support or financing campaigns. The grip of the leading political parties across the three main pillars of power remains very tight almost without interruption since the end of the war.

A much better regulation of political parties would loosen their grip on most other integrity pillars. This however cannot be achieved solely through the laws on their formation and management, and there is no silver bullet. A range of other legal and institutional solutions need to be introduced that would separate the influence of the party leaders(hip) on the executive, the in-between institutions (SAI, Ombudsperson, ACA), and the economy.

CAPACITY

> INDICATOR 11.1.1

Resources (law)

To what extent does the legal framework provide an environment conducive to the formation and operations of political parties?

Score: 75/100

The legal framework regulating the formation and operations of political parties is very conducive. However, in the FBiH there is still no law regulating budgetary allocations for political parties.

Freedom of association and political organisation is enshrined in the constitution. As there is no single law on political parties at the state level, parties are established and registered at the entity level. The requirements for the establishment of a political party remain uneven across different administrative levels, with the founding thresholds varying depending on the jurisdiction. Thus, a political organisation may be founded by at least 50 citizens in the Federation of Bosnia and Herzegovina, at least 500 citizens in Republika Srpska and at least 300 in Brčko District.⁸⁶⁹

Procedures for establishing a political party are simple – political organisations are established at founding assemblies. Within thirty days after of establishment, a political organisation has

to apply for registration with the competent entity court and the registration process is completed in 15 days in both entities.⁸⁷⁰ There are no legislative restrictions in place with regard to party ideology or the establishment and functioning of political organisations except for the prohibition against hate speech and discrimination under the Election Law as well as the obligation to respect fundamental human rights and freedoms.⁸⁷¹

An environment conducive to the operation of political parties is guaranteed by regulations governing budgetary allocations for the operation of political parties and party caucuses in parliaments at different administrative levels.⁸⁷² The FBiH still has no law regulating it, yet funding for political parties comes from municipal, cantonal and entity budgets. The right to direct budget funding is reserved only for the political parties, independent candidates, lists and coalitions that are represented in parliaments/councils at different administrative levels (state, entity, cantonal, Brčko District, municipal), meaning that parties with more parliamentary seats receive more by way of budget allocations.⁸⁷³

> INDICATOR 11.1.2

Resources (practice)

To what extent do the financial resources available to political parties allow for effective political competition?

Score: 50/100

While opposition parties can draw on some financial resources, these are considerably lower than the resources of the larger and/or ruling party. Political competition among parties is biased towards the ruling parties.

According to the data reported by parties in their financial reports in 2022, state funding accounts for about 65 per cent of political party revenues.⁸⁷⁴ According to the data reported by political parties and published by CEC, of the overall BAM29.5 million (€15.1 million) that all political parties reported in their annual financial reports for 2022, BAM19.5 million (€9.7 million) came from the direct budgetary allocations from all levels. At the same time, 19.7 per cent of reported funds came from donations of individual (physical) persons, 5.7 per cent came from membership fees, 2.1 per cent as income from the parties' property, while only 2.1 per cent refer to reported donations from legal persons.⁸⁷⁵

However, according to TI BiH monitoring, the data reported by political parties is incomplete, especially when it comes to amounts related to donations. The parties show a significant

decline in reported donations, especially those from legal persons, due to the previous sanctions imposed by CEC which made the parties stop reporting donations. At the same time, political parties report a significant increase in reported debt/obligations towards their suppliers, some of which are dubious leaving space for suspicions of fictitious billing, or are written off with time thus avoiding the caps for donations.⁸⁷⁷ For this reason the actual ratio between private and public funding cannot be accurately determined.

All parties are eligible and receive equal access to free airtime for their presentations (direct addresses) during the official election campaign, but only on public broadcasting networks, while paid advertising is governed by a rulebook on media representation in election campaigns and the election law.⁸⁷⁸ According to the Central Election Commission, the opportunity to advertise should be provided to all parties and candidates under equal conditions, including the same prices for advertising, without preferential treatment or discounts. However, supervision over the advertising conditions is insufficient due to lack of media transparency, as the media do not report on the amounts actually charged for advertising.⁸⁷⁹

Opposition parties are also eligible for public funding, with the level of funding determined by the number of mandates in parliaments/local councils, meaning that they receive smaller amounts than the parties with the largest number of mandates, and that newly formed parties are eligible for public funding only after they win parliamentary seats.⁸⁸⁰

☒ **Table 11.1: Table of submitted annual financial reports of political parties** ⁸⁷⁶

Year / source of income	2022 (General election year)	2021	2020	2019	2018 (General election year)
Membership fees	BAM1,701,370.36 €869,896.85	BAM1,552,197.45 €793,625.95	BAM1,805,651.30 €923,214.85	BAM1,882,218.52 €962,363.05	BAM1,967,852.18 €1,006,146.84
Donations from private persons	BAM5,843,612.76 €2,987,791.76	BAM1,773,834.18 €906,947.01	BAM2,811,977.97 €1,437,741.50	BAM1,581,882.50 €808,803.67	BAM3,723,101.16 €1,903,591.39
Donations from legal entities	BAM622,457.59 €318,257.51	BAM68,750.00 €35,151.31	BAM357,161.82 €182,613.93	BAM74,497.16 €38,089.79	BAM406,673.60 €207,928.90
Income from property of political parties	BAM639,303.41 €326,870.64	BAM531,032.58 €271,512.64	BAM462,383.65 €236,413.00	BAM206,796.21 €105,733.22	BAM280,969.65 €143,657.50
Profit from legal entities owned by the political parties	BAM0.00 €0.00	BAM0.00 €0.00	BAM0.00 €0.00	BAM0.00 €0.00	BAM0.00 €0.00
Income from gifts and services which party was not obliged to pay	BAM289,033.98 €147,780.72	BAM232,020.86 €118,630.38	BAM224,350.27 €114,708.47	BAM170,264.81 €87,055.01	BAM239,788.93 €122,602.13
Revenues from the budget	BAM19,481,493.94 €9,960,729.68	BAM18,929,473.18 €9,678,485.95	BAM15,550,506.55 €7,950,847.74	BAM18,469,573.13 €9,443,342.79	BAM20,087,701.34 €10,270,678.60
Income from publishing activities	BAM0.00 €0.00	BAM0.00 €0.00	BAM0.00 €0.00	BAM525.20 €268.53	BAM0.00 €0.00
Other income	BAM992,498.81 €507,456.58	BAM519,554.49 €265,643.99	BAM355,666.81 €181,849.55	BAM378,553.34 €193,551.24	BAM600,339.77 €306,948.85
Total	BAM29,569,770.85 €15,118,783.76	BAM23,606,862.74 €12,069,997.25	BAM21,567,698.37 €11,027,389.07	BAM22,764,310.87 €11,639,207.32	BAM27,306,426.63 €13,961,554.24

> INDICATOR 11.1.3

Independence (law)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?

Score: 75/100

The legislative framework and institutions provide very good protection to political parties, even in relation to the public interest. However, these safeguards are occasionally ignored by the larger ruling parties, against the spirit of the legislation, deeming the legal solution inadequate.

The entity level laws on political parties deal with the oversight of the work of political parties only by providing a broad formulation that the oversight of the legality of the work of political organisations is carried out by administrative bodies within a jurisdiction, with additional clarification in the Law on Political Organisations of BD that clarifies that these are the bodies of the state and BD.⁸⁸¹ This type of regulation leaves the issue of supervision over the legality of work of political parties open, except in the part where the jurisdiction of the Central Election Commission is envisaged by the Election Law⁸⁸² and the Law on the Financing of Political Parties.⁸⁸³ The parties cease operation by the decision of the bodies defined in their statutes if their membership falls below the statutory minimum or if they do not perform the activities defined under their statutes for a period longer than provided by

law.⁸⁸⁴ The circumstances related to the last condition are determined by a competent court, after which the party is removed from the public registry.⁸⁸⁵ In BD, the request for removal of a political party from the court registry is submitted by the public prosecutor instead.⁸⁸⁶ A party may be banned only if it threatens the principles of democratic governance and the rights and freedoms guaranteed by the constitution.⁸⁸⁷ No such ban has taken place to date.

In the implementation of the laws within its remit the CEC can undertake investigations or take appropriate measures on its own initiative or based on a complaint received.⁸⁸⁸ The CEC is in charge of auditing parties' financial reports,⁸⁸⁹ and failure to submit the regular reports or to participate and submit candidacy for elections are considered as not performing parties' statutory activities and cause for removal of parties from the registry.⁸⁹⁰ The CEC has the right to seek access to the premises of political parties in order to audit their financial reports, or if it concludes that a more detailed financial review is warranted. If a political party denies access to its premises, it shall be deemed to fail to submit the financial report and shall be banned from participating in upcoming elections.⁸⁹¹ In the event that there is a reasonable suspicion that the individuals who are members of political parties have committed a criminal offence, law enforcement authorities have the right to undertake necessary investigations. However, even in such cases there are no discriminatory provisions against political parties.⁸⁹²

> INDICATOR 11.1.4

Independence (practice)

To what extent are political parties free from unwarranted external interference in their activities in practice?

Score: 50/100

There are verbal as well as physical attacks by the ruling parties against the opposition, and allegations of selective corruption prosecution by the judiciary. However, this does significantly change behaviour of the leading political parties.

In practice, the most common reason for removing political parties from the registries is related to non-performance of activities for a period longer than one year, based on the recommendation of the CEC due to parties' failure to submit their financial reports. In the period from 2009 to March 2022, the competent courts removed a total of 179 political parties from the registers.⁸⁹³ According to its latest available annual report, during 2021 the CEC filed recommendations to relevant courts to remove 20 political parties from the registries since they failed to submit financial reports, participate in elections and did not perform any activities.⁸⁹⁴ There is no evidence of other attempts of state interference in the activities of political parties.

Even though there are no examples of arrests or detentions of political party members because of their activities, there are complaints that judicial institutions are biased and/or under political influence which leads to a selective approach in prosecuting corruption and organised crime depending on political party affiliations.⁸⁹⁵ But more significantly, there were instances of inter-party conflicts and attacks (verbal, but also physical) primarily against opposition parties in the last general election campaign.⁸⁹⁶

GOVERNANCE

> INDICATOR 11.2.1 Transparency (law)

To what extent are there regulations in place that require parties to make their financial information publicly available?

Score: 75/100

There are regulations in place that mostly require political parties to make their financial information public. However, there are loopholes regarding the form, level of detail and deadlines as well as a lack of sanctions for non-compliance.

The Law on Financing of Political Parties states that “the balance sheet and financial report detailing the sources of income, data on individuals and legal entities that made voluntary contributions, and data on the purpose, i.e. the activities for which the funds were spent, are public documents and are published on the website of the political party.” However, the provisions do not define the form, the level of detail or the deadlines for publishing this information, nor do they provide for sanctions against the parties for not publishing this information on their websites.

Additionally, the law stipulates the obligation of the CEC to publish parties’ financial and audit reports on its official website.⁸⁹⁷ In terms of the level of detail of political parties’ financial

reports, there is an obligation to report all sources of income and the identities of donors and in-kind contributors, and there has been some progress through amendments to the rulebooks on annual and pre- and post-election financial reports of political parties, adopted by CEC, which provide more detailed itemisation and definitions of types of expenses, compared to the previous provisions. However, the reporting forms do not require, and thus the reports do not contain, information on individual expenses, but only the overall amounts spent for each type of expense (like promotion and advertising), which significantly impedes transparency and public oversight.

> INDICATOR 11.2.2 Transparency (practice)

To what extent can the public obtain relevant financial information from political parties?

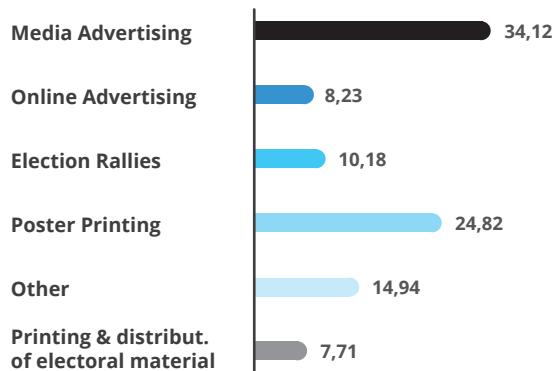
Score: 25/100

In general, while it is possible for the public to obtain relevant financial information from political parties, the information is not timely or reliable.

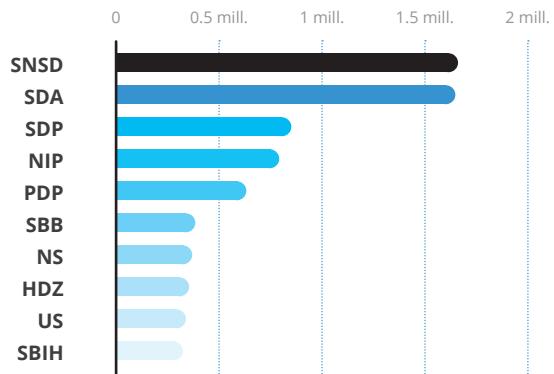
The CEC publishes all political parties’ reports, including annual, and pre-election and post-election reports. However, as noted above, the reports are not published in full and the published reports do not contain information

☒ **Political parties in BiH reported BAM 11.3 million in electoral campaign expenses in 2022.**

Cost structure:



Parties that reported the highest costs:



on individual expenses.

Even though the law stipulates the obligation of parties to publish their balance sheets and financial reports, including information related to the donors, expenditures and their purpose, very few parties actually publish this information. Namely, out of 15 major political parties only three have published both balance sheets and financial reports for the previous year, and years before that.⁸⁹⁸ Six political parties do not publish any reports on their websites, while others either do not update the information or publish only partial information (for example, only balance sheets that do not contain information on individual sources and donors). Three political parties had document sections with financial reports on their websites, but the documents could not be accessed.

Information on activities related to promotion and online campaigning is included in the parties' financial reports published by the CEC in the form of aggregated information, or the overall amounts spent for each type. However, TI BiH monitoring has shown that the information provided in financial reports is not reliable and that parties often misrepresent their expenditures. Most often, parties do not even report, and thus do not publish, information on in-kind donations.⁸⁹⁹

Additionally, the reports are published with delays due to the lack of capacity at the CEC, while audit reports take, on average, two to three years to be completed and consequently published, which also affects the timeliness of the access to relevant information on all aspects of political party financing.⁹⁰⁰

> INDICATOR 11.2.3

Accountability (law)

To what extent are there provisions governing financial oversight of political parties by a designated state body?

Score: 50/100

While a number of laws and provisions exist, significant loopholes within the legal framework allow for the parties to avoid reporting on all of their finances.

The financing of political parties is regulated by the Election Law⁹⁰¹, the Law on Financing of Political Parties⁹⁰⁸² and a number of bylaws, such as rulebooks on the submission of financial reports.⁹⁰³ The Election Law regulates the obligation to submit pre-election and post-election financial reports, their content, and determines the maximum amount of funds that a political entity can spend to finance an election campaign.⁹⁰⁴ The Law on Financing of Political Parties regulates the sources of financing, the use of these funds, the prohibited contributions and activities, as well as the financial control of political parties, the obligation to keep books and submit and disclose financial reports, the competence and role of the CEC, and sanctions for non-compliance.⁹⁰⁵ The legal framework mandates the authority of the CEC to review and audit parties' financial reports, and this includes annual and pre-election and post-election reports.

The annual financial reports are submitted by 31 March each year,⁹⁰⁶ for the previous year, while the pre-election reports that cover the period of three months before submitting the application to participate in the elections, are submitted alongside the application. Post-election reports that cover the period until the confirmation of election results are submitted 30 days after the CEC declares the official election results.⁹⁰⁷ The parties are obliged to report on all sources of income, including budget subsidies, individual donations, in-kind donations, income from the property or business activity, as well as all expenses, including operational costs and promotion (campaigning) expenses.⁹⁰⁸ The sanctions prescribed for law violations are inadequate. Not all violations of the Law on Political Party Finance are covered by the sanctions, while the fines do not correspond to the committed violations and potential gain.⁹⁰⁹ Fines up to BAM10,000 (€5,113) or the option of returning the donation to the banned source do not have a deterring effect with the benefits of violating the law seemingly much higher than the sanctions imposed.⁹¹⁰

The Election Law prescribes a general obligation for parties to report the bank account numbers which will be used for financing election campaign, while the CEC introduced further clarifications six years later in January 2022, when it adopted the instruction on reporting and the use of designated bank accounts.⁹¹¹ The instruction requests parties to report all transactions from the designated account and that the parties' participation in the elections will not be verified unless they assign and report the account for the election campaign.

This has still failed to resolve the issues of multiple bank accounts, or expenses not covered through this bank account.⁹¹² Also, this obligation is only introduced for election campaigns, while other types of financing and expenditure of political parties are not covered by the obligation to use single bank accounts, which makes the oversight more difficult, and de facto allows for the use of cash and unreported funds.

There is insufficient transparency in the accounts and activities of entities related to political parties or otherwise under their control. This is because the law requires parties to submit records of entities under their control without defining what these entities are. One example is the current practice of party candidates to financing parts of their campaigns themselves, while these costs or sources of financing are not reported in any of the reports.⁹¹³

Another issue is the lack of clearly mandated authority of the CEC to audit political parties' expenditures that leads to a primary focus on parties' income, not the expenditures (checking only if the reported campaign expenditures exceed the prescribed limits with limited control accuracy).

Finally, the legal framework still does not ensure the prevention of using public funds for the purposes of financing political parties and election campaigns, leaving space for parties to use these funds without detection in their financial reports and subsequently without control and sanctions.⁹¹⁴

> INDICATOR 11.2.4

Accountability (practice)

To what extent is there effective financial oversight of political parties in practice?

Score: 50/100

In general, parties provide partial, low-quality and/or late reports on their financing sources.

Given the strict provisions prohibiting candidacy in the next election for parties that fail to deliver their financial reports to the CEC, parties generally comply with this obligation. According to the CEC information on submitted post-election financial reports after the 2022 general elections, out of 90 political parties which participated in the elections, 81 (or 92 per cent) submitted their post-election financial reports.⁹¹⁵ However, considering a large number of registered political parties, a significant percentage of which are no longer active, the trends vary when it comes to submission of regular annual reports. According to the CEC registers, in 2021 there were 181 political parties registered, while only 127 (70.17 per cent) submitted their annual reports.⁹¹⁶ The reliability and credibility of these reports remain questionable, given the aforementioned deficiencies in financial oversight.

TI BiH monitoring of election campaign finance shows that political parties underreport their campaign expenses compared to the market

value of advertising. For the 2022 election campaign, TI BiH data shows that eight parties reported unrealistically low campaign costs, that is at least BAM1.5 million (€7.67 million) less than estimated by TI BiH.⁹¹⁷ Some of the parties did not report any of the expenses for party rallies, even though TI BiH identified at least 70 rallies organised by these parties. There are examples of newly founded parties which did not report any significant sources of income but at the same time had very a visible advertising incurring substantial costs, thus leading to the conclusion that not all funding sources were reported.⁹¹⁸ More than a third of major political parties do not report in-kind donations, which are a significant source of funding of election campaign activities as evidenced by the statements of party officials and a discrepancy between reported expenses for party rallies and their real costs.⁹¹⁹

- ✖ According to TI BiH's estimates, eight parties concealed at least BAM 1.5 million in electoral campaign expenses.

Party	TI BiH's estimate	Declared expenses	Difference
SNSD	2,043,786	1,544,851	-498,935
SDA	1,742,687	1,517,735	-224,953
PDP	934,126	726,962	-216,165
US	646,966	480,552	-166,413
SDS	600,029	363,014	-237,015
DNS	485,870	387,991	-97,879
DEMOS	165,634	141,309	-24,325
HDZ 1990	161,360	48,000	-83,360
	6,759,459	5,210,414	-1,549,045

Moreover, the lack of capacity of the CEC audit department significantly impacts its ability to undertake timely oversight and control over parties' financial reports. The audit is carried out two years after the initial submission of the financial reports, while publishing of the audit reports sometimes takes three years.⁹²⁰ This also influences the promptness of imposing sanctions for violations of party finance rules. These violations are only determined in the process of undertaking an audit, where parties will be paying a fine long after they reap the fruits of their election results. In 2021 (as per the latest available annual reports at the time of writing the report) the CEC imposed 53 sanctions on political parties for violations of the Law on Political Parties from 2018 and initiated 52 proceedings to determine possible law violations related to parties' reports from 2019.⁹²¹

- ✖ Twenty-six parties did not report any campaign expenses. Seven parties did not submit reports to CEC, including those with significant campaign expenses.

Party that fail to submit report	Declared expenses	TI BiH's estimate
NPS - Darko Banjac	x	231,191
BHI - Fuad Kasumović	x	43,470
Platforma za progres	x	32,185

The audit reports indicated that the political parties:

- Did not spend the funds allocated from the budget in line with their programmatic goals
- Did not report or take evidence of received donations
- Received donations that exceed the limit stipulated by the law or received funds from illicit sources, plus they did not keep the books in accordance with the rules
- Did not report all their bank accounts through which they made transactions
- Abused public resources or even violated tax regulations

The fines imposed were between BAM1,000 and BAM27,000 (€511 and €13,805) and were not proportional to the violations. Nor did they have a deterring effect, since the same findings and violations were repeated over the years.

