

Article 13. Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups, outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to such restrictions as shall only be such as are provided for by law.

CIVIL SOCIETY REPORT

on the implementation of
Chapter II (Prevention) of the

UNITED NATIONS CONVENTION AGAINST CORRUPTION

IN BOSNIA AND HERZEGOVINA

by Transparency International Bosnia and Herzegovina

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The findings in this report are those of the authors but do not necessarily reflect the views of the UNCAC Coalition and the donors who have made this report possible.

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of October 1, 2022.

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Transparency International in Bosnia and Herzegovina (TI BiH) is a locally run and operated civil society organization focused on anti-corruption and the rule of law, with more than 20 years of experience in advocating for the increased transparency in the work of all levels of government, creating and undertaking advocacy initiatives for legal and institutional reform, monitoring the work of institutions and implementation of anti-corruption reforms.

TI BiH is actively engaged in the areas of judiciary and prosecution of corruption, public procurement, conflicts of interest, political party finance, whistleblowers protection, public administration reform, building integrity of the institutions, preventing corruption at the local level, free access to information, and provides direct legal assistance to victims of corrupt practices and acts on specific cases of corruption toward relevant institutions.

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Abbreviations

AC	Anti-corruption
AP	Action Plan
APIK	Agency for Prevention of Corruption and Coordination of the Fight against Corruption
BD	Brčko District
BiH	Bosnia and Herzegovina
CDCI	Commission for Deciding on Conflict of Interest
CEC	Central Election Commission
CIN	Centre for Investigative Journalism
Col	Conflict of Interest
CoM	Council of the Ministers of Bosnia and Herzegovina
CoSP	Conference of the States Parties
CSO	Civil Society Organizations
CSS	Centre for Security Studies
DPA	Dayton Peace Agreement
EC	European Commission
EU	European Union
FBiH	Federation of Bosnia and Herzegovina
GRECO	Group of States against Corruption
HJPC	High Judicial and Prosecutorial Council
KM	Bosnian convertible mark
PPA	Public Procurement Agency
PPL	Public Procurement Law
RS	Republika Srpska
TI BiH	Transparency International in BiH
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime
USD	United States Dollar

I. Introduction

Bosnia and Herzegovina (BiH) signed the United Nations Convention against Corruption (UNCAC) on 16 September 2005 and ratified it on 26 October 2006.

This report reviews BiH's implementation of selected articles of Chapter II (Preventive measures) of the UNCAC. The report is intended as a contribution to the UNCAC implementation review process currently underway covering this chapter. BiH was selected by the UNCAC Implementation Review Group by a drawing of lots for review in the first year of the second cycle.

Scope. The UNCAC articles and topics that receive particular attention in this report are those covering preventive anti-corruption policies and practices (Article 5), preventive anti-corruption bodies (Article 6), public sector employment (Article 7.1), political financing (Article 7.3), codes of conduct, conflicts of interest and asset declarations (Articles 7, 8 and 12), reporting mechanisms and whistleblower protection (Articles 8.4 and 13.2), public procurement (Article 9.1), access to information and the participation of society (Articles 10 and 13.1), judiciary and prosecution service (Article 11).

Structure. The report begins with an executive summary, including the condensed findings, conclusions and recommendations about the review process, the availability of information, as well as the implementation and enforcement of selected UNCAC articles. The following part covers the findings of the review process in BiH as well as access to information issues in more detail. Subsequently, the implementation of the Convention is reviewed and examples of good practices and deficiencies are provided. Then, recent developments are discussed and lastly, recommendations for priority actions to improve the implementation of the UNCAC are given.

Methodology. The report was prepared by Transparency International in BiH with technical and financial support from the UNCAC Coalition. The group made efforts to obtain information for the reports from government offices and to engage in dialogue with government officials.

The report was prepared using guidelines and a report template designed by the UNCAC Coalition and Transparency International for use by civil society organizations. These tools reflected but simplified the United Nations Office on Drugs and Crime (UNODC)'s checklist and called for relatively short assessments as compared to the detailed official self-assessment checklist. The report template included a set of questions about the review process and, in the section on implementation, asked for examples of good practice and areas in need of improvement in articles of UNCAC Chapter II on prevention.

In preparing this report, the authors took into account the recent review of BiH carried out by Group of States against Corruption – GRECO, Fourth Evaluation Round, Evaluation Report Bosnia and Herzegovina (2015), as well as the Fifth Evaluation Round, Evaluation Report Bosnia and Herzegovina (2022).

II. Executive Summary

This civil society parallel report reviews Bosnia and Herzegovina's (BiH) implementation of selected articles of Chapter II (Preventive measures) of the UN Convention against Corruption (UNCAC) in law and practice. It identifies good practices and deficiencies and provides recommendations for a more effective implementation of UNCAC provisions.

2.1 Description of the Official Review Process

According to the Conclusion of the Council of the Ministers (CoM) BiH from 8 December 2016, Bosnia and Herzegovina (BiH) started then with activities related to the review process. An initial report was drafted and submitted to the evaluation team of the Secretariat of the Conference of the States Parties in March 2017. The evaluation team of the Secretariat of the States Parties visited BiH from 2 to 6 October 2017. Representatives of 24 institutions and seven Civil Society Organizations (CSOs) participated in the meeting with the review team. On 30 January 2019, CoM BiH adopted information on the completion of the second review cycle of the implementation of the UNCAC in BiH and approved the publication of the Executive Summary and the Full Report on the implementation of the UNCAC in BiH.

2.2 Availability of Information

Most of the information was publicly available. During the preparation of the report, researchers consulted official reports and publications of the institutions, research and publications of international organizations, as well as reports produced by Civil Society Organizations and media reports. Additionally, researchers approached the Agency for Prevention of Corruption and Coordination of the Fight against Corruption BiH (APIK), the Ministry of Justice of Republika Srpska (RS) and the Office for Prevention of Corruption of Brčko District for additional information through e-mail inquiries and freedom of information requests.

2.3 Implementation in Law and in Practice

Bosnia and Herzegovina signed the United Nations Convention against Corruption on 15 September 2005 and ratified it on 26 October 2006. According to the Dayton Peace Agreement (DPA)¹, Bosnia and Herzegovina is a state consisting of two entities, each with a high degree of autonomy: Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH). In addition, the District of Brčko operates as a single administrative unit under the sovereignty of Bosnia and Herzegovina. The criminal legislation and legislation on the criminal procedure are adopted at the state, entity, and Brčko District levels.² Each jurisdiction has its own criminal code and criminal

¹ The General Framework Agreement for Peace in Bosnia and Herzegovina (1995), available at: <https://www.osce.org/files/f/documents/e/0/126173.pdf>, accessed on February 7, 2023.

² Criminal Code of Bosnia and Herzegovina, Official Gazette BiH No. /03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15, 40/15, 35/18, 46/21, available at: https://www.tuzilastvobih.gov.ba/files/docs/zakoni/Criminal_Code_of_BH_-_Consolidated_text_47_14.pdf; Criminal Procedure Code of BiH, Official Gazette BiH No. 3/03, 32/03,

procedure code. Entity and Brčko District laws are enforced solely by the courts of the entities and Brčko District, while legislation at the state level is enforced by the court of Bosnia and Herzegovina.

In accordance with its constitutional set-up, the governance system in BiH is highly decentralized, with each entity having its own constitution, president, government, parliament and judiciary. As a result of the decentralized system, anti-corruption policies and strategies are adopted in such a manner.

Until the end of 2019, all levels in BiH had adopted Anti-Corruption (AC) Strategies and Action Plans. APIK, as an institution in charge of the process of drafting the AC Strategy at the state level, during the second half of 2019 started with activities related to the process of drafting a new AC Strategy and Action Plan at the state level for the period 2020-2024. The Strategy was sent to the CoM at the beginning of 2020, but it is not still adopted and currently there is no valid AC Strategy at the state level.

The process of development of a strategy proposal can be considered as an example of good practice, considering that it included representatives of institutions from all levels of governance in BiH, as well as representatives of CSOs. On the other hand, the lack of political will for the adoption of new AC Strategies and the lack of political will for AC reforms can be considered serious deficiencies in BiH.

The APIK is an independent and autonomous administrative organization and serves as a central body for the prevention of corruption which reports to the Parliamentary Assembly of BiH, in accordance with Article 6 of the Convention. The APIK is primarily a preventive body and is in charge of the coordination of anti-corruption activities with other bodies in BiH involved in AC on all levels of governance. Besides the APIK, in BiH there are AC bodies at the lower levels of governance which are in charge of the creation, monitoring and implementation of AC policies and strategies at their level, which could be considered a good practice in BiH. Hence, the APIK constitutes a body established in accordance with Article 6 of the UNCAC, while bodies at the other administrative levels in BiH are not established by the law. Most of them are