› INDICATOR 11.2.5

Integrity (law)

To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?

Score: 50/100

The majority of the largest political parties lack democratic provisions and/or existing provisions do not organise the parties in a democratic manner. All decision-making of the largest parties is formally subordinated to their leaders or the internal bodies they firmly control.

The issues of internal democratic mechanisms, integrity and internal organisation, membership, etc. are not defined by the laws on political parties but are regulated by the parties' own internal statutes and codes. The entity-level and BD laws cover the oversight of adherence to the regulations only generally, stating that the administrative bodies, within their competencies, are in charge of ensuring the oversight, without specifying who in particular is responsible.⁹²²

Statutes are largely based on democratic principles and members have the right to elect and be elected to party bodies.⁹²³ Party leaders are to be elected democratically by vote from among candidates at party congresses, councils, assemblies, etc. As a rule, candidates for president and vice-presidents of parties are to be nominated by the general committees, as

the highest decision-making bodies of parties between two congresses (councils, assemblies).

Selection procedures for other party functions are often defined in other internal rules, in addition to the statute. The level of democracy in these regulations varies somewhat in terms of how much discretionary power is left to the party leadership to propose or directly appoint party members to certain functions.

The statutes of political parties prescribe disciplinary responsibility with the primary goal of ensuring party discipline. It is clear from the way party documents regulate this type of accountability that the promotion of integrity as such is not of primary importance, but the emphasis is on preserving party discipline. Namely, all statutes stipulate that in case of failure to comply with the obligations or serious violations of party rules, disciplinary or ethical procedures can be implemented.⁹²⁴

Of the 15 political parties included in TI BiH research, only three have a code of ethics, while most of the others claimed it was in a preparation phase.⁹²⁵ The statutes of the parties prescribe disciplinary responsibility for non-compliance with the statute and programme, as well as other general and individual acts of the party. These include decisions made by party bodies when these cause damage to the party and when they publicly express political views that contradict official views. In these cases, various sanctions can be imposed on party members, from reprimands to expulsion from the party.

However, the decision-making at the programmatic level, is entirely closed and inaccessible to the outsiders or even the auxiliary party members.⁹²⁶

› INDICATOR 11.2.6

Integrity (practice)

To what extent is there effective internal democratic governance of political parties in practice?

Score: 0/100

The majority of political parties do not elect their leadership, candidates for public office or determine their policies through transparent and democratic means.

Political parties are characterised by a very low level of inclusiveness in the decision-making process, with a high concentration of power in very narrow leadership circles. Although some have a large membership, they are essentially leader-focused clientelist networks. Changes of leaders occur extremely rarely, while the names of leaders are often engraved in the very name of the political party or coalition. Most often, the powers of the president are such that they can make all decisions. The only exception regarding the election of the president attempting to introduce the principle of one member-one vote was introduced by SDP in 2015. However, this has been rendered

meaningless in practice by the recent changes to the statute enacted to allow the current president to remain in that position.⁹²⁷

Formally, the highest bodies of parties are congresses or party assemblies. These meetings, as a rule, are held every four years. As the highest bodies of political parties, it is formally within their authority to elect the president and the leadership, and to adopt the statute and programme documents. In practice, such bodies generally do not possess real power, nor do they represent a platform through which the most important issues of the party programme and activities are discussed. These mostly serve to verify pre-prepared decisions, and to manifest a monolithic culture and highlight party unity.⁹²⁸

The highest bodies of political parties between congresses/parliaments or assemblies are the main committees. These are relatively massive in terms of their membership, but their sessions, regardless of their formal responsibilities, are relatively rare. This again demonstrates no real role or influence of these bodies in the intra-party power plays.

The executives of the parties are much smaller and more operational in terms of their membership and frequency of meetings. In case of the ruling parties, these bodies are, as a rule, made up of the high-level officials in the executive or legislature, largest public companies and other important public sector institutions. Therefore, the party executives hold the greatest concentration of power, beyond their party leader. Key decisions (for example, establishing or dissolving lower-level

organisational units) are mostly reserved for the central bodies of political parties and they are only delegated to lower organisational units for execution.

Internal referendums and polls are not envisaged by the majority of party statutes, with the statutes of only two political parties containing such provisions.

Disciplinary regulations and codes, as well as information on implemented procedures are internal and hidden from the public. Only the participants in the proceedings and the presidency have access to such data. Criteria for appointments is whether a person has been subject to disciplinary measures. With the exception of the parties that have adopted ethical codes, the majority of parties have a more relaxed attitude towards the potential involvement of their members in corrupt practices. It is very rarely stipulated that the initiation of certain proceedings, including criminal ones, implies resignation from public and/or party office. Therefore, in practice, it is not uncommon for holders of public offices to be subjected to court proceedings for serious crimes, while holding public office.

> INDICATOR 11.2.7

Gender representation

To what extent are women part of political parties' leadership?

- Score: 25/100

Some legal provisions on gender representation exist, but in practice women are underrepresented, especially when it comes to positions of power. They are merely confined to the women's clubs of each party that hold very little leverage.

The Law on Gender Equality defines representation so that either gender must be represented with at least 40 per cent members of parliaments. Also, the Election Law makes it mandatory for political parties to include 40 per cent of underrepresented gender in election/ candidate lists. The Law on Financing of Political Parties also promotes gender representation, calling for the distribution of public funds to political parties so that 10 per cent is distributed based on the number of mandates belonging to the less represented gender.

However, even though the parties do respect the obligation to assign women 40 per cent of places on candidate lists, there are modes of manipulating the expected results and the number of elected women by not positioning women high on the candidate lists. Women are generally in less favourable positions, which leads to discrepancy between the number of women who are candidates and those

elected.⁹²⁹ After the 2022 general elections, only 9 women were elected out of 42 members of the House of representatives of Parliamentary Assembly (21 per cent)⁹³⁰. When it comes to the local elections in 2022, only 29 women, compared to 396 men were candidates for mayors.⁹³¹ Only 4 per cent of women were elected to lead local governments. The lack of visibility of women within their respective political parties consequently affects the visibility of women in political campaigns.

When it comes to women's representation within the political parties' internal bodies, each party defines this individually through their statutes. However, analysing the constitutions of major political parties' governing bodies, women make up to 30 per cent of their main boards.⁹³² However, some of the biggest political parties do not even prescribe a minimum percentage of women representation in their bodies, but only suggest that their representation must be ensured.⁹³³ When it comes to the highest party presidencies, the participation of women is even lower, and out of the 15 biggest political parties, not one has a woman as president. Almost all of the parties have specially designated women's forums. However, their impact on decision-making processes is limited or non-existent.

Especially during the election campaigns, party representatives often use gender stereotypes as a means of discreditation, while women are more likely to be targeted and harassed and their privacy is violated. There are frequent examples where women are presented as less capable of engaging in politics simply because of their gender. Thus, women are objectified

with various misogynistic content, and their role in politics is marginalised.⁹³⁴

ROLE

> INDICATOR 11.3.1

Interest aggregation and representation

To what extent do political parties aggregate and represent relevant social interests in the political sphere?

Score: 0/100

In general, political parties are based on clientelism and narrow interests. Many relevant social interests do not find a voice in the party system.

With the exception of youth forums and women's forums that are provided for in the statutes of most major political parties, the majority of parties do not have institutionalised cooperation with specific social groups.

Even though the parties are massive in terms of membership with robust and well-organised structures, their primary goal is mobilising the electorate only to secure votes, and not actually engaging the voters in the policy direction or interest representation. Democracy in the partisan decision-making processes is rudimentary.⁹³⁵ Yet the parties in power, run

patronage, nepotism, cronyism relationships with public institutions, and it is often very difficult to determine where the institution begins and the political party ends. A series of the European Commission reports on BiH emphasise that "all levels of government show signs of political capture directly affecting the daily life of citizens."⁹³⁶

Decision-making within political parties focuses on the distribution of state resources after elections including management positions in key sectors, distribution of public resources and control over employment in public sector. It is also focused on deciding on the candidate lists for the elections. Thus, the discussion on policy/programmatic issues is not a priority and parties often completely change their programmatic course and positions on specific issues if this brings more power or if they have a specific interest.⁹³⁷

Coalitions formed among political parties are not based on ideological similarities or programmatic directions but only on the possibility to form a political majority and distribute legislative or executive seats. For this reason, opposition parties at one government level may not be a part of the same coalition on another.⁹³⁸ Moreover, the parties are strongly divided along ethnic lines, and openly present agendas around one ethnic community claiming to be the legitimate representatives of a certain ethnic group or people.⁹³⁹

Thus, the parties are solely focused on representing the interests of a very closed circle of individuals governing the party, whereas the needs of the citizens and their

constituencies are of little importance. Cooperation between political parties and civil society has not yet been institutionalised and when it occurs in rare instances, it is mainly between party individuals and CSOs. Instead, the ruling political parties focus their activities and statements on attacking and discrediting civil society organisations and their representatives.⁹⁴⁰

› INDICATOR 11.3.2

Anti-corruption commitment

To what extent do political parties give due attention to public accountability and the fight against corruption?

Score: 0/100

Political parties are widely recognised as the main generator of corruption since political capture is identified as the most significant obstacle to prevention of corruption and necessary reforms.⁹⁴¹

All relevant international institutions portray the country as having undergone state-capture through political corruption and patronage networks.

Issues related to the rule of law and fight against corruption, although present in campaign declarations and speeches, do not translate into real action, further evidenced by the country's backsliding in all the indicators measuring corruption.⁹⁴² Even during election

debates, political party candidates focus on corruption cases only if they involve their political opponents while any misdeed committed by their own party ranks is marginalised or justified.⁹⁴³

When it comes to political party programmes and manifestos, most of the parties' documents on programmatic principles refer directly or indirectly to the rule of law and the dedication to the fight against corruption. However, the specific programmes and election platforms and priorities do not provide concrete or direct steps on how to fight against corruption and what actions the party will take.⁹⁴⁴

INTERACTIONS

Considering the level of politicisation and political capture, political parties directly impact almost all sectors in the society, being directly involved in the operation of the legislatures, executives, public sector, state-owned enterprises, but also the judiciary, law enforcement agencies, and even media and civil society.

The most direct linkage is with the legislative and executive branches of government and the public sector at all levels, where they parties sit in the parliaments, appoint representatives to all positions in the executive government, as well as and directly determine the orientation, size, resources and distribution of positions and funds within the entire public sector. Even in the instances where laws specifically ban partisan appointments, these are determined within the coalition agreements and intra-party distributions, and are openly negotiated between political parties.⁹⁴⁵

Moreover, the omnipresent “partocracy” led to a reverse accountability, where the executive branch acts upon party decisions made in a closed circle of leaders. This has a disproportionate influence on the legislative branch, where parliaments merely confirm initiatives previously agreed amongst the party leaders.⁹⁴⁶ Moreover, considering the overwhelming power of political parties to decide on employment, appointments, distribution of public funds, etc., the legislative branch and the public sector are effectively not accountable to citizens or their constituents,

but to political parties and their leaders.⁹⁴⁷

Having in mind Given these relationships, political parties have a predominantly negative effect on other selected pillars in all aspects, including integrity, transparency, accountability, and anti-corruption efforts.

PILLAR

RECOMMENDATIONS

In order to ensure equal criteria for the establishment and operation of political parties and consistent behaviour of parties and candidates across the country, it is necessary to adopt uniform regulations on political parties at all administrative levels.

- These should prescribe the minimum internal democracy standards and integrity requirements for political parties through legislation in order to establish genuine democratic elections within parties.
- Political parties need to improve and raise the level of internal democracy and integrity through the adoption of statutes introducing a meaningful process for all party members to vote for party management and important party decisions.
- The law on party financing should include:
 - The obligation of reporting on all bank accounts for all transactions of political parties (in particular distinguishing expenditures related to the day-to-day activities and those directly related to election campaigns).
 - Compulsory audits of all expenses (not only income) and defined categories of expenditures that can be covered from public subsidies in order to ensure their effective control.

- The prescribed formats of financial reports, which should be made more detailed and itemised by showing all individual expenses and donations.
- The publication of complete financial, which reports should be mandatory.
- In addition to introducing heftier monetary penalties, it is necessary to expand the range of sanctions available to the CEC (for example, the suspension of budget subsidies for parties who continuously violate the law).
- The legislative framework governing the conduct of political parties and candidates during election campaigns, which includes the Election Law and the laws on conflict of interest, should distinguish between the performance of public functions and performance of party functions, with a view to preventing misuse of public office for party promotion.

12 > MEDIA

Overall pillar score:	 32/100
Capacity score:	 31/100
Governance score:	 41/100
Role score:	 25/100

SUMMARY

According to the Law on the Public Broadcasting System, Bosnia and Herzegovina has three public broadcasters. These are the state-level Radio and Television of Bosnia and Herzegovina (BHRT) and Federal Television (FTV) and Radio Television of Republika Srpska (RTS) at the entity-level. Despite the law's provision for the formation of a corporation encompassing these three public broadcasters, this has not materialised following numerous attempts over the years.

A significant proportion of television and radio stations are owned by lower-level governments such as cantons, cities and municipalities. However, in recent years, there has been a marked increase in the establishment and operation of private radio and TV stations, and in particular online media outlets, for which the registration requirements remain inadequately defined. Currently, BiH is home to 312 radio and TV broadcasters (169 radio broadcasters, 108 TV broadcasters and 35 web-based content distributors),⁹⁴⁸ seven news agencies, eight daily newspapers, approximately 180 magazines and publications⁹⁴⁹ and 615 web portals.⁹⁵⁰ These figures suggest a diverse media landscape. The state-level Communications Regula-

ry Agency (CRA) oversees the operations of these broadcast media entities. However, this diversity does not necessarily translate into independence, objectivity, veracity and quality of information.

There is no effective monitoring of print media. The Press and Online Media Council only issues non-binding recommendations. In recent years, there has been a surge in the number of online media outlets. No comprehensive and accurate register of online media exists due to their vast number and the lack of regulation concerning online media. As a result, the online media sector is disproportionately large compared to the population size, and many online media outlets do not disclose their founders, editors or impressums. The absence of media ownership regulation fosters an environment conducive to media space monopolisation and political clientelism. Journalists and editors in both the state-funded and privately-run outlets face significant pressure to report on events through a political prism which leads to bias. In order to survive, the media must rely on government grants or private sector advertising, where politically connected companies provide a critical financial lifeline.

CAPACITY

> INDICATOR 12.1.1

Resources (law)

To what extent does the legal framework provide an environment conducive to a diverse independent media?

Score: 25/100

The absence of regulation concerning media ownership fosters an environment conducive to media monopolisation and political clientelism.

The Constitution of BiH, the constitutions of the entities,⁹⁵¹ the European Convention on Human Rights⁹⁵² (which is applicable in BiH) and the Law on Communications⁹⁵³ collectively comprise the legal framework safeguarding freedom of speech and media freedom in the country. The legal framework for the existence and operation of independent media reflects the right to freedom of opinion and expression. It provides the basis for the free, objective and democratic work of the media, without any pressure (political, economic, proprietary) on journalists and editorial policy.

However, at the national level, there is no overarching media law. The media legislative framework comprises of Laws on Protection Against Defamation⁹⁵⁴, Laws on Freedom of Access to Information⁹⁵⁵, the Law on the Public Broadcasting System, the Law on Copyright and

Related Rights⁹⁵⁶ and partially the Election Law, with its section related to election campaigns.⁹⁵⁷ These media laws were developed and adopted with the assistance of the international community and they fully support media freedom.

Enacted in 2005, the Law on the Public Broadcasting System⁹⁵⁸ established a public broadcasting system comprising of four broadcasters: two entity-level ones, a state-level one and a corporation serving as the public broadcasting service's overarching institution.⁹⁵⁹

All radio and TV stations, with the exception of the public broadcasting services, are subject to Rule 42/2009, as adopted by Communications Regulatory Agency, which pertains to licenses for terrestrial broadcasting of radio and TV programmes. During the licence issuance process, stations are required to provide the CRA with documentation on court registration and ownership structure. The CRA subsequently conducts a technical, programmatic and financial evaluation of each request on an individual basis. While the CRA compiles and publishes a list of broadcasters, it does not include information on the companies' ownership structures. Negative decision can be appealed to at the higher instance of the CRA.

Since 2006, when the Rule on Media Concentration and Ownership of Broadcast and Print Media originally adopted in 2004 expired, media ownership concentration has been entirely unregulated.⁹⁶⁰ Instead, the Competition Law which applies to all business sectors and responds to specific complaints, is in effect.⁹⁶¹

> INDICATOR 12.1.2

Resources (practice)

To what extent does the legal framework provide an environment conducive to a diverse independent media?

Score: 25/100

While there is a plurality of media sources, they are severely tilted towards the ruling segment of the political and social spectrum, and media in the country are highly monopolised.

The public broadcasting system, consisting of the three public radio and television services, is primarily funded by monthly licence fees and supplemented, to a smaller extent, by government grants. A decade ago, public broadcasters entered into an agreement to collect the monthly licence fees (so-called RTV tax) via telephone or electricity bills over a specified period but this agreement has not been honoured. In 2022, BHRT's claims exceeded BAM80 million (€40.9 million), largely due to the entity broadcaster from RS (RTRS) failing to contribute to the joint account. This failure is a result of both political relations and pressures exerted on public broadcasters.⁹⁶² Since 2017, the debt of over BAM61.6 million (€31.5 million) owed by RTRS to BHRT has been the subject of protracted litigation in entity courts.⁹⁶³

The public broadcasting services face constant challenges in their financing, particularly in light of the declining trend in revenues from

licence fees for public broadcasting services at both the state and entity levels. In 2022, BHRT saw a drop in its income from the licence fee of approximately BAM800,000 (€409,000) and lost an additional BAM1.4 million (€715,808) due to the freezing of its account by the FBiH Tax Administration.⁹⁶⁴ The diminishing revenue of public broadcasting services is further evidenced by the fact that in 2020, FTV earned BAM22.3 million (€11.4 million) from the licence fee, BAM650,784 (€332,741) less than in 2019.⁹⁶⁵

Private media mainly rely on advertising for their financing. However, the advertising market is disorganised and avoided by large global corporations. These corporations enter the market indirectly, utilising regional marketing agencies to place advertisements in the market via media broadcasts from their home countries and cable operators. There are no official figures regarding the value of the media market, but it is much smaller than the markets of neighbouring countries.⁹⁶⁶ A majority of media outlets are financially dependent on government budget allocations. Local authorities are the founders and direct funders of 28 per cent of existing TV stations and 44 per cent of radio stations.⁹⁶⁷ These outlets are subject to direct political influence due to their reliance on local community budgets, leading to a public perception of them as municipal and cantonal advertisers. Private media outlets also face a rather limited advertising market, where the biggest advertisers are often linked to the government and political parties. With numerous media outlets vying for a very limited market, this creates additional opportunities for editorial policy interference and political

pressure. As a result, truly independent media, particularly online portals, have largely transitioned to project-based financing, through donations and operate as CSOs or non-profit organisations.

Economic pressures on the media sector are escalating each year, and this is manifesting in the quality and independence of reporting. According to a 2021 survey involving over 200 journalists from both public and private media outlets, only 57.5 per cent of journalists are in permanent employment, while 19.3 per cent hold the status of temporary service contractors.⁹⁶⁸ Journalists' salaries are generally below average. According to a study conducted by the BH Journalists Association, the average salary in June 2020 stood at BAM965 (€493). It is important to note that the salary amount is contingent on the ownership structure of the media outlet.⁹⁶⁹

Training programmes for media reporting on corruption are sporadic, as is support for media outlets to report on this issue. They primarily occur under the patronage of and within the scope of projects funded by international donors. These programmes are predominantly organised by civil society organisations like TI BiH, or journalistic associations such as the BH Journalists Association and the Press and Online Media Council.⁹⁷⁰

› INDICATOR 12.1.3

Independence (law)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?

Score: 50/100

While the legal framework generally provides a foundation for the independent operation of the media, there is an observable trend of amending the framework so as to restrict the freedom of media expression.

The rights and freedoms stipulated by the European Convention on Human Rights are directly applicable.⁹⁷¹ The Law on Communications is grounded in the principles of impartiality, fairness, non-discrimination and the isolation of broadcasters from political control and manipulation.⁹⁷² The laws which decriminalised defamation over two decades ago were enacted to safeguard freedom of media expression.⁹⁷³ However, on 20 July 2023, the RS government/parliament introduced amendments to the criminal code. These amendments redefined defamation and other offences against honour and reputation as criminal acts marking a significant regression in the protection of media activity and reporting.⁹⁷⁴ As of 23 November 2023 there have already been 23 reports for defamation, according to the new amendments suggesting a political witch hunt against the free thinkers.⁹⁷⁵ Initiatives such as the draft of

the Sarajevo Canton Law on Offences against Public Order and Peace propose giving the police the authority to identify fake news and disinformation, and imposing high fines on the media.⁹⁷⁶ These initiatives further underscore the trend of authorities at all levels intending to legally curtail media freedoms.⁹⁷⁷

The Law on Communications establishes the independence of the Communications Regulatory Agency as the main body for regulating broadcast media. The law also clearly states that government institutions cannot interfere with the decision-making process of the CRA. Moreover, the law prohibits officials from legislative and executive institutions at all levels of government as well as members of political party bodies and persons who have financial ties with broadcast media from serving as general director or member of the CRA Council.⁹⁷⁸

The Law on the Public Broadcasting System guarantees the independence of public broadcasters, stipulating that public broadcasting services maintain both editorial independence and institutional autonomy.⁹⁷⁹ However, subsequent amendments in 2008 to the Law on RTV FBiH have resulted in the Communications Regulatory Agency being stripped of its authority to elect members of this public broadcaster's board of directors. Instead, this procedure has been transferred to the FBiH Parliament. In RS, the law permits the process of electing members to the RTRS Board of Directors to be repeated indefinitely until a candidate secures political support in the National Assembly.⁹⁸⁰ This places the agency in a position where it is compelled to propose a

politically acceptable candidate.

➤ INDICATOR 12.1.4

Independence (practice)

To what extent is the media free from unwarranted external interference in its work in practice?

Score: 25/100

The media are subjected to political pressure through financial constraints, such as denial of advertising by institutions and advertisers aligned with the authorities. Additionally, they face direct threats and persecution from the highest levels of power, as well as strategic lawsuits against public participation (SLAPPs) which are predominantly initiated by public officeholders and authority representatives.

Reporters Without Borders' (RSF) *World Media Freedom Index* ranks BiH 67th in 2022, a decline of nine places from 58th position in 2021 when it had a score of 28.34.⁹⁸¹ The RSF report for 2021 emphasises ongoing political influence on the media and states that "manipulation of the media for political purposes continues, especially in the public broadcast media but also in privately owned media (and online media in particular)."⁹⁸²

The unencumbered operation of the media and the practice of journalism have been

increasingly strained by a rising number of defamation lawsuits. A survey from 2020 indicates that there were nearly 300 active defamation cases, a significant portion of which were strategic lawsuits against public participation (SLAPP).⁹⁸³ These lawsuits exert a profoundly detrimental effect on journalists' freedom to report critically and on the financial viability of media organisations. Furthermore, there is an emerging trend of excessive damage claims, with the lawsuits against *Dnevni Avaz* and *Žurnal* being particularly noteworthy. According to the first-instance verdicts, these outlets are required to pay damages amounting to approximately €200,000. About 80 percent of plaintiffs in defamation lawsuits against journalists and media outlets are politicians, judiciary representatives and/or public officials.⁹⁸⁴ Prosecutors' often disregard Article 8 of the Defamation Law, which requires a mediation process before trial, and their failure to use the possibility of submitting complaints and objections to press and online media writings to the Print and Online Media Council in BiH.⁹⁸⁵

Public institutions and public enterprises continue to be significant advertisers. Consequently, they possess an effective mechanism for influencing the media by financing outlets where editorial policies align with the interests of the ruling structure. This is particularly evident in media reporting on elections. Media funding, apart from advertising, is allocated from all levels of government and through various grants and subsidies. According to 2018 research by TI BiH, all levels of government allocated approximately BAM30.8 million (€15.7) from

their budgets for media financing. The majority of this funding was directed towards public TV and radio stations. This figure represents a 44 per cent increase compared to the amount allocated in 2014. From that point until now, more than BAM140 million (€71.6) have been spent on the media, with the amount intensifying year-on-year.⁹⁸⁶

The management boards of the three public broadcasting services are appointed under influence of the political leaders and the ruling parties, and a robust model for collecting licence fees has yet to be established. The European Commission's BiH reports for 2021 and 2022 highlighted the politicisation of management boards that negatively influences the editorial policy of public broadcasters and leads to self-censorship.⁹⁸⁷

Media outlets that adopt critical stances towards the ruling structures frequently encounter overt pressures and threats from authorities and/or criminal groups. In 2022 the trend of increasing attacks on journalists continued. The Journalists' Helpline recorded 79 cases of violations of media freedoms, freedom of expression and safety of journalists, as well as 35 cases of online violence against media professionals. Political pressures and attacks on journalists and the media increased by 40 per cent compared to 2021, while cases of verbal threats, death threats and hate speech increased by 137 per cent.⁹⁸⁸

Alongside attacks on journalists in the digital sphere, physical and verbal assaults have also been documented. The most severe attack on a journalist occurred in 2018 when Vladimir

Kovačević, a journalist for BN Television, was brutally beaten with collapsible batons outside his residence in Banja Luka. Boxer Marko Čolić from Banja Luka, who media reports associated with the ruling party in RS and whose sporting activities are sponsored by RS institutions, received a four-year prison sentence for the attempted murder of Kovačević.⁹⁸⁹ However, neither the investigation nor the court proceedings managed to identify the actual perpetrators, who initiated the attack or their motives.

Other instances of physical assaults include a 2022 attack by Zoran Čegar, the suspended head of the Uniformed Police Department of the FBiH PA, against a journalist from the Centre for Investigative Journalism who had asked him for a comment following a hearing where he was tried for fraud.⁹⁹⁰ Another incident involved a physical attack in BD where journalist Mirza Dervišagić was beaten in August 2023.⁹⁹¹

Numerous other attacks stem from high-ranking officials, where it has become commonplace for journalists to be insulted, labelled as traitors, subjected to derogatory names and discredited at press conferences. The most frequent instances of confrontations with journalists via social media and at press conferences are instigated by the President of the RS Milorad Dodik.⁹⁹² However, this practice is prevalent at all levels, including the Minister of Foreign Affairs Elmedin Konaković⁹⁹³ and other officials, and also manifests as direct threats by local officials such as councillors of the Banja Luka City Assembly⁹⁹⁴ or the Mayor of Šipovo.⁹⁹⁵

Despite consistent condemnation of attacks on journalists by the media and European institution representatives, an adequate response from the judiciary is conspicuously absent. The *Western Balkans Journalists' Safety Index: BiH* for 2021 underscores that prosecutions of attackers are typically not pursued. Particularly concerning is the stance of prosecutors' offices that frequently issue orders not to investigate the reported attacks and threats to journalists citing a lack of elements of a criminal offence. Even when prosecutions do occur, the resulting sentences are notably lenient.⁹⁹⁶

A public opinion survey conducted by the OSCE in 2022, as part of an assessment of media sector needs, revealed citizens' dissatisfaction with the media situation and their low level of trust in the media.⁹⁹⁷ The media are perceived as undergoing significant censorship and self-censorship, driven by political and economic factors.

GOVERNANCE

› INDICATOR 12.2.1 Transparency (law)

To what extent are there regulations in place that require parties to make their financial information publicly available?

Score: 50/100

To what extent are there provisions to ensure transparency in the activities of the media?

The Law on the Public Broadcasting System of BiH governs the relationship between the three public broadcasters in the country (BHRT, RTRS and RTV FBlH), which were constituted as public enterprises under separate laws.⁹⁹⁸ As these broadcasters hold the status of public enterprises, they are subject to the provisions of relevant laws concerning freedom of access to information, discussed at length in 2.2.1.⁹⁹⁹

The transparency of private media ownership is governed by general rules stipulated by laws that regulate company operations.¹⁰⁰⁰ However, despite sustained advocacy efforts by journalist and professional associations, no specific legislation guaranteeing media ownership transparency has been enacted to date. During the licence issuance process, stations are required to provide CRA with documentation on court registration and ownership structure.¹⁰⁰¹ There is no regulation for publishing this

information. The Law on Communications does not mandate that stations disclose their ownership structures. Although the ownership structure of each broadcaster is publicly accessible through the relevant institution where the broadcaster has been registered, the information may not necessarily be reliable or up to date.

› INDICATOR 12.2.2 Transparency (practice)

To what extent is there transparency in the media in practice?

Score: 25/100

The issue of inadequate transparency in media ownership is highly prevalent. This, according to both relevant survey findings and media experts, has a profoundly detrimental effect on media operations.

The activities of public broadcasting services, which are governed by freedom of information laws as public enterprises, remain insufficiently transparent.

Currently, there is no publicly accessible complete register encompassing all media – private and public, radio stations, TV, press and online media with an impressum. The broadcaster register on the CRA website does not include ownership data, only information

on editors and directors.¹⁰⁰² The Press and Online Media Council of BiH maintains a register of press and online media on its website¹⁰⁰³ but it is incomplete and only includes information about online media that are members of the council.¹⁰⁰⁴

Ownership transparency is particularly contentious with online media. There are no standards for publishing ownership information on these media websites, and many online media are not registered at all, making it difficult to determine ownership. This poses a significant problem in potential legal proceedings against such portals. Given the large number of online media outlets and the lack of regulation regarding their registration, it is impossible to maintain a complete and accurate register of online media. The absence of regulation concerning media ownership fosters an environment conducive to media space monopolisation and political clientelism (see 12.1.1 & 12.1.2). A significant number of online media neither have an impressum nor provide any information on ownership and editorial boards, contributing to a complete lack of transparency and accountability, as well as the establishment of direct "branch offices" of political parties and the dissemination of misinformation. According to a 2021 survey, only a third of portals had an impressum, while as many as 270 portals did not list any information.¹⁰⁰⁵

› INDICATOR 12.2.3

Accountability (law)

To what extent are there legal provisions to ensure that media outlets are answerable for their activities?

Score: 75/100

While there exist certain legal mechanisms to ensure media accountability, they are not comprehensive and fail to provide an adequate oversight.

The regulation of broadcast media throughout the country falls under the purview of the Communications Regulatory Agency, according to the Law on Communications. The CRA possesses supervisory powers and the authority to impose sanctions in cases of regulation and code violations.¹⁰⁰⁶

For print and internet media, the Press and Online Media Code applies, implemented by the Press and Online Media Council based on the principle of self-regulation. In line with media self-regulation principles, the council monitors compliance with professional standards but lacks the power to impose fines, suspend or close media outlets. Potential disputes between the public and press or online media are resolved by the Press and Online Media Council using journalistic means exclusively. These include the right of reply, publication of corrections, apologies and retractions.¹⁰⁰⁷

Media activities during the election campaigns are regulated by the Election Law.¹⁰⁰⁸ However, this law's provisions primarily refer to broadcast media and less so to print media, while online media remain outside its legal purview.

In principle, accountability should also be ensured by defamation protection laws, such that liability for defamation is determined in civil proceedings, with proceedings for damages also initiated. Defamation was reinstated as a criminal offence in RS in 2023, potentially allowing accountability mechanisms to be misused as a means of exerting pressure (see 12.1.3).

> INDICATOR 12.2.4

Accountability (practice)

To what extent can media outlets be held accountable in practice?

Score: 25/100

Regulators, primarily the Communications Regulatory Agency, which are supposed to ensure media accountability, are themselves compromised by political pressures and a lack of independence.

In practice, media accountability unsatisfactory. Media reporting is influenced by ethnocentrism and loyalty to political interests rather than by professional standards and principles of accountability. Furthermore, the CRA's

monitoring of media reporting is selective and thus ineffective. the CRA has the duty to ensure that broadcast media respect political pluralism throughout the year, but it only conducts monitoring based on specific audience requests and during election campaigns.

The CRA continues to grapple with a lack of full political and financial independence, with political influence on management appointments being particularly significant. In September 2021, the CRA issued an order to decommission certain TV transmitters in line with the decision to terminate the analogue TV signal. This decision sparked indignation among some TV stations, which alleged that the decision was politically motivated.¹⁰⁰⁹ Furthermore, the appointment of Draško Milinović as the Director of CRA has been met with ongoing criticism. Milinović, formerly the director of the public broadcasting service RTRS, assumed his position at the CRA after serving as the chief of staff for the then Prime Minister of RS, Željka Cvijanović. His tenure as head of RTRS coincided with a period when the CRA imposed sanctions on this public broadcaster due to biased reporting.¹⁰¹⁰

In 2022 the Journalists' Helpline recorded 79 cases of violations of media freedoms, freedom of expression and safety of journalists, as well as 35 cases of online violence against media professionals.¹⁰¹¹ The members of the Press and Online Media Council have not faced direct threats, but they experienced unpleasant reactions from complainants and media editors who were dissatisfied with the outcomes of some appeal procedures.¹⁰¹²

The institute of protection against defamation through lawsuits, which is one of the basic mechanisms for ensuring media accountability is largely ineffective in practice and has become a way of pressuring the media (see 12.1.4).

> INDICATOR 12.2.5

Integrity mechanisms (law)

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

Score: 50/100

While sector-wide codes of ethics exist, they do not cover all aspects related to the integrity of media employees and some provisions contain loopholes that allow the media to operate in the grey zone.

There are sector-specific ethical codes. One pertains to the broadcasting of radio and television programmes, established by the CRA, and is binding for all broadcast media.¹⁰¹³ Additionally, there is a Code for Press and Online Media agreed upon by six journalist associations with the Press and Online Media Council.¹⁰¹⁴ Unlike the CRA, which can impose sanctions, the Print and Online Media Council only acts as a self-regulatory body that monitors and analyses potential code violations based on individual complaints about specific articles or journalistic pieces. The Code for Press and Online Media was updated in 2021 with new articles concerning the use

of information technology, misinformation, incompatibility of the journalistic profession, conscientious objection, acceptance of gifts and privileges, and transparency of print and online media.¹⁰¹⁵

The amended code introduces greater responsibility for editors and publishers of online media for all the content they publish, including the comments of their readers. They are required to delete any user comments that contain hate speech, incitement to violence, instigation, intolerance, insults, threats or any other form of improper and socially unacceptable communication. Some online media outlets disagreed with the code changes and withdrew from the council membership.¹⁰¹⁶

The code contains important provisions on the prohibition of discrimination and insults, the accuracy of transmitted information and a new article on the transparency of print and online media. The code allows authors to explore someone's privacy in the interest of investigative journalism, but it also sets some stipulations to prevent misuse.

Media outlets do not have their own codes of ethics or boards of ethics. The only ethics committees that exist are the councils of honour in journalists' associations.¹⁰¹⁷ However, these committees are not present in individual media outlets.

> INDICATOR 12.2.6

Integrity mechanisms (practice)

To what extent is the integrity of media employees ensured in practice?

Score: 25/100

There is partial and reactive approach to ensuring integrity of media employees, but enforcement of regulation is weak.

There are five journalist associations: the BH Journalists Association, the Association of RS Journalists, the Association of Croatian Journalists, the Society of BiH Journalists and the Network of Women Journalists in BiH. The number of journalists working is not precisely known, but it is estimated to be between 2,000 and 3,000, most of whom belong to these associations.¹⁰¹⁸ However, these associations are generally aligned with the ethnic and entity division of the country, with the exception of the BH Journalists Association which endeavours to surmount such divisions in practice, especially within the journalistic profession.

In a 2021 poll conducted as part of the *Integrity of Journalism and Media Transparency* survey, many journalists raised concerns about the operations of all professional journalist associations. They felt that these associations, perceived as interest groups, often acted selectively and with bias. Also, a prevailing concern was that these associations were

monopolised by a select few, which led to other members feeling unheard.¹⁰¹⁹

Journalists and editors are of the view that the establishment of a single union of media professionals at the state level, increased awareness and education on journalistic rights and media freedoms, and initiatives to improve journalists' economic conditions are necessary to enhance the working environment for journalism. For issues related to their labour rights, journalists commonly turn to the BH Journalists Association, the Communications Regulatory Agency, the Press and Online Media Council and the Institution of the Human Rights Ombudsman.¹⁰²⁰

Almost all of the journalist associations in question have adopted codes and instituted courts of honour for handling infringements of professional standards. Yet, despite the frequent contraventions of the code, as indicated by the numerous complaints received by the Press and Online Media Council, these mechanisms are rarely employed in reality.

According to the Press and Online Media Council's statistics, in 2022, the Council received 79 cases of violations of media freedoms, freedom of expression and safety of journalists, as well as 35 cases of online violence against media professionals.¹⁰²¹

Every so often, accusations surface against journalists and media entities alleging blackmail. These allegations suggest that journalists solicit favours from individuals in exchange for not publishing damaging content. Anonymous interviews with journalists

conducted as part of the *Integrity of Journalism and Media Transparency* report revealed that both public and private media outlets – influenced by the interests of their owners or the political allegiances of their management – tend to favour certain political groups while displaying a negative bias towards others.¹⁰²² This is an unequivocal sign of clientelism within the media industry. Journalists confessed that they regularly encounter blackmail in their professional lives and that by agreeing to work for a particular outlet, they also consent to its editorial policy, leaving their professional integrity vulnerable. A survey carried out by the Regional Platform for Advocating Media Freedom and Journalists' Safety in Western Balkans showed that 51 per cent of journalists admit that censorship influences their work, although this is typically not reported.

Expert research and public opinion polls indicate that media reporting suffers from bias. The media sector reflects ethno-national and political divisions, and produces a lot of disinformation, which was particularly evident during the COVID-19 crisis.¹⁰²³ A 2022 report by the State Department notes that nationalistic rhetoric and ethnic and political bias dominate media coverage, fostering intolerance and sometimes even hatred.¹⁰²⁴

ROLE

› INDICATOR 12.3.1

Investigate and expose cases of corruption practice

To what extent is the media active and successful in investigating and exposing cases of corruption?

Score: 25/100

In general, the task of investigating and exposing individual cases of corruption is mostly neglected by the media, due to their dependence on the financing sources linked to the ruling elites.

The vast majority of media outlets seldom engage in investigative journalism in a methodical and accountable manner. This is because of the scarce funding available, but also because many media are beholden to government institutions either through direct control or indirectly through advertising reflecting the fact that government institutions and state-owned companies remain the largest advertisers.¹⁰²⁵

In the face of censorship threats from advertisers and political influences, independent media outlets increasingly turn to foreign organisations, apply for projects and become a vital part of civil society, often functioning as non-profit organisations. A significant number of these media outlets

focus on socially relevant topics, political accountability, EU integration, human rights, uncovering corruption and clientelism, etc.

Active participants in this endeavour include the Centre for Investigative Journalism (CIN), Balkan Investigative Reporting Network (BIRN), online magazine Žurnal, Inforadar.ba, Tačno.net, Buka, Etrafika.net, Capital.ba, Fokus.ba, Direkt-portal.ba, Impulspornal.net, Interview.ba, Infoveza.com and Gerila.info among others, and their number is constantly increasing.¹⁰²⁶

In spite of the challenges and the often selective approach where corruption scandals are disclosed mainly when they involve opponents, the media have been instrumental in unveiling major corruption scandals. Regrettably, very few of these revelations elicit an institutional response or result in a judicial outcome, such was the case against former FBiH prime minister for procurement during the pandemic, which was firstly published by journalists.¹⁰²⁷

The few media outlets that undertake investigative journalism are frequently subjected to pressure, as well as extraordinary financial and tax inspections, which hinder their operations considerably (see 12.1.4).

› INDICATOR 12.3.2

Inform public on corruption and its impact

To what extent is the media active and successful in informing the public on corruption and its impact on the country?

Score: 25/100

In general, the task of informing the public on corruption and its impact is mostly neglected by the 'captured' media and covered superficially. Demand for such news is not growing strong either.

Independent media outlets report on corruption daily, focusing primarily on individual cases. Media outlets under the partisan grip are biased in their reporting, outlining only cases coming from the political opposition or the other ethnic caucus. Investigative journalism resources are limited and a systemic, long-term approach is largely absent, with few exceptions among mostly non-profit media.¹⁰²⁸ This is a result of lack of time and capacity, and focus on daily reporting. On the positive side, there is an increasing number of donor supported projects for non-profit media that prioritise reporting on corruption.

Finally, a rhetorical question comes to mind: the more examples of corruption crop up in the media, the more is the public saturated with the notion that this is a cultural determination and that little can be done to change it. The country has not seen an increase in demand for

anti-corruption efforts as a result of accurate reporting. In fact, quite the opposite has taken place. The more evidence surfaces about corruption, the more subdued the citizens feel about what can be done.

› INDICATOR 12.3.3

Inform public on governance issues

To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?

Score: 25/100

There is a noticeable absence of sufficient critical and analytical review of government work, particularly in the public broadcasting system.

While media outlets report daily on institutional activities and decisions made by parliaments and governments, these reports often lack in-depth analysis. This is compounded by lack of specialised journalists and media outlets that can scrutinise the behaviour of the government from a long-term perspective. Reporters carry the official government statements or those of the political opposition in full (with preference given to one or the other, depending on the editorial policy), often without a thorough problem analysis, comments, independent assessments, etc.¹⁰²⁹

Objectivity in reporting is largely determined by ownership structures and editorial policies. Media controlled by governments or those significantly dependent on state advertising often serve more as tools for government promotion than as objective news sources.