36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09, 72/13, 65/18, available at: https://www.tuzilastvobih.gov.ba/files/docs/zakoni/Criminal_Procedure_Code_of_BH_-_Consolidated_text_72_13.pdf; Criminal Code of FBiH, Official Gazette FBiH, no. 36/03; 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/14, 76/14, 46/16 i 75/17, available at: <https://portalfo1.pravosudje.ba/vstvfo-api/vijest/download/55714>; Criminal Procedure Code of FBiH, Official Gazette of FBiH No. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09, 12/10, 8/13 i 59/14, available at: <https://portalfo1.pravosudje.ba/vstvfo-api/vijest/download/55715>; Criminal Code of RS, Official Gazette of RS No. 64/17, 104/18, 15/21 and 89/21, available: <https://www.paragraf.ba/propisi/republika-srpska/krivicni-zakon-republike-srpske.html>; Criminal Procedure Code of RS, Official Gazette RS No. 50/03, 111/04, 115/04, 29/07, 68/07, 119/08, 55/09, 80/09, 88/09 i 92/09, available at: <https://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpr/Documents/zakon%20o%20krivicnom%20postupku.pdf>; Criminal Code of Brčko District, Official Gazette of BD No. 6/05, 21/10, 9/13, 26/16, 13/17 i 50/18, available at: <https://skupstinabd.ba/3-zakon/ba/Krivic--ni%20zakon%20Brc--ko%20Distrikta%20BiH/05B19-20%20Krivic--ni%20zakon%20-precisceni%20tekst.pdf>; Criminal Procedure Code of Brčko District, Official Gazette of BD No. 48/04, 6/05, 14/07, 19/07, 21/07, 2/08, 17/09 i 9/13, available at: <https://skupstinabd.ba/3-zakon/ba/Zakon%20o%20krivic--nom%20postupku%20Brc--ko%20Distrikta%20BiH/01B33-13%20Zakon%20o%20krivic--nom%20postupku.%20prec--is--c-eni%20tekst.pdf>.

established as “ad hoc” bodies, and do not have adequate independence in the context of the provisions of the Convention. Also, those bodies do not have enough capacities for their work, considering the complexity of the activities related to the prevention of corruption.

Laws on civil service at the state and entity levels regulate the legal status of civil servants in institutions at all levels. The legislation at all levels stipulates that the recruitment process as well as the professional career advancement of a civil servant is based upon open competition and merit. The Law on Civil Service does not differentiate the position with respect to the risk of corruption and rotation in civil service is only possible through promotion, internal or external transfer. Civil service agencies provide training for public officials with anti-corruption responsibilities. The Law on Civil Service and the Regulations on Disciplinary Accountability of Civil Servants legally regulate the disciplinary procedures, responsibilities, measures, etc.

The Office for Audit of Political Parties Financing within the Central Election Commission (CEC) is responsible for the control over political party financing. According to the Law on Political Financing, political parties are obliged to submit annual financial reports, as well as post-election financial reports to the CEC, which has the authority to verify the accuracy of income, but not of other submitted data, which is why it is necessary to establish an audit of expenses. The legal framework still does not address the problem of the so-called "official campaign" which represents one of the main causes of inequality between political subjects from the ruling and opposition parties. Holders of public offices who ran for and obtained a position in the elections use their position for personal or party promotion, and Transparency International BiH has long warned that party functions completely "merged" with public functions during the election campaign.

The Council of Ministers adopted the Code of Conduct for Civil Servants in the institutions of BiH. This act is a code of ethics governing the rules and principles of good conduct of civil servants in their exercise of civil service. The Code contains rules and principles of good conduct of civil servants to the citizens and in mutual relations of civil servants, and informs citizens about the behavior they are entitled to expect from public officials. Similar regulations are adopted at the lower level of governance in BiH.

Conflicts of interest are governed by Conflict of Interest (CoI) legislation enacted at different levels. The issue of conflicts of interest at the BiH level is regulated by the Law on Conflict of Interest in Government Institutions of BiH³, which was amended in 2013. With those changes, the authority for the application of the law was placed on the Commission for Deciding on Conflicts of Interest, which is extremely politicized due to its composition and decision-making methods. The law also covers only an extremely narrow circle of persons and functions, and contains a number of other shortcomings. Those changes of the law had a direct impact at the level of FBiH, considering that the 2013 amendments to the law at the state level deprived the CEC of its jurisdiction in the area of conflicts of interest. FBiH never amended the law at the

³ Law on Conflict of Interest in Institutions BiH, Official Gazette BiH No. 13/02, 16/02, 14/03, 12/04, 63/08, 18/12, 87/13 and 41/16, available at: https://advokat-prnjavorac.com/zakoni/Zakon_o_sukobu_interesa_u_institucijama_vlasti_BiH.pdf, accessed on May 18, 2023.

level of FBiH to reflect changes of the jurisdiction of the CEC. As a result, since 2013, there is no institution in charge of deciding on conflicts of interest in FBiH.