On the other hand, the few media outlets that strive to report impartially on government activities are constrained by limited capacity, often resorting to various analysts and experts whose impartiality may be questionable.¹⁰³⁰

› INDICATOR 12.3.4

Gender

To what extent does the media include women's voices?

Score: 25/100

The news stories include the voices and perspectives of women. However, there is the lack of women in management structures and in editor-in-chief positions.

According to the 2018 report by Mediacentar two-thirds of management structures and editors-in-chief in media are men.¹⁰³¹ The biggest disproportion in the representation of women and men in the key management positions is in the television sector. A UN Women report states that there is lack of thematic and in-depth media reporting on

violence against women through analyses, comments and research results in the media.¹⁰³² There is not enough problematisation of violence against women as a social problem. A recent Council of Europe assessment of gender in BiH media claims that women were less visible in 2020 than they were in 2015 in the national media. The same study shows that one in four citizens approves of violence against women journalists, which is a result of the long-term sexist reporting and media vocabulary.¹⁰³³

INTERACTIONS

The media interacts with most of the country's institutions, on which they report and cover all activities organised by them. In most cases, media interact with the governments, assemblies and civil society.

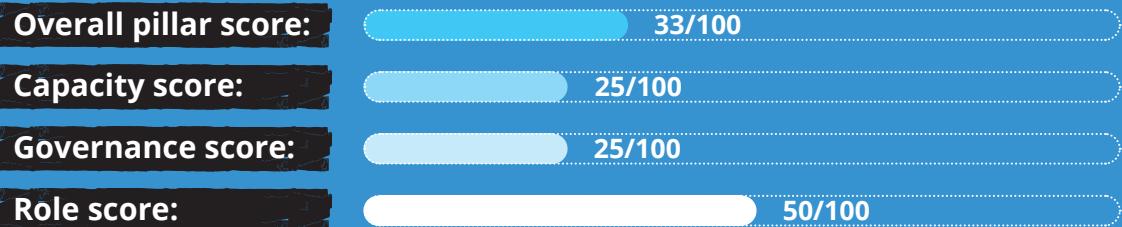
Interaction between media and governments, parliaments and civil society are reduced to the media coverage of government and parliamentary sessions, official meetings, publishing unedited press releases, as well as coverage of conferences and other public events organised by the authorities or civil society organisations. In terms of systemic support and collaboration, government controlled or supported media rely on this interaction being solid, whereas opposition media favours links to CSOs and critical voices.

PILLAR RECOMMENDATIONS

- The governments and parliaments need to increase the availability of information relating to the ownership of media outlets, through regulation of the public disclosure of ownership structure by adoption of a law on transparency of media ownership.
- The legislative branch should legally establish transparent rules for advertising in the media in order to enhance media independence and competition.
- The governments at all levels needs to ensure equal treatment of all media in the market by ensuring transparent and competitive procedures for the allocation of state subsidies, based on transparent and measurable criteria or, alternatively, abolish the subsidies altogether.
- There is a need for an improved legal framework related to the public broadcasters by ensuring the independent election of members of the management boards in the public broadcasters, through public, independent and competitive procedures.
- The legislative branch needs to strengthen the programming councils within public broadcasters, by selecting its members and providing them with independence in programme creation, free of the management boards' or external political influence.

While mentioned earlier, it is critical for the media's free operations that the RS Parliament revokes the amendments to the Criminal Law that criminalise slander in any form.

13 > CIVIL SOCIETY



SUMMARY

According to official statistics, there are currently 27,432 civil society organisations (CSOs) registered in Bosnia and Herzegovina.¹⁰³⁴ In reality, however, the number of CSOs that are actively pursuing their programmatic goals and serving the interests of their target beneficiaries is far lower. The biggest impediment to evaluating their performance and effectiveness is a lack of data on their number, capacities, areas of work and activities.

The legislative framework governing the establishment and operation of CSOs is adequate, but there is room for improvement.

There have been instances of authorities misusing budget money because there are no mechanisms in place to ensure transparent government support of CSOs. They typically fund a number of associations that arose from the 1990s war, as a popular measure. The executive attempts to either maintain the status quo or enforce new, even more stringent policies such as Law on Register of Foreign Agents in Republika Srpska, Amendments to Criminal Code in RS related to regulation of the defamation, the Law on Financing of the NGOs in FBiH, and set of policies that regulate freedom of assembly and use of the public space in FBiH Cantons and RS.

During the election periods, some CSOs serve as a conduit for political campaign funding.

Even though the number of informal groups and coalitions seems to be increasing, civil society has not yet had a major impact on getting authorities to address certain topics or problems. Also, the contribution of CSOs to public policymaking remains relatively modest.

The lack of a mechanism for CSO self-regulation is one of the issues that CSOs need to address in order to improve their reputation and public trust in their work. While some CSOs have adequate capacities, they do not collaborate sufficiently with the government and businesses in creating national development strategies.

Furthermore, they continue to rely heavily on funding from public budgets or international donors, making them very vulnerable and dependent. Attacks on activists and CSOs working to promote human rights, and in particular LGBTIQ rights and the rights of migrants, are on the rise.

CAPACITY

> INDICATOR 13.1.1

Resources (law)

To what extent does the legal framework provide an environment conducive to civil society?

Score: 25/100

Overall, the legal framework is conducive to civil society organisations in terms of fundamental protection of the freedom of association and several laws at state, entity and district level that provide a solid basis for CSOs to operate. However, recent changes of Criminal Code in RS which criminalise defamation will have direct consequences on the CSOs environment.

The right to freedom of peaceful assembly and association is guaranteed by the Constitution, while the establishment, registration and operation of associations and foundations in the country is governed by the laws on associations and foundations at the state, entity and BD levels, as well as the corresponding implementing regulations.¹⁰³⁵

CSOs can register at any of the 18 judicial institutions: the state-level Ministry of Justice,¹⁰³⁶ the FBiH Ministry of Justice, any of the ten cantonal ministries of justice,¹⁰³⁷ the basic court of BD, or with any of the six district courts¹⁰³⁸ in RS.¹⁰³⁹ The length and cost of the registration

process, as well as the required documents vary across administrative units and range between BAM200-800 (approximately €100-400). Depending on where a CSO is registered, different procedures are followed for closing CSOs and removing them from the existing registers. Closure procedures are unclear and many CSO which are de facto closed have not been legally unregistered due to the lengthy and complicated procedures.

In July 2023, RS parliament introduced amendments to the criminal code criminalising defamation, which threatens freedom of speech, investigative journalism and CSO activities.¹⁰⁴⁰ These legal changes are expected to have a chilling effect on critical reporting, advocacy and investigative journalism, diverting resources from primary activities due to concerns about costly lawsuits. Also in 2023, RS has adopted a draft law, titled the Law on the Special Registry and Publicity of the Work of Non-Profit Organizations, so-called "Foreign Agents Act" which designates organisations financed by external funding as so-called foreign agents, regardless of their activities.¹⁰⁴¹ This law further restricts freedom of expression and raises concerns about suppressing public criticism.¹⁰⁴²

The legal framework for ensuring transparency in government financing of CSOs is in the drafting stage. The income tax exemption rates and types of organisations eligible for public financing vary between the entities.¹⁰⁴³

CSOs are legally allowed to engage in profit-making activities, but any profits they generate must be used exclusively to support their work

and align with their organisational statutes.¹⁰⁴⁴ CSOs must register in the VAT system if they generate more than BAM50,000 (€25,565) in annual revenue from economic activities. CSOs are required to pay VAT and can only request a refund if they receive funding from a donor whose government is exempt from paying VAT under an international agreement.¹⁰⁴⁵ However, VAT regulations, as outlined in the VAT Law and its Rules of Application¹⁰⁴⁶ lack clarity as to when CSOs must pay VAT. This ambiguity results in varying interpretations and decisions by tax authorities, creating uncertainty and potential challenges for CSOs. In some cases, CSOs have been asked to pay VAT on grants received, which, if applied universally, could significantly hinder the operations of CSOs, given their non-profit nature and limited resources.¹⁰⁴⁷

The proposed Law on Financing Civil Society Organisations in Republika Srpska lacks any engagement and consultation with civil society, suggesting an attempt to exert more control and pressure on critical CSOs.¹⁰⁵⁸ The similar law is being drafted in FBiH, with only a few CSOs participating in the working group.

➤ INDICATOR 13.1.2

Resources (practice)

To what extent do CSOs have adequate financial and human resources to function and operate effectively?

Score: 25/100

In general, most CSOs suffer from serious financial and human resource problems threatening their survival due to lack of adequate financial support from institutions as well as lack of institutional capacity to identify and select the best applications despite established guidelines and regulations on public funding allocation.

An analysis conducted by the Institute for Youth Development 'KULT' shows that while CSOs are all registered with the state-level Ministry of Justice, 41 per cent of them operate statewide, 15 per cent at the cantonal level, 14 per cent in FBiH municipalities, 10 per cent at the territory of RS and only 6 per cent in the territory of BD.¹⁰⁴⁹ About 55 per cent of the CSOs listed in the Ministry of Justice's e-register are active, whereas the bulk of CSOs do not at all engage in or proactively influence governmental budgeting and policymaking processes.¹⁰⁵⁰

Yet, most CSOs depend on foreign funding, primarily from the EU Delegation, USAID, the Swedish International Development Cooperation Agency (SIDA), Swiss Agency for Development and Cooperation (SDC) and the Norwegian Embassy.¹⁰⁵¹ When it comes

to domestic funding, most authorities at all levels of government have a regulatory and strategic framework in place for public financing of CSOs.¹⁰⁵² Calls for allocation of this funding are publicly advertised. However, the actual amounts and the purpose of the projects remain undisclosed in most cases.¹⁰⁵³ According to a 2022 TI BiH report, public authorities awarded a total of BAM121 million (€61.9 million) to CSOs.¹⁰⁵⁴ However, the highest amount still goes to sports associations, veterans' associations and religious organisations.

During the COVID-19 pandemic in 2020 and 2021, funding for CSOs was reduced which endangered the existence of a considerable number of CSOs.¹⁰⁵⁵ According to the Donor Coordination Forum report, €16 million (BAM31.3 million) was allocated for financing the work of CSOs in 2021, excluding funds intended for humanitarian initiatives.¹⁰⁵⁶

The strength of the volunteer and membership base of CSOs varies considerably across the country. In accordance with the findings of the *Volunteerism as a path to sustainability of CSOs in BiH* workshop held in January 2022 and organised by the Network for Building Peace (NBP), it has a vibrant civil society landscape, with numerous CSOs dedicated to various causes, ranging from human rights and social services to environmental protection and cultural preservation. While some CSOs enjoy robust volunteer and membership support, others may struggle to attract a dedicated base.

The 2023 NBP study on philanthropy found that the main issue for CSOs is actually not a lack of

funding diversity. In fact, the data shows that 60 per cent of the surveyed organisations engage directly with companies and 51 per cent of CSOs even fund some of their socially beneficial activities using market-generated revenue. The real problem is their limited connection to local communities, where support from citizens and businesses makes up only an insufficient quarter of their funds. Effective communication with the local community is a challenge, both in terms of transparent reporting to individual donors and engaging with the corporate sector due to lack of communication skills.¹⁰⁵⁷

The ability of CSOs to attract skilled professionals as staff members varies as well. Big and strong organisations in bigger cities may have access to a pool of talented individuals who feel passionate about their missions, while others may face challenges in recruiting and retaining skilled professionals due to resource constraints and competition with other sectors for talent.

The aforementioned attempt of the RS authorities to brand the CSOs recipients of international donor funding as "foreign agents" (see 13.1.1.) might bring sustainable funding for many independent NGOs in that entity into jeopardy if successfully implemented.

> INDICATOR 13.1.3

Independence (law)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?

Score: 25/100

A number of laws exist to prevent unwarranted external interference in the activities of CSOs. However, there are loopholes preventing CSO independence particularly in the RS, but also how the authorities interpret the regulation and apply it against the CSOs.

The right to freedom of association is guaranteed by the constitution and the laws that govern the establishment and operation of CSOs are not restrictive regardless of political ideology, religion or objectives.¹⁰⁵⁸ Also, the laws on associations and foundations, as well as those governing the right to peaceful assembly, do not exclude specific groups such as civil servants, law enforcement officers and military personnel. The legal system prioritises protection of the autonomy and independence of CSOs and state intervention is generally reserved for situations when a state of emergency is declared. These emergencies typically arise from extraordinary circumstances such as natural disasters or other threats that pose significant risks to well-being and safety of the entire population. Even during such times, any state intervention must adhere to the principles of necessity and

proportionality, ensuring that the response is both adequate and limited in scope, with the primary goal of safeguarding welfare of the citizens.

There are no laws that would allow the government to oversee and control the work of CSOs like mandatory state attendance at CSO meetings or mandatory state membership on CSO boards.¹⁰⁵⁹ CSOs may be subject to financial controls by tax authorities and must submit financial statements to the financial informatic agencies – the Financial and Information Agency (FIA) and the Agency for Intermediary, Information Technology and Financial Services APIF – with regards to compliance with national and international accounting standards and payment of taxes.¹⁰⁶⁰

According to the Law on the Prevention of Money Laundering and Financing of Terrorist Activities and its Implementation Guidelines, the State Investigation and Protection Agency's Financial Intelligence Department and banks have a mandate to check all incoming funds and, as necessary, request that CSOs provide additional documentation as proof of their contractual relationship with the money sender.¹⁰⁶¹

The extent to which CSOs have rights to privacy regarding their banking transactions can vary depending on the specific legal and regulatory framework in place. Generally CSOs, like other legal entities, have financial privacy rights when it comes to banking transactions. However, these rights may be subject to certain limitations and conditions imposed by the legal and regulatory authorities. CSOs, like

other entities, should expect their banking transactions to be subject to routine financial oversight and reporting in accordance with these regulations. It's essential for CSOs to maintain proper financial records and compliance with these regulations to avoid any misunderstandings or legal issues. They should also be aware of their rights and responsibilities concerning financial privacy and ensure that their transactions are conducted in a transparent and legal manner.

On top of this come the aforementioned recent severe attempts in the RS to subject the NGOs in that entity to scrutiny and mercy of the executive, which now has it within its remit to brand CSOs as "foreign agents" and potentially terminate their operations as a consequence. While the adoption of the law is a new development at the time of writing, it will soon be clear how far the authorities will go in limiting the space for CSOs in practice.

› INDICATOR 13.1.4

Independence (practice)

To what extent can civil society exist and function without undue external interference?

Score: 25/100

The government regularly and severely interferes in the activities of CSOs, exerting influence due to high dependence on public funds, misusing CSOs for political financing and directly attacking CSOs and activists.

Given the enormous number and variety of registered CSOs, it is impossible to quantify how autonomous they are in their work. The financing of CSOs from public budgets is inseparably linked with their levels of independence. According to the first publicly accessible register of public funding allocated to CSOs maintained by TI BiH, the vast majority of budget funds designated for CSOs went to veterans' associations, sports organisations and religious organisations.¹⁰⁶² As a rule, these organisations do not have sufficient capacity to raise funds from other sources and are entirely reliant on the budget funding making them highly susceptible to political interference. The fact that many public officials serve on the governing boards of CSOs that get government funding is indicative of the pervasiveness of conflicts of interest.¹⁰⁶³ TI BiH has identified 47 such officials, some of whom would be in a conflict of interest. A surge in the number

of government-operated non-governmental organisations (GONGOs)¹⁰⁶⁴ is especially noticeable during election seasons, when CSOs are frequently employed as vehicles for financing political campaigns. After receiving budget funds and accomplishing the agreed-upon activities, the majority of these CSOs disband.¹⁰⁶⁵ According to TI BiH, in the last two election cycles, over 800 election candidates headed NGOs that received public funding.¹⁰⁶⁶ The majority of those NGOs are veterans' and religious organisations.

Even though the laws guarantee freedom of assembly, activists have experienced harassment, intimidation and even arrests. Court proceedings are lengthy and their outcomes are often discouraging for activists.¹⁰⁶⁷ Also, authorities employ additional methods such as designating particular gatherings as high-risk events, cancelling them or charging unreasonable amounts to secure them to discourage and stifle CSO and civic initiatives aimed at defending fundamental human rights.¹⁰⁶⁸ Online attacks on activists are becoming increasingly frequent. The majority of such cases receive no adequate response from the ombudsman's office, the police and the prosecutor's office. The attacks on activists and CSOs are typically met with a deafening silence by the vast majority of institutions at all levels of government with a mandate to protect human rights or foster cooperation with CSOs.

Activist CSOs, and in particular those that work to protect rivers and natural resources and those concerned with women's rights and the rights of LGBTQI persons and migrants, are frequently subject to threats and abuse.¹⁰⁶⁹

GOVERNANCE

› INDICATOR 13.2.1

Transparency (practice)

To what extent is there transparency in CSOs?

Score: 50/100

In general, CSOs vary significantly in how transparent their operations are. Practically all government funded CSOs (GONGOs) lack even the minimal levels of transparent reporting, while those bound by international funding and reporting standards tend to be significantly more open and adhering to the good international practices.

Some larger CSOs publish activities on their website, social media and other communications channels, while in most cases smaller CSOs do not even have an official website.

CSO transparency also varies significantly in terms of data availability. This includes openness to the public regarding how funds are used and the publication of information on activities, membership and work plans. CSOs that receive government grants often entirely lack transparency and there is neither a proactive attempt to inform the public about how these funds are being spent, nor can the public obtain such information at its own initiative. In contrast, NGOs that largely

enjoy international donor support abide by the requested transparency and reporting standards and make such information publicly available through their websites. The primary source of information are indeed the CSO websites, which many government-funded CSOs lack.

According to the USAID's *CSO Sustainability Index* which observed the totality of the CSOs scene in the country, most lack quality financial management systems or do not operate in a transparent manner.¹⁰⁷⁰ CSOs registered at the state level are required to submit their financial reports to the Ministry of Justice, which then publishes them on its website.¹⁰⁷¹ Some CSOs fail to do so, based on the number of CSOs who submitted the report to the MoJ and the total number of registered organisations. Also, very few CSOs do regular audits and release their findings to the public. Furthermore, few CSOs provide publicly accessible information about the composition of their governing structures (governing board and assembly), membership and staff, as well as their strategic documents and memorandums of cooperation/partnership with other CSOs or institutions.¹⁰⁷² CSOs typically meet transparency criteria only to the extent required by donors when approving grants. Again, the same division applies here, with significant differences among the CSOs, depending on the source of their funding.

➤ INDICATOR 13.2.2

Accountability (practice)

To what extent are CSOs answerable to their constituencies?

Score: 25/100

Few CSO governing structures actually carry out the functions assigned to them in the constituent acts, such as overseeing and directing CSO activity, making strategic decisions, participating in strategic document drafting, raising funds and promoting CSO work.

According to the 2021 USAID *CSO Sustainability Index*, the founders, governing board members and assembly members of many CSOs are only formally listed, meetings are typically only held to satisfy the legal requirements and minutes are rarely made available to the public. Very few CSOs, through their membership and leadership, keep in touch with their constituencies and actively pursue transparent and accountable decision-making about their work plans and priorities.¹⁰⁷³

Many are simply 'one-person-shows' disguised in the civil society format, while the structures only serve as a formality. This person or a small closed circle of decision-makers perform the project duties, are answerable to the funders, with little long-term growth strategy. The CSO is active for as long as the funds are available.

> INDICATOR 13.2.3

Integrity (practice)

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

- Score: 25/100

In general, CSOs are mostly inactive in ensuring the integrity of their staff and board, so that misconduct mostly goes unsanctioned.

The CSO integrity score is informed by each CSOs' commitment to preventing misconduct and fraud in the performance of their activities as well as taking actual efforts to combat corruption and crime. By April 2022, 107 CSOs¹⁰⁷⁴ had signed the Code of Ethics for Civil Society Organisations¹⁰⁷⁵ that draws on a 2006 document drafted by the NGO Coalition *Raditi i uspjeti zajedno*. The code represents a voluntary self-regulation framework for CSOs.

Some CSOs have developed their own ethical codes to guide their work.¹⁰⁷⁶ As mentioned in 13.2.1, the integrity of CSOs that rely on international donors is higher than that of CSOs financed from public budgets. International donors require compliance with their procedures for overseeing the use of funds, but also encourage CSOs to develop and implement internal policies and submit activity reports to relevant institutions in the country.¹⁰⁷⁷ National institutions that provide funding, even those having guidelines and regulations in place regarding project selection, implementation

monitoring and reporting on the use of awarded funds, pay little attention to these activities, leaving plenty of room for CSOs to engage in unethical behaviour and misconduct. So, although CSOs are typically held up as leaders in monitoring the accountability of public institutions and reporting on corruption and crime, they are not immune to unethical behaviour themselves.¹⁰⁷⁸

> INDICATOR 13.2.4

Gender

To what extent are CSO programmes gender-sensitive?

- Score: 50/100

Mainstreaming gender with CSOs is a relatively recent effort mostly driven by donor agendas and slowly being implemented in practice. There is a varied success rate at gender perspective integration, but overall civil society is a relative leader in promoting gender equality.

Apart from the CSOs dealing directly or indirectly with gender equality, other CSOs do not sufficiently take into consideration gender issues and do not integrate gender perspectives in project planning, development, implementation, monitoring and evaluation, as well as the distribution of financial resources, with the aim of promoting gender equality and eliminating gender-based discrimination.¹⁰⁷⁹

They collect gender-disaggregated data only when this is requested by donors.

Thus, not all CSOs are gender-aware. All those that apply for international funds include a gender equality component in their applications and projects, as this is now a donor requirement. In recent years, a substantial number of calls for budget-funded projects have included a gender equality requirement. However, it is unclear, based on the available data, to what extent this requirement actually contributes to the gender sensitivity of the projects. Also, monitoring indicators are in place, but data collection is largely inconsistent. In conclusion, the majority of CSOs continue to exclude a gender perspective from their strategic plans of action.

Nonetheless, as a matter of tradition, ever since the civil society started to play an active role, this segment has had a solid gender balance in its ranks. Many NGOs are led by women or their leadership consists of outspoken women, which in itself supports the gender balance and empowerment of women.



➤ INDICATOR 13.3.1

Hold government accountable

To what extent is civil society active and successful in holding government accountable for its actions?

Score: 50/100

While CSOs are somewhat active in seeking to hold the government to account in the form of collecting data and publishing reports on the performance of institutions and collaborating with the media, the effectiveness of their actions is limited due to high dependency on state resources (see 13.1.2) and a lack of political will to take their recommendations on board.¹⁰⁸⁰

The number and capacity of CSOs that monitor government operations is increasing. This includes CSOs such as Transparency International in BiH, the Centre for Civic Initiatives, the Centre for Investigative Journalism, Association "Why Not", the Balkan Investigative Reporting Network, etc. Using a systematic approach to specific issues/problems, they collect data and publish reports evaluating the performance of institutions and exposing government misconduct.

Some CSOs, The Coalition for Free and Fair Elections *Pod lupom* are part of the so-called sectoral networks that specialise in

monitoring judiciary, human rights violations against minority groups, electoral process, public procurement, etc. The Initiative for Monitoring the European Integration of BiH, an informal coalition, comprises of over 20 CSOs focuses on the country's progress towards EU membership. Although CSO reports are based on credible data and are even produced in collaboration with public institutions under signed memorandums, very few institutions actually accept them and follow their recommendations.

In 2021, TI BiH conducted a study concluding that institutions lack the necessary capacity to respond to requests under the Law on Freedom of Access to Information, after which the Ministry of Justice drafted a new law which did not correspond to the EU standards, as discussed in 2.2.1. Also, TI BiH remains the leading CSO advocating the adoption and implementation of a more effective legal and regulatory framework to prevent all forms of corruption by actively participating in the drafting process or by providing comments and recommendations, as well as by advocating with the decision makers to adopt or improve any related legislation.

CSO reports and statistics are frequently used by the media in their reporting and to inform the public about the situation in a particular area, which can sometimes result in indictments or legal actions.¹⁰⁸¹

> INDICATOR 13.3.2

Policy reform

To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?

Score: 50/100

While CSOs try to cooperate with other stakeholders on anti-corruption the government still fails to include CSOs to support anti-corruption policy efforts.

The most important mechanism for engaging CSOs in policy-making is the public consultation process. However, the e-Consultation web platform is ineffective due to the small number of institutions registered in this database (67) and the lack of transparency in the process of adopting comments and inputs received from CSOs.

One potentially encouraging avenue of impact is the state-level Ministry of Justice, which, based on its cooperation agreement with CSOs, promised to engage CSOs in the drafting of strategic documents and the monitoring of implementation of the Justice Sector Reform Strategy.¹⁰⁸² On the other hand, during the recent deliberation of the draft Freedom of Access to Information Act, more than 200 comments and proposals were received from CSOs but not one was adopted and built into the law.¹⁰⁸³ The Ministry of Justice and Council of Ministers of Bosnia and Herzegovina (CoM)

therefore formally claim to encourage this dialogue, whereas in practice they show they do not care about the civil society's views.

CSOs have proved themselves effective in the advocacy process in the past. For example, the River Protection Coalition (comprising of some 30 CSOs) has long advocated against construction of mini-hydro power plants (MHPPs). Finally, in June 2022, the FBiH Parliament's House of Peoples introduced a ban on the construction of MHPPs with capacity of 10 megawatts.

Representatives of academia and CSOs collaborate more closely in the creation of policies pertaining primarily to freedom of speech and public assembly.¹⁰⁸⁴

INTERACTIONS

There is an evident lack of communication among the CSOs themselves, as well as among CSOs, authorities and media. A 2020 study by the BH Journalists Association on the capacities of NGOs and citizens' associations identifies six reasons for their current insufficient contribution: weak messages from civil society, a lack of media reporting on public-interest issues, a lack of coordinated action by various segments of civil society, a lack of engagement in promoting public-interest issues, a lack of response by public institutions to such initiatives and pressures, and a lack of civic engagement.¹⁰⁸⁵ There are some instances of

beneficial cooperation in delivering information and reports to the media, but most CSOs do not pay sufficient attention to the messages they communicate to the media. Also, CSOs should endeavour to enhance media literacy among citizens and assist the media in defending themselves from unfair attacks and criticism.¹⁰⁸⁶

The establishment of the CoM's Advisory Body for Cooperation with the NGO Sector¹⁰⁸⁷ in 2020 marked the first step in putting the Agreement on Cooperation with Civil Society into action.¹⁰⁸⁸ The agreement constitutes a policy framework for promoting participatory democracy, responding to the CoM needs for a transparent design and implementation of policies under its purview, which is an EU accession requirement. It aims to increase citizen participation in these processes, considering the distinct roles of public institutions, citizens and CSOs. To date, however, no visible efforts have been taken to achieve the goals outlined in the agreement, most notably those around "building a prosperous, just, open, pluralistic and democratic society in BiH."

CSO collaboration with the private sector is primarily focused on developing socially responsible companies. There are initiatives aimed at engaging businesses in the development of long-term social, economic and environmental strategies in local communities and at the national level. Unfortunately, the private sector still does not see investment in long-term development as beneficial, hence very little funding for CSOs comes from this sector (see 14.3.2).

PILLAR

RECOMMENDATIONS

➤ For Donors:

- Provide capacity-building support particularly in such areas as data collection, reporting on specific issues (like corruption, anti-money laundering, asset recovery, etc) and implementing existing participatory mechanisms in decision-making processes and advocating for the adoption of new policies or the improvement of existing ones.

➤ For CSOs:

- Build partnerships with government and private sector representatives, both locally and at higher levels, in particular with regard to the creation of strategic documents that will eventually allow BiH to become less dependent on outside donor funding and more reliant on its own resources.
- Improve transparency by publishing annual activity and financial reports in order to strengthen public trust and recognise them as essential to the country's growth and development.
- Develop and establish self-regulation mechanisms to ensure quality of work and to guard against wrongdoing by CSOs that are not genuinely devoted to the values enshrined in the code of ethics.

- Build and strengthen networks and coalitions for advocacy, such as sectoral networks, as coordinated efforts by civil society have a higher chance of success.

- Strengthen collaboration with the media in order to increase exchange of information, improve public image and increase efficiency of advocacy activities.

➤ For the government:

- Provide more opportunities for civil society to participate in policy development by implementing already existing tools and mechanisms for public consultations, such the online platform for legislative drafting.
- Directly involve CSOs in the process of development of all policies that regulate their existence and well-being.
- Cease the creation of policies that limit the space for civil society, such as restrictive laws on financing and particularly the "foreign agents" in the RS.
- Contemplate a framework financing mechanism to ensure the long-term sustainability of civil society, beyond the international donor funding and also acting as a transparent funding vehicle.

14 > BUSINESS

Overall pillar score:

36/100

Capacity score:

50/100

Governance score:

33/100

Role score:

25/100

SUMMARY

According to the 2021 statistics¹⁰⁸⁹ more than 91 per cent of all workers are employed at the business categories of micro (0-9 employees) and small enterprises (10-49 of employees), with only 1 per cent employed in the large companies.¹⁰⁹⁰ Furthermore, in terms of the overall structure of the business sector, a statistical review of the type of activity reveals that the majority of companies (70.6 per cent) operate in the following six areas: wholesale and retail trade, repair of motor vehicles and motorcycles (20.4 per cent), other service activities (18.7 per cent), manufacturing (10.9 per cent), professional, scientific and technical activities (7.9 per cent), arts, entertainment and recreation (7.7 per cent), and transportation and storage (5.6 per cent).¹⁰⁹¹ The fact that the business sector is dominated by micro and small enterprises is further corroborated by annual revenue statistics, which show that 90 per cent of businesses generate revenues of less than BAM4 million (€2.1 million) per year, 5.5 per cent generate revenues between BAM4 million and BAM20 million (between €2.1 and 10.23 million), and only 2.8 per cent have revenues of BAM20 million or more (€10.23 million or more).¹⁰⁹²

The business sector frequently selects a form of association and representation of business

interests, mainly through chambers of commerce and employers' associations. The latter have emerged in recent years as an important negotiating force in both entities, particularly during negotiations over issues such as minimum wage, the formulation of tax and contribution policy and the abolition of certain parafiscal levies. Either form of association, the traditional chambers or the more recent business associations are free and there is no compulsory membership or fees payable.

Meaningful government interventions to support development of the entire business sector have been absent ever since. The estimated level of informal economy remains relatively high (up to one-third of GDP), continuing to pose a substantial barrier to levelled economic development.¹⁰⁹³ It also demonstrates a dire need for improvements in the business climate.

The rule of law continues to be weak and corruption persists, especially in public contracting and business operations which remain heavily influenced by the state (public administration) and political actors. Among the most successful businesses, there are still a considerable number that do business with the government under preferred conditions.¹⁰⁹⁴

CAPACITY

> INDICATOR 14.1.1

Resources (law)

To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?

Score: 50/100

The regulatory framework that shapes the environment for the formation and operations of businesses is extensive and overregulated. Many of them appear created only to institutionalise new public sector bureaucracy.

Business registration is regulated separately in both entities and BD in accordance with the Framework Law on Registration of Business Entities in BiH.¹⁰⁹⁵ In recent years numerous revisions and amendments have been made to these laws in an effort to facilitate and streamline the business registration process.

In RS, the Law on Registration of Business Entities has been updated to make it consistent with the RS Law on Electronic Signatures¹⁰⁹⁶ and RS Law on Electronic Documents¹⁰⁹⁷ allowing the applicant in the registration procedure to verify their identity with an electronic signature based on the previously obtained certificate and card. This greatly simplifies and lowers the cost of business registration, bringing

the number of procedures in the business registration process from eleven down to four or five.

In FBiH, the Law on Registration of Business Entities has also been amended in September 2021 to introduce an electronic registration in an effort to streamline the business registration process. However, although the FBiH Employers' Association advocated for a solution in which, similarly to RS, the business registration process would be transferred from the courts to the Financial and Information Agency (FIA), this was not implemented and the registration process remained in the courts, like in the old Yugoslav days.¹⁰⁹⁸

Aside from business registration, various changes have been made to the broader regulatory framework that governs business operations since 2015 in areas of tax and social policy, labour, professional health and safety, intellectual and proprietary rights, etc. Among the changes that reduced the burden on the business sector, it is certainly worth mentioning the initiative of Employers' Association in RS to abolish the municipal tax for displaying the business name, which was approved and has been in force since the beginning of 2022.¹⁰⁹⁹ With the adoption of the RS Law on the Tax System¹¹⁰⁰ and the publication of the official Register of Tax and Non-tax Charges some progress has been made toward creating a legal environment that ensures transparency, predictability and legal certainty in the introduction of new tax and non-tax levies.¹¹⁰¹ However, not all changes were beneficial to the business sector. On the contrary, in some areas, additional requirements and restrictions have

been imposed on businesses.¹¹⁰²

Other laws governing areas of relevance to business operations, such as the definition of proprietary and other rights, patents, trademarks, industrial design, inspection of businesses and the work of commercial courts (that is, the special commercial departments of existing courts in FBiH) have not undergone significant change in last five years. The problem entrepreneurs encounter is a lack of legislative predictability, stability and business-friendliness. The laws and regulation are being adopted in the spur of the moment by various levels of government and the private sector has little or no say in the process.

> INDICATOR 14.1.2

Resources (practice)

To what extent are individual businesses able in practice, to form and operate effectively?

Score: 50/100

Due to the complex legal framework, starting and operating a business can vary from region to region.

According to the World Bank's last available Doing Business Reports, despite changes in the regulatory framework, in practice, there has been no major progress in building a more

enabling business environment.¹¹⁰³ According to the report, BiH was ranked number 82 overall with 63.6 points in 2015 and number 90 with 64.5 points in 2020.¹¹⁰⁴ The business registration process involves an average of 13 procedures and can take up to 80 days in practice. This is a step back from 2015, when the process involved 11 procedures and took 37 days. However, according to the methodology, only businesses from the capitals of each country surveyed, whereas business registration procedures vary between RS and FBiH.¹¹⁰⁵

Analysing the results of this survey by specific segments, the procedures for starting a business are still substantially more complicated than in most other countries, with BiH ranking as low as 184th.¹¹⁰⁶ On dealing with construction building permits, BiH ranks 173rd with no significant progress since 2015.

It did not make progress on other indicators either. For example, enforcing contracts indicator ranks it 93rd. This indicator measures the effectiveness of the judicial system in resolving commercial disputes through local courts by analysing data related to time and cost needed for resolving commercial lawsuits. The obtained results indicate that commercial disputes last an average of 595 days and their total costs exceed 36 per cent of claim value.¹¹⁰⁷

Due to the complexity of the administrative structures, all these procedures may differ depending on the location and the specific entity included in the analysis. Notwithstanding these methodological limitations, the survey's overall findings support the conclusion that it has made no practical progress in building a

more enabling environment for starting and running a business since 2015. The results of the *Index of Economic Freedom* point to a similar conclusion. BiH has made only a slight progress over the last ten years and according to the latest report, it had an overall score of 62.9 in 2023, up from 59.3 in 2012.¹¹⁰⁸

The largest impediments in operating a business are the associated costs, while access to finance remains scarce and limited to the politically connected businesses. Low quality of work and expanding public bureaucracy add to this burden and to the cost of operations. Parafiscal transfers are imposed and requested with no plan, discussion or advance warning, making doing business chaotic and unpredictable. Finally, there are no systemic measures, programmes or initiatives that support business growth and conducive investment climate including in agriculture.¹¹⁰⁹

> INDICATOR 14.1.3

Resources (law)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of private businesses?

Score: 75/100

Formal safeguards to prevent unwarranted external interference in the activities of private business exist. However, there is no special regulation regarding the compensation of businesses in case of interference.

Formal safeguards to protect businesses from unwarranted/illegal external interference are enshrined in constitutions and laws at all administrative levels while other specific regulations govern particular aspects of business independence and protection. For example, the Law on Competition establishes the rules, measures and procedures for protecting market competition.¹¹¹⁰ According to the law, if there is a reasonable suspicion that the actions of a business entity significantly hinder, restrict or distort market competition, the Competition Council shall initiate proceedings (at a party's request or on its own initiative).¹¹¹¹ Over the recent period, the Competition Council has made dozens of decisions preventing business from engaging in acts that restrict or distort market competition.¹¹¹²

Another piece of legislation that is important

from the standpoint of legal safeguards for businesses is the Law on Prohibition of Discrimination.¹¹¹³ It provides a framework for the implementation of equal rights and opportunities for all persons and establishes a system of protection against discrimination. This law, which also applies to private businesses, lays down the responsibilities and obligations of legislative, judicial and executive authorities, as well as legal persons and individuals with public authorities, to act to ensure protection, promotion and creation of conditions for equal treatment.¹¹¹⁴ The law was amended in 2016, but no significant changes were made to its content.

Operations of the private sector are subject to a set of standard policies and laws that govern areas such as customs and taxes, import and export, investment, inspection, state aid, public-private partnership, etc., which stipulate that the relevant authorities have the right to interfere in the work and business policy of companies in certain circumstances. Nonetheless, all the relevant legal norms that permit external interference in the activities of businesses (such as the Law on Inspection¹¹¹⁵ and others) contain adequate safeguards in the form of provisions establishing the means of redress for businesses that are subject to such control, such as external interference.

There is no register of beneficial ownership that would allow tracking the actual people behind formally registered firms that, as the next section will show in practice, remains a huge gap that allows the ruling elites to engage with the private sector and redistribute wealth according to their private interests.

› INDICATOR 14.1.4

Independence (practice)

To what extent is the business sector free from unwarranted external interference in its work in practice?

Score: 25/100

Implementation of existing formal safeguards designed to prevent external interference of private business remains low. This is particularly visible through the public contracting and public procurement process.

Despite the existence of a number of formal safeguards designed to prevent unwarranted external interference in the activities of private businesses, their practical application and benefit to businesses remains questionable. According to the latest *Index of Economic Freedom* report the business sector continues to experience a low level of economic freedom, with the country ranking 63rd out of 176 surveyed countries.¹¹¹⁶ This index examines a wide range of business environment aspects, such as judicial effectiveness, property rights, tax burden and various financial freedoms. BiH performs the worst in the areas of government integrity (33.1 points) and judicial effectiveness (34.3 points) and is among the worst-ranked countries based on these criteria.

The 2022 EU Report on BiH states that cooperation and coordination of economic policy making at state level and among entities

have further deteriorated, resulting with the country's internal market being fragmented.¹¹¹⁷

Another important issue is corruption which continues to erode the integrity of government institutions while also impeding any serious progress in the business sector.¹¹¹⁸ Undue external interference in the work of the private sector is particularly prevalent in public contracting and public procurement.¹¹¹⁹ In 2022, the public procurement market represented more than 10 per cent of the country's GDP. At the same time, according to the Public Procurement Agency's statistics, the use of the negotiated procedure without prior publication remains significant, accounting for 6.69 per cent of all contracts awarded in 2022.¹¹²⁰

Examples of government and political interference in the operations of businesses are still commonplace, whereby public institutions are used as a key mechanism for enforcing clientelist relationships between the ruling political structures and the private sector.¹¹²¹ The market is increasingly witnessing the emergence of so-called privileged companies, which are awarded numerous public procurement contracts under opaque conditions and thus constitute unfair competition to other companies on the domestic market.¹¹²² Notable example of such non-market behaviour is the company Pionter, allegedly associated with the family of the RS President Dodik. A few free online portals of the FBiH media write about a range of connected companies that syphon the public funds or the wealth of the public enterprises and transfer them to the privately owned businesses, affiliated with the elite in power.¹¹²³

When it comes to the judicial system, it remains inefficient and particularly sluggish in resolving commercial disputes. Overall, according to the European Commission's *Bosnia and Herzegovina report for 2023* contract enforcement settling commercial disputes remains difficult and there is substantial backlog in court cases.¹¹²⁴

GOVERNANCE

› INDICATOR 14.2.1 Transparency (law)

To what extent are there provisions to ensure transparency in the activities of the business sector?

- Score: 50/100

Some issues of transparency and independence in the business sector have been addressed by existing laws. However, audit reports do not have to get published and there are no provisions for annual banking inspections.

Corporate transparency is generally regulated by accounting and auditing law. Both entities have new accounting and auditing legislation in effect. In FBiH, the new Law on Accounting and Auditing¹¹²⁵ went into effect in 2021, while the new Law on Accounting and Auditing in RS was passed in 2015 and updated in 2020.¹¹²⁶

In summary, the legislative framework governing corporate transparency does not diverge significantly from that of other European countries, given that the new legislation is largely harmonised with the EU acquis¹¹²⁷ and relevant EU directives. In terms of reporting, all legal persons must submit their financial statements to the relevant agency (FIA in FBiH and APIF in RS) and all financial statements must be prepared and submitted

by an authorised/certified accountant.¹¹²⁸ Those reports are not required to be published. On the other hand, joint-stock companies that are listed on the Sarajevo or Banja Luka stock exchanges are required to make their financial statements as well as other information about their operations relevant to interested investors accessible to the public.¹¹²⁹ There are no provisions for annual banking inspections when it comes to commercial or investment banks.

› INDICATOR 14.2.2 Transparency (practice)

To what extent is there transparency in the business sector in practice?

- Score: 25/100

Despite some regulation on transparency and independence in the business sector, there are significant implementation gaps, such as beneficial ownership, transparency of contracting and business performance, all in the aid of politically networked firms.

In terms of the transparency of private businesses, just a handful of businesses make their annual reports available to the public due to the lack of legal obligation. Of particular concern is the availability of data from the register of businesses, such as detailed information on the management and ownership structure, authorised

representatives, key financial data and business transactions with connected legal entities. According to the European Commission's *Bosnia and Herzegovina 2023 Report* the different independent business registers among entities and BD are not connected and have no established ways of coordination.¹¹³⁰ Also, as noted earlier, there is no established beneficial ownership register of legal persons.

While the accounting and auditing laws in both entities have established relatively high standards for the quality of financial reporting, the supervision of compliance with these provisions is inconsistent and sporadic in practice, as is the external audit of financial statements of private businesses by recognised auditing firms.

In the case of listed companies, the relevant securities commissions generally perform ad hoc reviews in the event of capital increases or decreases, but never analytically reviewing the annual financial statements of listed companies. Large companies do not publish information in relation to countering corruption. It is unknown if any internal policies exist and what these are. However, given very low disclosure requirements overall, it is highly unlikely even the private sector attempts to foster anti-corruption.

As argued in section 14.1.4, there is a significant issue with the business sector's transparency given the close proximity of the ruling elites to the owners and managers of private companies. The interlacing between political party financing and returning favours through public sector's contracting, as well as

privileges in accessing finance, markets etc. for the selected firms makes the entire sector extremely vulnerable to daily politics and the ruling elites. With minimal public reporting requirements, doing business with local companies at any given level (country-wide or just accessing a municipal market) either as a foreign or national investor is as feasible as the strength of links to the people in power.

Therefore, the laws are being implemented in a selective manner. Some companies and investors are safe from publishing any contracting data, while others endure repeated inspections because they do not comply with the expectations of the ruling elites.¹¹³¹ Even more widespread are the conflicts of interest, where high ranked politicians make sure contracting is done with companies connected to them.¹¹³² As only a few examples from FBiH demonstrate, municipalities as well as entity governments race in awarding contracts to the politically exposed persons.¹¹³³

> INDICATOR 14.2.3

Accountability (law)

To what extent are there rules and laws governing oversight of the business sector and governing corporate Governance of individual companies?

Score: 50/100

Legal provisions for appropriate oversight of corporate governance are established, including rules of formation and governance of companies, as well as role of boards, management and owners. However, these are limited only to segments of the business sector.

Company laws, which exist at the entity and BD levels, establish mechanisms for overseeing the operations of all companies.¹¹³⁴ Different oversight mechanisms are envisaged depending on the organisational form of the company. In joint-stock companies, for example, the supervisory board is the mandatory governing body, along with the company's assembly, the board of directors and the audit committee.¹¹³⁵

In case of limited liability companies, in FBiH every company with more than ten members, as well as a company with a share capital of more than BAM1 million (€511,292) and at least two members, is required to have a supervisory board function.¹¹³⁶ For companies that do not meet these criteria, the formation of a supervisory board is optional.

According to the Company Law in RS, if the articles of incorporation or an agreement between the company members so specify, a limited liability company may appoint an internal audit to perform the supervisory function. In addition to internal audits, a limited liability company may have an audit committee. Additionally, a limited liability company may have an independent auditor.¹¹³⁷

For companies entering the capital market through stock exchanges, corporate governance codes are laid down by the FBiH Securities Commission and the RS Securities Commission, in accordance with internal official documents, the Rules on the Management of Joint Stock Companies in FBiH¹¹³⁸ and Standards for the Management of Joint Stock Companies in RS.¹¹³⁹ There is no specialised and professionally staffed financial regulator for the oversight of companies. On the other hand, there are two securities commissions, the Securities Commission of the FBiH¹¹⁴⁰ and the Securities Commission of RS¹¹⁴¹ with competences for regulation and oversight over the securities trading.

> INDICATOR 14.2.4

Accountability (practice)

To what extent is there effective corporate governance in companies in practice?

- Score: 25/100

In general, investors and boards are only partially effective in providing oversight of corporate management decisions. The supervisory boards, which are crucial corporate sections, are mostly overlooked.

The business sector is dominated by micro and small enterprises. These are businesses with a small number of employees (between 0 and 49), typically without a formal management structure and in which the functions of owner and director (manager) are usually performed by the same person.¹¹⁴² In this private business setting, awareness of the importance of corporate governance remains irrelevant and thus extremely low. Although good corporate governance contributes to sustainable economic development by improving business performance and increasing access to foreign markets, few people are aware of its significance.¹¹⁴³ Therefore, promoting the importance of good corporate governance and tailoring it to different business size and market segments, may support their growth potential.

When it comes to corporate governance, the supervisory board, which is a crucial corporate body, is mostly overlooked. As stated above,

corporate governance principles are not followed even in the large companies listed on a stock exchange.¹¹⁴⁴ This is the product of a corrupt political environment focused on the few larger state-owned enterprises that are politically managed and/or influenced where such rules do not apply. In such a highly corrupt environment, SMEs are focused on bare survival and there is little time to enhance governance. Frequent corrupt contracting also demonstrated that corporate governance plays no role and that being appropriately connected pays off a lot more.

> INDICATOR 14.2.5

Integrity mechanisms (law)

To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

- Score: 50/100

Mechanisms to ensure the integrity of businesses are still reliant on voluntarism and have no footing in the regulatory framework.

Integrity mechanisms for businesses include internal documents, such as the code of ethics or the rules of professional conduct as outlined in the company's business policy. Larger companies (mainly international corporations) more often take into account good reputation and integrity of their business partners, as well

as their willingness to accept and follow the standards of ethical and business conduct as provided by the code.

More recently, chambers of commerce at the entity and cantonal levels have adopted codes of business ethics for members of chambers, but implementation of such codes is missing.¹¹⁴⁵ There is no legal obligation for the private companies to have appointed compliance officers.

Criminal codes at all levels incriminate bribery in the private sector and also prescribe liability of legal entities.¹¹⁴⁶ There are no provisions that explicitly prohibit bribery abroad, but existing laws do not mention them. Bribery abroad is not much of a concern though, as enterprises lost the economic strength to make significant business representation abroad and the key export market is the EU, which is generally much better regulated regarding business bribery. Finally, the public procurement law does not require bidders to have ethics programmes and policies in place.¹¹⁴⁷

In terms of formal mechanisms for combating corruption in the private sector, the role of whistleblowers has more recently come to light. However, despite multiple initiatives in recent years to revise the regulatory framework at the state level to better address their status and protection, the legislation has not been updated, as discussed at length in section 2.2.5.

> INDICATOR 14.2.6

Integrity mechanisms (practice)

To what extent is the integrity of those working in the business sector ensured in practice?

Score: 0/100

In general, there is absence of business actions which aim to ensure clean practice and corporate integrity is still uncommon.

Indigenous businesses that have achieved some level of corporate integrity are rare. Those few that have are typically involved in global supply chains or are part of larger, global corporate systems that enforce such requirements as part of their business policy (for example, the signatories to the Global Compact).¹¹⁴⁸

An example of good practice is when advocacy and interest organisations, such as employers' associations and chambers of commerce, develop their own codes of ethics and rules of professional conduct for their members to follow.¹¹⁴⁹ Unfortunately, the majority of these initiatives arose as a result of an international project or external influence and such initiatives very rare originate within an organisation or company itself. Therefore, their long-term effects are questionable.

Similar is true of the earlier attempts to establish courts of honour at entity and cantonal chambers of commerce, which were to be charged with developing and protecting ethical business practices among chamber members. Courts of honour were going to be responsible for conducting hearings and imposing sanctions for violations of business customs, contracts, trade rules and other regulations on the domestic market. In addition, they were expected to consider and sanction market competition violations such as monopolistic behaviour, unfair competition, speculation and market restriction, as well as damage to the reputation of chamber members and other companies in the course of business. In practice, however, no information regarding the work of courts of honour ever emerged, nor is there evidence that a court of honour has ever convened.

Bribery is one of the most widespread forms of corruption within businesses. Analysis by the Association of Employers of FBiH notes that out of 102 of its members among the business entities, 58 per cent often face corruption, 34 per cent sometimes, while only 4 per cent of respondents did not face corruption in their regular operations.¹¹⁵⁰ Anecdotally, most businesses would overlook such unethical practices in order to secure contracts, therefore they themselves are ready to play a role in the corrupt system, rather than report and fight it.

In conclusion, corporate governance culture and integrity in the business sector remains low, corruption high and awareness of the importance in strengthening business integrity is largely underdeveloped.

› INDICATOR 14.2.7

Gender representation

To what extent do women have a fair share of business sector leadership?

Score: 25/100

The government collects and published some statistics and available evidence suggests an imbalance between women's and men's presence in the business sector leadership or corporate board/executive ranks.

According to UNDP, gross national income of women per capita comes to BAM19,457 (€9,948), while that of men equals BAM36,189 (€18,503), signifying that women make only 53.7% of the men's income.¹¹⁵¹ Women also take lower paid jobs more often and have fewer opportunities to advance during their careers, which reflects on their material status through the period of employment and afterwards.¹¹⁵²

In general, there is support for women in the field of business, particularly in the creation of small business.¹¹⁵³ However, the participation of women in the business sector is still low. According to a UNDP-funded report women are still underrepresented as members of management structures in local companies.¹¹⁵⁴ Also, representation of women in business associations or chambers of commerce is low. According to the Analysis of the Financial and Information Agency of FBiH out of the total number of companies in FBiH, approximately

only 20 per cent of leadership positions are held by women.¹¹⁵⁵ In case of medium and large business, this share is even smaller (14 per cent in medium and 16 per cent in large business). While the roots of this might go as far back as the last century when this highly traditional country did not care for education of women, the tide is turning more recently as more women tend to graduate than men, particularly in business studies and economics.¹¹⁵⁶ This will result in an eventual transition and a greater role of women, but there is still a way to go.

An Association of Business Women in BiH has been formed as an NGO aimed to connect women in business, support development of their business, present them with growth opportunities and help understand and promote the needs of women in business sector.¹¹⁵⁷

ROLE

› INDICATOR 14.3.1

Anti-Corruption policy engagement

To what extent is the business sector active in engaging the domestic government on anticorruption?

Score: 25/100

There is a visible absence of anti-corruption efforts in the business sector agenda, particularly when engaging with the government. Business have no incentive to contribute to the fight against corruption.

The business sector is a major partner in an effective fight against corruption. The Association of Employers of FBiH that works with business entities in FBiH acknowledges frequency of such phenomenon and recognises that it represents a major obstacle to business and economic development. They often emphasise the necessity of fundamentally changing the legal framework in order to prevent corrupt actions and to reduce the space for civil servants and politicians to be exposed to corruption or foster it when dealing with businesses.¹¹⁵⁸ In a recent survey, 98 per cent of its members see corruption as an enormous obstacle¹¹⁵⁹ but only 7 per cent reported corruption when they encountered it.¹¹⁶⁰

Consequently, several NGOs teamed up with the Employers Association of FBiH and its RS counterpart, namely TI BiH, CCI and Centre for Development of Media and Analyses (CRMA), supported by USAID, to launch the “Business without corruption” project in early 2021.¹¹⁶¹ Unfortunately, the site which launched only two years ago that was going to act as a conduit for clean business support is no longer online, similarly to the UN initiative Global Compact that also suffered a major setback in BiH in its early days but is seeing some revival in the last year or two with 14 national members at the time of writing.¹¹⁶²

› INDICATOR 14.3.2

Support for/engagement with civil society

To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?

Score: 25/100

Examples of the business sector and civil society working together to prevent corruption are rare and ineffective.

There are sporadic activities of business and civil sector in fighting against corruption. The reasons for this are multiple, one of which is that the government, on the other side of that table, still has a negative perception of CSOs as those that solely look for flaws and criticise the public administration, while businesses that engage with CSOs are viewed in a similar light.

Nonetheless, examples of engagement with/ support for the civil sector do occur, albeit infrequently. Several CSOs led by TI BiH and the CCI, emerged as particularly prominent and active in various areas of the fight against business corruption (see also 14.3.1). These two CSOs have gained recognition and established collaboration in anti-corruption efforts with a diverse spectrum of stakeholders, including representatives from the business sector through chambers of commerce and trade unions. TI BiH has developed Business Integrity Forum platform for communication,

exchange of opinions and experiences of all who are interested in the field of corporate governance, strengthening integrity and fighting corruption.¹¹⁶³ The fact that such collaboration is rarely initiated by the corporate sector or that such attempts quickly fail remains a concern. Furthermore, while cooperation exists, it is typically project-based and might not encounter sustainability, unless there is a serious take up by businesses, the ultimate beneficiaries. One of the examples is the ACCOUNT initiative which was launched back in 2014 and ended in 2019 with the aim to put pressure on government officials at all levels, where the members of the network were representatives of CSOs, media, academic institutions, chambers of commerce, trade unions and individuals.¹¹⁶⁴

Financial support for civil society from the business sector is still lacking, unlike in most industrialised democracies. This goes back to the perception of very limited impact the CSOs can make in such hybrid societies, such as BiH.

INTERACTIONS

Business interact primarily with the executive and public sector mainly in a reactive capacity or in response to legal obligations. Businesses act as the bidders for public procurement contracts.

There are no established formal mechanisms or institutionalised forms of cooperation in the fight against corruption, only sporadic project-based initiatives, as already emphasised.¹¹⁶⁵ Following their diagnostic work, "Business without corruption" initiated a dialogue on revising legislation that is conducive to corruption (regulation on inspection as the pilot project).

PILLAR RECOMMENDATIONS

- Separating individual and partisan interests from the business sector is of paramount importance. This can be done by:
 - Increasing transparency and accountability of the public administration, particularly in the area of contracting, public procurement and other interactions with the private sector, using digital solutions, registries etc.
 - Introducing harsher sanctions on both ends of bribery acts, with much stronger enforcement mechanisms, ability to report bribery and whistleblower protection.
- The private sector needs to engage in fostering and upgrading corporate governance and business integrity by promoting examples of good practice and developing specific tools and guidelines for the formulation of integrity plans in the economic and private sectors. Regional and donor projects supporting this process would provide a good platform for an exchange of experiences.
- The private sector needs to establish appropriate sector mechanisms for reporting corruption and other irregularities. This can be done in collaboration with the civil society that already has experience with similar tools and taking up the cases with the judicial and law enforcement authorities.
- Both the public and private sectors should take advantage of the opportunities/benefits of digitisation in order to increase transparency by creating a more favourable business environment with fewer discretionary powers for the public sector through automation and fewer direct contacts with businesses, but also for the private sector to provide more information about their own status and operations.

15 > STATE-OWNED ENTERPRISES

Overall pillar score:



Capacity score:



Governance score:



Role score:



SUMMARY

State-owned enterprises (SOEs) make up an important segment of the economy, accounting for approximately 11 per cent of total employment and owning 40 per cent of fixed assets according to IMF statistics from 2022.¹¹⁶⁶ Because they rely on a major portion of the private sector for their operations, SOEs remain one of the most important components of the economy and they dominate the sectors of energy, forestry, transport and utilities.

The operation of SOEs is governed by entity laws on public enterprises, which are effectively *lex specialis* (a law governing a specific subject overrides a law governing general matters).¹¹⁶⁷ In RS, the Law on Public Enterprises of RS¹¹⁶⁸ was adopted in 2004 and revised in 2011, while the Law on Public Enterprises of FBiH¹¹⁶⁹ was last updated in 2012.

Due to extensive political interference in their work and decision-making processes, public enterprises are ineffective and they are seen as a major source of corruption and a critical power resource of the corrupt system.

There is a lack of accurate, up-to-date and publicly accessible statistics on the SOEs, including their number, financial operations

and management structure. According to TI BiH's data from 2022, there are 451 functioning public enterprises, with a total workforce of around 81,000 as of the end of 2021. Public enterprises account for a sizeable portion of the economy, with TI BiH data indicating that their annual revenues total around BAM7 billion (€3.6 billion).

According to the International Monetary Fund (IMF), a more comprehensive reform of the public enterprise sector might result in a 3 per cent annual growth in the country's GDP.¹¹⁷⁰ The total debt of SOEs, according to the same report, amounts to around 26 per cent of the country's GDP. This includes close to 4 per cent of GDP in tax and social contribution arrears, which affects tax revenue and has a negative impact on the functioning of the social benefits system. According to the financial ratio analysis, over 44,000 people employed in SOEs face high or very high financial risks, accounting for 6 per cent of overall workforce in the country. According to the IMF, public enterprises generate only 10 per cent of added value, suggesting that employees in SOEs generate less added value than their counterparts in the private sector or in the other countries of the region.

CAPACITY

> INDICATOR 15.1.1

Independence (law)

To what extent does the legal and regulatory framework for state-owned enterprises protect the independent operation of SOEs and ensure a level-playing field between SOEs and private sector companies?

Score: 50/100

The legal framework technically allows state-owned enterprises to operate independently due to the existence of independent management and supervisory boards, however gaps in the legal provisions governing appointments allow for undue interference in the work of SOEs.

Entity laws on public enterprises expressly prohibit political interference in the day-to-day operation of SOEs.¹¹⁷¹ Entity company laws, which govern how businesses operate, apply equally to private and state-owned companies.¹¹⁷²

However, there is no clearly established separation between the different functions performed by governments as shareholders, public policymakers or regulators in different sectors. The insufficiently clear or overlapping legal framework allows for ambiguous consumption of each of the aforementioned roles.¹¹⁷³ At no level in BiH are there regulations

or policies considered, let alone in place, that would regulate SOE ownership and their independence from the executive.

Other laws also give public enterprises a privileged position, such as the gas law¹¹⁷⁴ and entity laws on railways¹¹⁷⁵, forests¹¹⁷⁶ and electricity¹¹⁷⁷, which give public enterprises monopolies. Additionally, the RS Law on Concessions has a provision that allows the RS Government to grant a concession through a negotiated procedure without a public bidding process if the concession is requested by a public enterprise that performs an activity of general interest.¹¹⁷⁸ Despite the assumed obligations of market liberalisation and harmonisation with the European Union acquis, BiH has not progressed much in years.

Public enterprises' relations with the state-owned banks (the RS Investment Development Bank and the FBiH Development Bank) are not based on purely commercial grounds as these banks have frequently rescued public enterprises from insolvency through soft loans. For example, RS IDB purchased the bonds of the Jahorina Olympic Centre on multiple occasions, despite the fact that this centre had not regularly paid its obligations on the basis of previously purchased bonds.¹¹⁷⁹ The Law on the Investment Development Bank of the RS enables the government to significantly interfere in decision-making of this bank.¹¹⁸⁰ Similarly, the law governing the Development Bank of FBiH allows the government to indirectly influence both the decision-making and the appointment of management.¹¹⁸¹

The legal framework on public enterprises

allows the governments to interfere in the day-to-day decisions of public enterprises only through appointments and personal/party connections even though these are formally the responsibility of the management and supervisory boards.¹¹⁸²

> INDICATOR 15.1.2

Independence (practice)

To what extent are the day-to-day operations of state-owned enterprises performed independently of state interference in practice?

Score: 0/100

SOEs are managed by individuals or groups associated with political parties despite the fact that the legal framework prohibits political interference and calls for the independent management of public enterprises.¹¹⁸³ Most of the directors of public enterprises are politically appointed without public competition and the law allows the government to appoint board members directly as acting officials for shorter periods. However, in practice, these short-term appointments¹¹⁸⁴ can be repeated indefinitely.¹¹⁸⁵

Restrictions on political interference are rarely enforced in practice. Formally, the governments appoint management by a competitive process, but in practice, this is largely determined by political agreement among parties.¹¹⁸⁶ As a result of inadequate legal provisions governing

the appointment of members of governing boards, competitions are often reduced to a formality or not held at all due to the possibility of appointing board members in an acting capacity, allowing the government to appoint and replace them at any time or extend their temporary appointments permanently. This is best exemplified by the purge of directors of public enterprises in RS following the 2018 election, when the SNSD president publicly said that he would dismiss all directors who did not support him in the election.¹¹⁸⁷

Another example was the disclosure of the coalition agreement¹¹⁸⁸ of the ruling coalition in RS and this document states which party 'gets' which company. Similar examples abound in FBiH where the three ruling parties 'divided' control over the largest SOEs among themselves as a condition to form the governing coalition at that level.¹¹⁸⁹ According to the Register of Public Officials published by TI BiH, 82 elected or appointed officials currently sit on management or supervisory boards of SOEs.¹¹⁹⁰ According to a survey conducted by TI BiH in 2020, 13 of the 83 MPs serve on the governing bodies of public enterprises, despite the fact this is prohibited by law.

However, the government has found a way around this prohibition. The terms of acting directors of public enterprises are extended indefinitely also for MPs because the relevant Conflicts of Interest Commission persistently interprets the law in such a way that an acting director is not the same as a director within the law, despite the fact that this is not explicitly stated anywhere. The TI BiH statistics cited show that the implementation of entity laws

on public enterprises and laws on conflicts of interest at all levels have not resulted in a reduction in political interference in the work of public enterprises and that directors act in their own and their party's interests rather than in the best interest of the enterprises they lead.

One such example is the appointment of Sedin Kahriman, head of the SDA's personnel commission, as general director of BH Telekom. Likewise, Luka Petrović, the SNSD's general secretary in charge of party finances, was appointed the general manager of Elektroprivreda RS. Both appointments were made in contravention of the entity laws on public enterprises, but the supervisory boards have habitually disregarded these restrictions for years. Appointing management and supervisory board members in this manner gives political parties direct control over public enterprises, rendering such boards incapable of making objective, professional and independent decisions in the best interests of the enterprise. In the context of SOEs' privileged position over the private sector, the implementation of numerous laws and regulations makes this possible and demonstrates that the very laws frequently do not protect public interest, but rather abuse and the favour private interests, as well as distort market competition.

Granting a monopoly to state-owned postal operators with the last related law of 2005, also had the effect of stifling competition in an increasingly lucrative business.¹¹⁹¹ The purpose of granting a monopoly to state-owned operators was to ensure that mail could be delivered to all residents at a uniform price, but the dominant position of postal operators

began to be abused with the emergence of new trends in the field of commerce and the rise of online shopping, making this sector attractive to private investors as well. A TI BiH's analysis shows that, despite their dominant position, public operators are performing ever worse, while hiring excessively, which has put pressure on public finances in the case of Pošte Srpske, as the accrued debt gets shifted to the entity budget.¹¹⁹²

Article 7 of the Gaming Law of RS granted public enterprise Lutrija RS the exclusive right to organise an electronic lottery, essentially barring dozens of small organisers from participating in a lucrative market of an estimated annual turnover of BAM2.6 billion (€1.33 billion) across the country.¹¹⁹³ Lutrija RS then formed a joint venture and brought in a private investor under murky circumstances. It eventually led to a corruption scandal in 2020 and the formation of a joint venture with the company Casinos Austria VLT, where the media presented abundant evidence of its ties with high-ranking officials in RS.¹¹⁹⁴ The outcome of this were lawsuits against the RS government won by the private betting shops and casinos (both online and offline) that might cost the budget tens of millions of euros in damages and penalties for providing concessions under monopolistic treatment.¹¹⁹⁵

GOVERNANCE

> INDICATOR 15.2.1 Transparency (law)

To what extent are there provisions to ensure transparency in the activities of state-owned enterprises?

Score: 50/100

The country has developed a solid regulatory basis to ensure an appropriate level of transparency in the operations of public enterprises but certain legal loopholes lead to hiding important information from the public.

Under the laws on Freedom of Access to Information any natural or legal person de jure has the right to access information held by public authorities, including public enterprises.¹⁹⁶ According to the FBiH Law on Public Enterprises, the shareholders' assembly is required to present a report on the activity and operations of the public enterprise to the local council, cantonal assembly, or FBiH Parliament at least once a year.¹⁹⁷

Entity accounting laws apply to all companies, regardless of capital ownership.¹⁹⁸ There is a distinction between different types of companies, regarding what needs to be published. Those that are registered as joint-stock companies are required to post regular business data on stock exchanges. This

includes quarterly financial reports, annual financial reports, audit reports, shareholder meeting minutes and all substantial changes in capital. For failure to submit reports, stock exchanges generally impose sanctions in form of suspension of share trading. Companies registered as limited liability, on the other hand, are only required to submit reports to the entity business registries. These reports are released only in a truncated form by the registries, while most companies' own websites do not include financial and audit reports, composition of governing bodies and essential business information.

Regulations governing transparency of financial relations between the founder and the enterprise require public enterprises to make their business plans and business reports available online on their websites.¹⁹⁹ According to these regulations, the plans and reports should include, among other things, data on investments, the degree to which set business objectives and have been achieved, information on the waiver of receivables and the reasons/grounds for doing so, coverage of losses of related companies, information on transfer prices with related parties, information on debt rescheduling or debt write-offs by the tax administration and other authorities, write-offs of interest, etc.

But, the majority of public enterprises are exempt from the transparency regulation that require detailed reports. This is because the regulation set high thresholds when detailed reports become compulsory. Only manufacturing businesses with turnover of more than €250 million in the previous year

and other public enterprises with turnover of more than €40 million in the previous two years have to comply with these regulations in both entities.¹²⁰⁰

Entity governments are expected to engage with the World Bank to establish centralised coordination units in charge of overseeing the operations of public enterprises. In RS, a decision was made in 2021 to establish a system of oversight over public enterprises in RS that would be housed in the General Secretariat of the RS Government and the relevant ministries and the RS IDB will also participate. Throughout the course of six phases, this unit is expected to establish mechanisms for monitoring economic and financial indicators, analysing data and making recommendations to relevant ministries and supervised public enterprises. However, aggregate reporting on indicators of financial operations or the implementation of public policies in SOEs is not envisaged for the current phase. In 2022, the FBiH Government adopted the *FBiH 2021-2025 Public Finance Management Reform Strategy*. One of the measures under the strategy is the establishment of a unit within the General Secretariat of the FBiH Government tasked with overseeing public enterprises.

› INDICATOR 15.2.2

Transparency (practice)

To what extent is the integrity of those working in the business sector ensured in practice?

Score: 25/100

In general, there is very little transparency regarding the organisational structure, overall operations, ownership and governance structure of public enterprises. When business plans, financial reports and other documents are available, their contents provide scant insight into how public enterprises perform financially, if they are achieving business goals or serve the public interest. Even where court rulings are obtained under the freedom of access to information law, SOEs do not publish larger sets of information.¹²⁰¹

According to a TI BiH 2018 survey in over 60 per cent of the surveyed enterprises supervisory board meetings are held more than seven times a year, which is more than the legal minimum of four.¹²⁰² However, there no information is available about those meetings, the decisions made, etc. A comprehensive search of the websites of 20 surveyed public enterprises listed on the stock exchange revealed that not one of them had posted the regulations and documents governing the work of their assembly and supervisory boards, and that only one enterprise had made information on the meetings of these bodies (invitations, agendas, adopted decisions, minutes or

excerpts from the minutes, etc.) available, and only for the supervisory board.

In 2021 TI BiH requested access to all these reports based on the Freedom of Access to Information Law and published them in the database of public enterprises on the Transparentno.ba platform. For the purposes of the last survey, TI BiH sent a total of 434 requests to public enterprises (7 public enterprises at the state level, 274 at the level of FBiH and 153 at the level of RS), seeking access to information about business operations, financial and audit reports, the composition of governing bodies and management salaries. It sent reminder notices to 208 companies for failure to respond within the statutory deadline. Also, TI BiH filed 32 complaints with second instance authorities, 113 complaints for administrative silence and 9 administrative lawsuits. Lawsuits were filed against some of the largest public enterprises, including Elektroprenos BiH, HT Eronet, BH Pošte, Putevi Republike Srpske and MH Elektroprivreda RS Parent company, for failing to grant access to information.

SOEs that are listed on the stock exchange provide publicly accessible information about individual shareholders' ownership stakes. However, enterprises registered as limited liability companies do not release such information, which poses a particular problem when it comes to enterprises with a mixed public-private ownership structure, such as the very large Alumina d.o.o. Zvornik, Arcelor Mittal Prijedor and Aluminij d.o.o. Mostar. In all three enterprises the public stake, while significant, is less than 50 per cent and all three enterprises

have been involved in numerous corruption scandals. However, the unavailability of reports and accurate information about business operations has prevented the public from responding in a timely manner. Thus, in the case of Aluminij, there was enormous harm to the public interest resulting from multi-million debts left behind after the company declared bankruptcy.

Furthermore, enterprises in the arms sector are exempt from the Freedom of Access to Information Law and in FBiH alone Igman Konjic, Zrak d.d. Sarajevo, Binas d.d. Bugojno and Pretis d.d. Vogošća generate as much as BAM358 million (€183 million) in annual revenue.¹²⁰³

Because the Register of Public Enterprises has not yet been established in FBiH, the number of public enterprises can only be estimated. In RS, however, the Register of Public Enterprises has been established and is maintained by the Agency for Intermediary, Information Technology and Financial Services (APIF)¹²⁰⁴ but the data available in this register includes only basic information about companies: name, address of headquarters, tax and registration number, etc. There is a total absence of information regarding recapitalisation, unconditional and conditional donations and other forms of assistance, approved loans, etc., for which the register contains corresponding (unfilled) sections.

Since the central coordination units in the entities are not yet fully established and operational, consolidated reports on SOEs, their performance and their contribution to

the broader public interest are still not being prepared.

> INDICATOR 15.2.3

Accountability (law)

To what extent are there rules and laws governing oversight of state-owned enterprises?

Score: 50/100

Entity laws on SOEs define the responsibilities of the supervisory boards and the initiation of responsibility of management members for failures in work. However, due to the absence of a central coordinating unit to supervise the work of SOEs, it is difficult to get a comprehensive picture of the operations and wider social contribution of SOEs.

Entity laws on SOEs define the management's responsibility for business results.¹²⁰⁵ There is an obligation for the management, when preparing the financial report, to assess the firm's ability to continue operating (principle of business continuity). In their internal acts SOEs transpose principles from state and entity laws on administration, such as those relating to legality, transparency, publicity, accountability, professionalism and impartiality. Managing state capital in enterprises is, in general, the responsibility of entity and canton governments, or mayors of local self-government units.

SOEs are subject to the same accounting and auditing standards as private companies listed on the stock exchange, including the international financial reporting standards. SOEs are required by law to conduct an independent external audit once a year, whereas SAIs audit the operations of public enterprises periodically in accordance with their work plans.¹²⁰⁶ Internal audit laws impose an obligation on the public sector, including public enterprises and organisations in which the state owns a majority stake, to establish an effective internal audit system and to systematically review and evaluate risk management, internal controls and organisational management, which includes SOE policies, procedures and activities.¹²⁰⁷

As mentioned in 15.2.1, the entity governments engaged with the World Bank to establish centralised coordination units charged with overseeing the operations of public enterprises within their respective government general secretariats. This process is still in an early stage at the time of writing of this publication.

> INDICATOR 15.2.4

Accountability (practice)

To what extent is there effective oversight of state-owned enterprises in practice?

- Score: 25/100

SOE supervisory boards formally have the necessary authority and competences to carry out their function of strategic guidance and monitoring of management. However, most members of management and supervisory boards are openly appointed along political lines and the seats on these boards are divided as part of coalition deals.

SOE supervision have no authority and necessary competences to carry out their function of strategic guidance and monitoring of management because most members of management and supervisory boards are appointed along political lines. According to publicly disclosed information, the seats on these boards are divided as part of coalition deals (see 14.2.2).

Hence, accountability for business performance is practically non-existent. There have even been instances of successful directors being ousted in order to make way for party members, resulting in worker unrest.¹²⁰⁸ Numerous management changes were made in contravention of the law, resulting in court victories for dismissed directors and damages paid by public enterprises, for example case of Đorđe Popović, the former Director of RiTE

Ugljevik.¹²⁰⁹

In contrast to politically driven removals, directors in SOEs are rarely dismissed for poor performance, even if the overall performance of public enterprises deteriorates progressively. The role of management is not tied to the company's success but rather to their political affiliation. Although SOE governing structures submit regular reports on operations and undertake internal and external audits, in reality these reports do not enhance accountability of managers. The 2022 EU report on BiH¹²¹⁰ notes that the quality of audit reports should improve and communication efforts at entity level stepped up to strengthen public awareness of the importance of this type of reporting.

Internal audits are ineffective in the fulfilment of their role and do not contribute meaningfully to the development of internal financial control systems. According to the report by the RS SAI, an effective system for ensuring and improving the quality of internal audit in SOEs has not been established: a system for measuring the performance of internal audit and its contribution to the public enterprise.¹²¹¹ The internal audit in RS Railways revealed multiple illicit activities, such as detrimental contracts with major clients, resulting in millions of BAM in damages. However, shortly after the release of the audit report, instead of earning praise, the internal auditor fell victim to bullying, as found by the courts in RS.¹²¹²

SOEs represent an increasing strain on public budgets, not only because of subsidies supplied to cover their losses, but also as a result of

unpaid taxes and the activation of guarantees for loans that public enterprises cannot repay. *Željeznice Federacije BiH* [FBiH Railways] alone has outstanding liabilities for pension, health and unemployment contributions totalling BAM159 million (€81 million) over the period between 2000 and 2017.¹²¹³ According to a FBiH Tax Administration report, among the ten biggest tax debtors are nine public enterprises with a tax debt of BAM948 million (€485 million), or one-sixth of the FBiH annual budget. However, despite all these indicators, managers of public enterprises are rarely removed for poor business results.

Another issue is that entity governments lack a strategic approach in the management of public enterprises, despite previous commitments made during the negotiations with the IMF.¹²¹⁴ Analyses have found that, rather than using public enterprises for the benefit of the public good, the power-wielding structures primarily use them to syphon money, maintain their grip on power and support the loyal party members.¹²¹⁵

Minority shareholders are equal in terms of the law, but in reality, public enterprises do not pursue an active policy of communication and consultation with all shareholders, many of whom act as whistleblowers and reveal corruption in the enterprises.¹²¹⁶ The role of minority shareholders depends on the percentage of ownership they have. Those that have a significant stake can band together to appoint a member of the supervisory board. For example, in the case of a major enterprise such as RMU Banovići, the FBiH Government appoints two members of the supervisory

board and the minority shareholders appoint one, but decisions are made by majority vote.¹²¹⁷

> INDICATOR 15.2.5

Integrity mechanisms (law)

To what extent are there mechanisms in place to ensure the integrity of state-owned enterprises?

Score: 25/100

Entity laws on public enterprises envisage the adoption of a code of ethics, but that does not provide an effective mechanism. Cases of violations of the code of ethics are never disclosed to the public and it is not possible to present measurable data on the effects of the application of these codes. Also, many public companies have not yet established any codes.

The RS Law on Public Enterprises¹²¹⁸ and the FBiH Law on Public Enterprises¹²¹⁹ stipulate that the supervisory board has the duty and responsibility to draft a proposal of the code of ethics in consultation with the audit committee. This code includes guidelines on conflicts of interest, trade secret protection, competition, credits and the responsibilities of enterprise members and employees. These codes empower the management board to oversee compliance and enforce disciplinary actions for violations. The laws on public enterprises

also govern conflict of interest and provide that connected persons must avoid actual or apparent conflicts of interest with a public enterprise in personal or professional relations.

Also, there is a Code of Corporate Governance¹²²⁰ for joint stock companies registered on the Sarajevo Stock Exchange and Corporate Governance Standards¹²²¹ for enterprises listed on the Banja Luka Stock Exchange. These standards apply equally to public and private companies and there are no special standards for public enterprises that include separate integrity mechanisms. The codes for joint stock companies contain provisions that define good practices, including particularly those on conflict of interest and prohibitions on receiving gifts by members of the management and supervisory boards. The standards lack specific provisions on the reporting of corruption and the financing of political activities. Among other things, the standards include provisions on the transparency of operations and quarterly financial reporting, as well as the disclosure of information on the ownership structure, audit reports, minutes from shareholders' meetings and other important information about the company's operations.

According to the Law on Public Procurement, rules on transparency apply to all participants in procedures, but these rules do not include the obligation to publish contracts and other relevant information for the prevention of corruption.¹²²²

Under the Law on Party Financing, SOEs and enterprises in which the state owns a stake of

more than 25 per cent are expressly forbidden from financing political parties.¹²²³ However, the law lacks effective mechanisms for controlling party financing, which leads to the exact opposite – SOE money pouring into the coffers of political parties.¹²²⁴

Bribery in business transactions is expressly prohibited under the criminal codes of all jurisdictions, including both receiving and giving bribes. Under the Criminal Code, this criminal offence carries a prison sentence between six months and five years.¹²²⁵

As discussed at length in 2.2.5, whistleblower protection is not governed uniformly and adequately.

› INDICATOR 15.2.6

Integrity mechanisms (practice)

To what extent is the integrity of state-owned enterprises ensured in practice?

Score: 25/100

Conflicts of interest, violations of the ethical code and the misuse of public enterprises for political purposes by SOE executives go unpunished due to weak laws and even weaker enforcement.

In FBiH, the Conflict of Interest Law has not been in effect since 2013. According to the report of the commission responsible for

implementing this law in RS there were only five instances of conflict of interest in 2020.¹²²⁶ However, according to TI BiH statistics from 2021 as many as 13 RS MPs were in a conflict of interest at the time because they served on the governing boards of public enterprises.¹²²⁷

Some SOEs have adopted integrity plans (for example KJP Sarajevo Šume¹²²⁸, KJP Centar Skenderija¹²²⁹, Hercegbosanske Šume¹²³⁰) but few measurable indicators of their effectiveness are available to the public. Also, despite being a legal requirement, reports on the implementation of integrity plans are not made public.

Whistleblowing channels that employees and others can safely use without risk of reprisal exist formally but are rarely used in practice. Statistics on the effects of whistleblower protection legislation show that there are very few reports of corruption, which can be attributed to fears of retaliation. Since 2014, the Agency for Prevention of Corruption and Coordination of the Fight Against Corruption (APIK) has received only 32 reports. In RS, only two requests for judicial protection of whistleblowers have been filed in the five years since the law went into effect. These figures are far lower than the number of qualified whistleblowers who contact TI BiH. According to the latest TI BiH report, in 2021 alone, 19 whistleblowers were from the public sector.¹²³¹

While no documented incidences exist of SOEs directly donating money to political parties, TI BiH uncovered cases where political parties used enterprises' equipment for election campaign purposes.¹²³² One such instance

was the deployment of Bugojno Public Utility Company's cranes to put up pre-election posters of Mayor Hasan Ajkunić in 2020.¹²³³ Similarly, in 2020 in Bijeljina, cranes of the public enterprise Elektro Bijeljina were used to put up SNSD posters.¹²³⁴ Another interesting case is the Public Enterprise Regional Landfill DEP-OT, which leased an advertising billboard for a full year in 2020 and displayed the pre-election poster of the enterprise's director who was a candidate in the election during the election campaign.¹²³⁵ The poster was removed only after TI BiH's intervention. In yet another case in 2014, Autoceste FBiH [FBiH Motorways] paid for the production and broadcasting of a promotional video for the then-SDP president and other SDP candidates.¹²³⁶

TI BiH monitored party finance for the 2022 election and found that the eight major parties had concealed at least BAM1.5 million (€766,937) in campaign expenses.¹²³⁷ Ample evidence and even some investigations indicate that money is siphoned from the public sector through public procurement and privileged private enterprises, and then funnelled into election campaigns. In conclusion, the rule of thumb is – the larger an SOE, the more politically pressured it is with its operations orchestrated by the ruling elites.

INTERACTIONS

The interactions of SOEs with the executive are mainly related to the legal obligations regarding the appointment and dismissal of SOEs boards. On the other hand, SOEs are forced to interact with CSOs and media, mainly related to the monitoring of work of SOEs, as well as monitoring the activities of SOEs. That interaction relates to provision of information on appointments within SOEs, as well as monitoring of work of SOEs, including their plans, spending and financial management. From the point of view of transparency, civil society and media have a positive impact on the work of SOEs by reporting cases where SOEs officials have been identified in potential conflicts of interest or other legal violations.

Cooperation between SOEs and civil society and media is needed particularly in the area of access to information and implementation of freedom of access legislation by the SOEs. This remains poor, since data shows that only 52 per cent of SOEs provide information in accordance to the law.¹²³⁸

PILLAR RECOMMENDATIONS

- Entity governments need to conduct due diligence on all public enterprises of strategic importance and identify restructuring actions to increase their efficiency and mitigate their losses and debts.
- Entity governments need to create ownership policies for public enterprises.
- Entity governments must respect the legal provisions that prohibit the appointment of political party officials to the boards of public companies and must ensure that these boards are appointed on the basis of public competition as provided by law.
- It is necessary to resolve legal gaps in the appointment of acting directors for a shorter period so that these gaps are not abused.
- Entity governments need to reduce political pressure on SOE management by professionalising governing bodies and improving corporate governance in SOEs, with an emphasis on management transparency and accountability. Implement measures to ensure the depolitisation of public enterprises, including mechanisms for integrity and transparency in the appointment of supervisory and management boards, preventing conflicts of interest and strengthening independence and oversight.
- Entity governments and the BD government need to establish public registers and create a list of all SOEs, including the names of the members of their management and supervisory boards in both entities and the BD.
- The centralised coordination unit and SOE management need to improve the transparency of reporting and disclosure of annual reports on the work of SOEs, with an emphasis on proactive transparency, including the requirement to routinely publish all important information pertaining to SOE operations.
- Entity governments need to initiate programmes to encourage strategic SOEs to adopt anti-corruption strategies and/or integrity plans.

CONCLUSION/POLICY RECOMMENDATIONS

Decades after the conflict Bosnia and Herzegovina remains a divided country, not necessarily because such division reflects the will of its citizens, but due to leaders who have masterminded ongoing crises to divert attention from the abuse of power and corruption. The lack of reforms and vision of development and growth generate artificial tensions and the population continues to live in a climate of anxiety, not questioning the deep political and economic crisis where political leaders syphon off the country's remaining wealth. This is particularly acute in Republika Srpska, where continuous borrowing reached the creditworthiness ceiling and it is unclear how basic social needs, alongside the enormous foreign debt, can be serviced.

Based on the this National Integrity System assessment, the three main and supposedly independent branches of power – the legislative, executive and judiciary – appear to be strongly dominated by another pillar, the political parties. This is largely true in a whole range of other “in-between” institutions such as the prosecution, civil service, law enforcement, supreme audit institutions, ombudsperson’s offices, state-owned enterprises and electoral commission. Others, such as the anti-

corruption agency, media, CSOs and the private sector, have systemically been weakened, marginalised or heavily confronted by all of the above. Through the permanent and tight grip of political parties over the institutions and with very rigidly manipulated or controlled staffing, there are limited and continuously disappearing opportunities to raise a critical voice, let alone initiate reforms. The only institution in possession of potentially effective “carrots and sticks” is the international community, which has generally been very silent, laidback and almost complicit in the reform collapse. This is particularly true of the European Union, which has very significant and high stakes leverage in the form perspective membership, but which has thus far been unable or unwilling to appropriately exercise such pressure.

BiH has been characterised as a “failed state” by a range of international assessments and the current NIS portrays the country similarly. The institutions are largely captured by the ruling elite, the few independent, dissenting voices have been silenced by placing these institutions under a partisan control (the backsliding that was referenced several times across the text). The country has been regressing, as also demonstrated by the

TI's Corruption Perceptions Index. It is not a democracy, but a country captured by the three nationalist leaders who each hold nearly unlimited power among their respective ethnic corps (with a cyclical return to power of SDA among the Bosniaks). No will of the people is being respected and the minority rules over the majority with no possibilities to call such division of power to account.

The situation has only been worsening. The NIS recommendations therefore focus primarily on the tasks ahead of the national institutions. Essentially, BiH must further improve the accountability and transparency of the public sector, including public financial management, transparent budgets, a prohibition of conflict of interest and depoliticising of the administration. These tasks have been high on the agenda for more than two decades but have not seen much progress.

Yet, if one revisits the previous set of recommendations from the 2015 NIS published for BiH most have not been implemented.¹²³⁹ Backsliding has been observed in both the legal framework and its enforcement. In light of the absence of genuine efforts to implement the recommendations and improve transparency, integrity and accountability, most of the these recommendations remain applicable today. Specifically, 2023 NIS recommends the following key reforms:

- Conflict of interest: In line with The Group of States against Corruption (GRECO) recommendations, all government levels need to adopt a uniformed credible legislative and institutional framework for preventing conflicts of interest, by extending the width of its application and the depth of reporting.
- Freedom of information: The governments and parliaments need to harmonise free access to information legislation throughout the country by improving provisions on proactive transparency and introducing heavy sanctions for failure to provide information according to the law that would in turn make the governments and civil service more accountable.
- Whistleblower protection: The Federation of Bosnia and Herzegovina (FBiH) government and parliament need to adopt a whistleblower protection law and their Bosnia and Herzegovina (BiH) and Republika Srpska (RS) counterparts need to update of the laws to make reporting corruption safe and granting the whistleblowing status prompt and attainable.
- Parliamentary transparency: Parliaments must make the process of adopting laws more transparent and ensure the participation of experts and civil society in the law-making process, through full drafting and public discussion process instead of fast-track political bargaining behind closed doors.
- Executive oversight: Supreme audit institutions (SAIs) need to perform a proper oversight role over the public sector, the

precondition to which is ensuring the auditors are appointed independently from the executive and accountable to all parliamentarians, the general public and the judiciary. This is achieved through timely and politically unconditioned approval of budgets and no political appointments to SAIs. There has to be a feedback loop, whereby the institutions with negative SAI opinion must undertake actions to rectify the issue before the next reporting cycle.

- Ensuring the independence of judiciary and prosecution by automating their financing to reduce the possibility of influence from various levels of government. Independent vetting of all judicial and prosecutorial office holders, including the High Judicial and Prosecutorial Council (HJPC) needs to involve civil society organisations (CSOs) and be open to public and media scrutiny.
- The public sector's recently established financial management and internal control system needs coordination of its activities with the relevant SAI in order to enhance its efficiency and improve control of government spending. Greater transparency in recruitment to all public institutions goes beyond the urgently required law enforcement, SAI and ombudsperson.
- Police agencies must establish the independence of disciplinary mechanisms and more effective investigation and prosecution of corruption cases and other criminal offences. Transparent and prompt reporting of police agencies will support that cause.

➤ **Elections:** Support the work of the Central Election Commission (CEC):

- The governments and parliaments need to ensure stability in financing of elections by prompt adoption of the proposed budgets, with no political conditioning.
- The governments and parliaments need to strengthen the legal provisions to prevent political pressures against the operations of CEC (especially at the local election committee level, through transparent selection of its members).
- The CEC needs to undergo a detailed review of the election process to avoid any future election engineering.

➤ **Anti-corruption agency:**

- The governments need to expand the role of the Agency for Prevention of Corruption and Coordination of the Fight against Corruption (APIK) to include mechanisms for responding to violations of the related law or non-compliance with the institutional obligation to cooperate with the agency.
- The anti-corruption agency (ACA) needs to strengthen its coordinating role and improve collaboration with other institutions working on corruption prevention. The ACA law should make the collaboration of the law enforcement and executive and public sector with the ACA mandatory, especially regarding requests for whistleblower status.

- Business sector and state-owned enterprises (SOEs): Reduce political pressure by SOEs professionalising their governing bodies and improving corporate governance, with an emphasis on management transparency and accountability.
- The government needs amend the laws on the public contracting and procurement system by exposing the process to the public and enforcing greater transparency and access to contracting information to reduce the opportunities for corruption that arise from the interplay of the private and public sectors.
- The government needs to increase the transparency and accountability of the public administration by introducing harsher sanctions for political abuse of the business sector, to stop the ongoing political interference in the work of private businesses and vice versa, also to be prioritised by the judiciary. This would address both the supply and the demand side of corruption.
- The government needs to set up public registers and listing of all SOEs with the names of the management and supervisory boards members in both entities and the Brčko District (BD), including devising a register of beneficial ownership.
- Setting up mechanisms for integrity and transparency in the appointment of supervisory and management boards, prevention of conflicts of interest and strengthening independence and oversight.
- The public and the private sectors need to develop specific tools and guidelines for integrity plans to improve corporate governance and business integrity promoting good practices, also tailored to small and medium enterprises (SMEs).

- Shrinking civic space: Independent media and CSOs have both been under extreme political pressure from the executive in particular, all leading back to the political parties. That pressure needs to stop, particularly in RS where independent CSOs have been subjected to orchestrated political scrutiny. The slander provisions in the criminal law and the so-called foreign agents act should be abolished. Across the country, public funding for all associations must be made available transparently and as part of public calls, administered under clear rules.
- Media ownership transparency must improve through appropriate and detailed public registers of ownership. Similarly, budget funding for media either needs to stop or be awarded through public calls and transparent outcome-based evaluations.
- Mainstreaming gender: All institutions need to elaborate their gender approach/strategy so as to allow for equal opportunities in recruitment and treatment of all employees. The end result should be more women elected and appointed, greater access to services and visibility of women in particular, as studies have shown that such integration supports anti-corruption efforts across all sectors.

	Legislative	Execution	Judiciary	Prosecutor	Public Sector	LEA	EMB
Legislative	x	●	●	●	●	●	●
Execution	●	x	●	●	●	●	●
Judiciary	●	●	x	●	●	●	●
Prosecutor	●	●	●	x	●	●	●
Public Sector	●	●	●	●	x	●	●
LEA	●	●	●	●	●	x	●
EMB	●	●	●	●	●	●	x
Ombuds	●	●	●	●	●	●	●
SAI	●	●	●	●	●	●	●
ACA	●	●	●	●	●	●	●
Parties	●	●	●	●	●	●	●
Media	●	●	●	●	●	●	●
CSO	●	●	●	●	●	●	●
Business	●	●	●	●	●	●	●
SOE	●	●	●	●	●	●	●



Legitimate and desirable healthy interaction, highly dependent on one another



Interaction that requires appropriate regulation and monitoring (existing needs review, reinforcement or reforms)



Inappropriate interaction with illegal elements, potential conflict of interest

The figure consists of a 15x8 grid of colored circles. The columns are labeled at the top: Ombuds., SAI, ACA, Parties, Media, CSO, Business, and SOE. The rows are numbered 1 through 15 on the left. Each cell contains a colored circle: yellow, green, red, or a black 'x'. The distribution is as follows:

- Row 1: Yellow, Yellow, Yellow, Yellow, Green, Green, Red, Red
- Row 2: Yellow, Yellow, Yellow, Red, Green, Green, Red, Yellow
- Row 3: Green, Green, Green, Red, Green, Green, Green, Green
- Row 4: Green, Green, Green, Red, Yellow, Green, Green, Green
- Row 5: Green, Green, Green, Red, Green, Green, Yellow, Green
- Row 6: Green, Green, Green, Red, Yellow, Green, Yellow, Yellow
- Row 7: Green, Green, Green, Red, Yellow, Green, Yellow, Red
- Row 8: Green, Green, Green, Red, Yellow, Green, Yellow, Yellow
- Row 9: Red, Yellow, Red, Red, Yellow, Red, Red, Red
- Row 10: Green, Green, Green, Yellow, Red, Green, Red, Red
- Row 11: Green, Green, Green, Yellow, Green, Red, Green, Red
- Row 12: Green, Yellow, Green, Red, Green, Red, X, Yellow
- Row 13: Yellow, Yellow, Green, Red, Green, Red, X, Red
- Row 14: Yellow, Green, Yellow, Red, Red, Yellow, X, Yellow
- Row 15: Yellow, Green, Yellow, Red, Red, Yellow, X, X

On a general note, several social features have taken steep turns for the worse and need to be addressed urgently in order to secure a positive future for the country. The weak economic policies that rely on external borrowing and remittances from abroad illustrate that there is no development vision or reform capacity among the elected and appointed officials, nor is the international community addressing these priorities appropriately. These scarce remaining sources of income have been misused for private gain for too long now. Further structural issues that receive little or no attention and that drive the society towards collapse are gender inequality and poor quality of education. Both are detrimental to the long-term development of the country. All these factors together, including the weak institutions as described by this assessment, contributed to one of Europe's largest braindrains that will adversely affect the future of BiH for several generations to come.

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76 Consequently, there are no registered lobbyists, and MPs and delegates are under no obligation to disclose any contact with individuals who may be lobbying for specific legislative outcomes despite not being registered as lobbyists. Despite previous commitments to adopt a lobbying law as part of the anti-corruption strategies for both 2009-2014 and 2015-2019 periods, such legislation has yet to be enacted.

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381 Issues pertaining to the status of civil servants' is here used to mean the following issues: taking up employment, reassignment, appraisal, promotion, disciplinary and material liability and termination of employment.

382 Article 63 of Law on Civil Service in the Institutions of BiH; Article 65 of Law on Civil Service in FBiH; Article 109 of Law on Civil Servants.

383 RTRS, *Dogovorena raspodjela svih direktorskih pozicija* [Agreement Reached on Distribution of All Directorships]

384 RTVBN, *Direktora Agencije sud vratio, NS ga ponovo razriješila* [Court Reinstates Agency Director, National Assembly Dismisses Him Again]; Capital, *Sud ponovo vratio Tomića na mjesto direktora Inspektorata RS* [Court Reinstates Tomić as Director of RS Inspectorate]; Klix, *Sud vratio bivšeg direktora ZZO ZDK Senaida Begića na posao* [Court Reinstates Former ZDC HIF Director Senaid Begić]

385 Restart, *V.D. republika*

386 According to several available vacancy notices.

387 EU, *Bosnia and Herzegovina 2021 Report*

388 OECD SIGMA, 2022, p. 81

389 TI BiH, *Public sector reform in BiH: 20 years of lessons (not) learned*, 2023, p.15

390 Ibid., p.16

391 Disclosure of information on the websites of public organisations/institutions, proactive disclosure of materials related to the interested public's participation in normative activities, as well as provision of information about the organisation/institution's transparency.

392 EU, *Bosnia and Herzegovina 2021 Report*

393 Conclusion of the RS Government, no. 04/1-012-886/06, 28 March 2006.

394 Article 3 of the BiH Public Procurement Law.

395 EU, *Bosnia and Herzegovina 2022 Report*, p. 61

396 Apart from a narrow set of exemptions provided by law.

397 The law does not require the public sector to publish the entire content of public procurement contracts.

398 TI BiH, *Monitoring the Implementation of Anti-corruption Policies in BiH, 2021 Report*

399 TI BiH, *ibid.*

400 Agencija za drzavnu sluzbu BiH – konkursi, accessible at: <https://www.ads.gov.ba/bs-Latn-BA/open-vacancies?page=1&rows=10&searchByStatus=Open>; Agencija za drzavnu sluzbu FBiH – konkursi accessible at: <https://ekonkurs.adsfbih.gov.ba/>; Agencija za drzavnu upravu RS – konkursi accessible at: <https://adu.vladars.net/Podkategorija/3>

401 Parlamentarna skupstina BiH, sjednice, accessible at: <https://parlament.ba/session/Read?ConvernerId=2>, Parlament FBiH, sjednice; Narodna skupstina RS, zasjedanja, I

402 Article 1 of the Law on the Audit of the Institutions of BiH; Article 1 of the Law on the Audit of the Institutions in FBiH; Article 3 of the Law on the Audit of the Public Sector of RS

403 These data refer only to civil servants, excluding employees in public services (public enterprises, public institutions, etc.).

404 Answers to the EC questionnaire

405 Ibid.

406 EU, *Bosnia and Herzegovina 2021 Report*, p. 25

407 Ibid.

408 TI BiH, *Zakonodavstvo i praksa zaštite uzbunjivača u BiH [Whistleblower Protection Legislation And Practice in BiH]*, p.14

409 TI BiH, *Monitoring the Implementation of Anti-corruption Policies in BiH, 2021 Report*

410 Code of Conduct for Civil Servants in the Institutions of BiH; Code of Ethics for Civil Servants in FBiH; Code of Conduct for Civil Servants of RS

411 Rules on disciplinary liability of civil servants in the institutions of BiH; Regulation on the rules of disciplinary action for disciplinary liability of civil servants in civil service bodies in FBiH; Regulation on disciplinary and material liability in the republican administrative bodies of RS

412 This does not apply to special, professional codes, that are established for specific professions (medical, auditing, etc.).

413 This does not include specific professional codes such as codes of medical ethics and deontology that lay down obligations related to the provision of health services, etc.

414 For example, Article 183, 184 and 185 of the Law on Healthcare in FBiH; Article 133 of the Law on Healthcare in RS

415 Representatives elected directly and indirectly at all levels in accordance with the BiH Election Law declare assets and interests in accordance with the BiH Election Law.

416 Amendments to the Law on Conflicts of Interest in the Institutions of BiH abolished the CEC's competence for determining conflicts of interest. This has created problems in the implementation of the FBiH Law because by abolishing the CEC's competences for the implementation of the state-level Law, the legislator also effectively abolished its competences for the implementation of the FBiH Law.

417 Article 12 of the Law on Conflicts of Interest in the Institutions of BiH

418 TI BiH, *Monitoring the Implementation of Anti-corruption Policies in BiH, 2021*

419 Ibid.

420 Article 12 of the Law on Prevention of Conflict of Interest in Government Authorities of RS

421 For example, directors and members of governing/supervisory boards of public enterprises, educational institutions, health care facilities, etc.

422 Article 52 of BiH Public Procurement Law

423 RCC, *Balkan Barometer 2020*

424 Members of state, entity, cantonal and local parliaments, presidents and vice-presidents of entities, members of the BiH Presidency

425 For example, training for public sector employees on misuse of public resources as part of the project *Combating the misuse of public resources by strengthening the capacity of the civil service*, or training on whistleblower protection as part of the project USAID Assistance to citizens in the fight against corruption.

426 PPA, training

427 For example: <https://podlupom.org/biblioteka/izvjestaji-o-posmatranju-izbora/> <https://ti-bih.org/publikacije/monitoring-izborne-kampanjie-lokalnih-izbora-2020-godine-enelection-campaign-monitoring-2020-2>

428 Mostly regarding some elementary protocols, such are separation of male/female premises, providing for female stuff and other needs.

429 UN Women Office in Bosnia and Herzegovina, *Gender Equality Profile in Bosnia and Herzegovina, 2021*, p. 20

430 TI BiH, *Pregled nivoa realizacije Strategije i Akcionog plana za borbu protiv korupcije 2015-2019. godine [Review of the Level of Implementation of the Anti-corruption Strategy and Action Plan 2015-2019]*

431 Ibid.

432 Ibid.

433 EU, *Bosnia and Herzegovina 2021 Report*

434 TI BiH, *Make Public Procurement Public*

435 Radio Slobodna Evropa, *Vlada RS utvrdila zakon o kontroli nevladinih organizacija iz inostranstva*

436 *Article 19 of the Public Procurement Law of BiH.*

437 Ibid.

438 Article 92 of the Public Procurement Law of BiH.

439 Article 93 of the Public Procurement Law of BiH.

440 Article 115 of the Public Procurement Law of BiH.

441 For example, according to the BiH 2022 Report, PPA administrative capacities are insufficient, particularly concerning the monitoring and support functions (22 versus 45 civil servants planned).

442 European Commission, *Bosnia and Herzegovina 2022 Report*, p. 61

443 PRB, *Activity Report 2021*, p.4

444 EU, *Bosnia and Herzegovina 2022 Report*, pp. 61, 62

445 Office for the Audit of the Institutions of BiH, *Performance Audit – Legal protection in public procurement procedures before PRB*, p. 9

446 BiH Public Procurement Portal

447 Article 36 of the Public Procurement Law of BiH

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449 EDA, *Dvije strane medalje*, 2019; Dometi, *Ex post monitoringa*, 2018; TI BiH, *Javne nabavke u doba pandemije COVID-19*, 2021

450 *Sud BiH potvrdio optužnicu protiv Novalića i drugih u slučaju 'Respiratori'* [Court of BiH Confirms Indictment against Novalić and Others in 'Ventilators' Case]

451 *Podignuta optužnica protiv Zeljkovića i ostalih u aferi "korona nabavke"* [Indictment Brought against Zeljković and Others in 'COVID-19 Procurement' Scandal]

452 Agencija za javne nabavke BiH, *Godišnji izvjestaj o dodijeljenim ugovorima u postupcima javnih nabava u 2022.godini*, p. 51

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455 Even though the 2020 budget was 4 per cent lower than the 2019 budget. On the other hand, the planned for 2022 increased by about 7.5 per cent. Source: Official website of the SIPA, 2019 Budget, 2020 Budget, 2022 Budget

456 Radio Free Europe, *Bosnia and Herzegovina received a budget after two years*, June 2022

457 Federal Ministry of Interior, *Work Report on 2022*

458 Federal Ministry of Interior, *Work Report on 202*. Note: Mol of Republika Srpska does not have available reports that would show the planned budget for previous years.

459 Official website of the SC Government, *SC 2022 budget proposal*

460 Amendments to the ZDC 2022 Budget

461 Klix.ba, *Od danas veće plate policijskim službenicima u FBiH za 5%* [Salaries for police officials in FBiH to increase by 5 per cent]

462 Website of the BiH Agency for Statistics, Category 13

463 Plata.ba, accessible at: <https://www.plata.ba/plata/obezbjedenje-i-zastita/inspektor-u-policiji>

464 The terms 'police officials' and 'police officers' are used interchangeably to mean 'members of law enforcement'.

465 Radio Sarajevo, *Policajci iz BiH se bune zbog malih plaća, uputili zahtjeve, evo koliku osnovicu traže* [Police officials in BiH protesting low salaries, put forward demands, here is the basic salary they are asking for]

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468 Detektor.ba, *Bosnia and Herzegovina is increasing the number of police officers, but not their efficiency*, 2022

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470 Official website of the BP. *SR Njemačka Graničnoj policiji BiH donirala opremu u vrijednosti 458.000 eura* [FR Germany donated €458,000 in equipment to the BiH Border Police]; *Potpisani Sporazum o donaciji SR Njemačke Graničnoj policiji BiH* [Agreement on donation by Federal Republic of Germany to BiH Border Police signed]

471 Nezavisne novine, *Forenzička oprema za zaštitu djece na internetu donirana MUP-u RS* [Forensic equipment for protection of children on internet donated to RS Mol] 21 December 2020

472 Interview with a cyber security expert.

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474 Law on Independent and Supervisory Bodies of Police Structure of BiH; Law on Police Officials of BiH

475 Ibid.

476 RS Law on Police and Internal Affairs

477 Law on the State Investigation and Protection Agency

478 ZDC Law on Police Officials

479 SC Law on Police Officials, Law on Police Officials of ZDC

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481 Ibid.

482 Centre for Security Studies, 2016 and 2017; Interview with a police official

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494 Faktor, „Reception of 200 police officers in CS: Conversations will be recorded, without nepotism and corruption“, 2021

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615 *Report on the audit of the Institution of Human Rights Ombudsman of BiH for 2017*

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620 *Report on the audit of the Institution of Human Rights Ombudsman of BiH for 2018*

621 Annexes 4 (constitution) of the General Framework Agreement for Peace in BiH and Annex 6, Articles 4, 5 and 6 of the General Framework Agreement for Peace in BiH

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644 Law on Conflict of Interest of BiH, Article 12

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