The lack of a body overseeing the implementation of the law of conflicts of interest at the level of FBiH can be considered a key deficiency in BiH. While there is a body for deciding on conflicts of interest at the State level, it is not in accordance with international standards and Group of States against Corruption (GRECO) recommendations.⁴ The conflicts of interest law in RS is not in line with international standards and it is significantly different and milder compared to the law at the state level, which results in inconsistency of the legal framework and inequality of public office holders at different levels of government in BiH. The Commission for Deciding on Conflict of Interest in RS in the last few years has issued decisions and opinions that are based on arbitrariness in the interpretation of the law, which resulted in many unsanctioned cases of conflict of interest. Also, conflict of interest laws in BiH do not have clear provisions regarding the submission and verification of financial statements for holders of public functions, and those statements are not publicly available.

On the other hand, the elected officials in the governmental bodies of BiH are obliged to submit asset declarations to the Central Election Commission, according to the Election Law BiH. The forms of asset declaration are available to the public on the platform⁵ for asset declarations of elected officials. However, the Central Election Commission is not responsible for the accuracy of the information stated in the form and has no authority to validate the information and act based on the content specified in the asset declarations.

The issue of whistleblower protection in BiH is regulated by the laws at the state, entity and Brčko District level. The state Law on Whistleblowers Protection in institutions of BiH foresees the so-called administrative protection through an external model, or protection provided by a special independent institution, the APIK. A similar legal solution is in force in Brčko District. In the Republika Srpska, the area of protection of corruption whistleblowers is regulated by the entity law which provides guaranteed protection for all employees in the public and private sector. In addition to the significantly wider range of persons to whom it applies, the law stipulates that external protection proceedings are conducted before courts of regular jurisdiction according to slightly modified provisions of the protection procedure in relation to the Law on Administrative Procedure. There is no adopted law on whistleblower protection in FBiH which means that potential whistleblowers do not have any kind of legal protection.

BiH has a decentralized procurement system. Individual ministries, agencies and institutions are responsible for their own procurement. The Public Procurement Agency (PPA) is the body responsible for the overall coordination of procurement in

⁴ Group of States Against Corruption, Fourth Evaluation Round: Corruption prevention in respect of members of parliament, judges and prosecutors, Evaluation Report Bosnia and Herzegovina, Adopted on 4th December 2015, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c4999>, accessed on May 18, 2023.

⁵ Online platform with forms of asset declarations for the elected officials for General election in 2014 and 2018, as well as for Local election in 2016 and 2020 are available at the official site of Central Election Commission of BiH, <https://www.izbori.ba/Default.aspx?CategoryID=776&Lang=3>, accessed on May 18, 2023.

BiH and for providing advice to contracting authorities. The legal framework defines clear procedures for participation in the tender procedure and defines the process of checking the bidder's qualifications and the conditions the bidder has to fulfill in order to be qualified for participation in public procurement.

A lack of information on the implementation of contracts is often the main shortcoming in covering the entire procurement cycle, although this information best shows the actual costs and quality of works, services and procured products. Any deviations from the agreed conditions or the Law on Public Procurement in the phase of contract implementation, as one of the important phases of public procurement, put other bidders in an unequal position, which renders the entire system of public procurement meaningless.

Bosnia and Herzegovina have adopted necessary legislation at the state and entity level on access to information. However, there are repeated concerns about the effectiveness of both, proactive disclosure of information and responding to requests from citizens. Deficiencies in the implementation of the laws are noted by the Ombudsman, as well as other reports by CSOs. The large number of complaints to the Ombudsman by citizens indicates that the enjoyment of the right to access to information is significantly hampered, despite the fact that special laws have been applied for more than a decade. In BiH, there is no special independent body that decides on appeals in the case when applicants are rejected with requests, but appeals are decided on by second-level authorities, which are usually the heads of public bodies themselves.

In BiH, there are four, organizationally and by competence, completely independent judicial systems. According to the constitutional structure of BiH, the judicial system is divided into several levels that are not interconnected. The High Judicial and Prosecutorial Council (HJPC) is the single self-management body for the entire judiciary. A comprehensive legal framework enables the public, either general or professional, to get information about the functioning of the judiciary and on the decisions made by the courts. Public access to all court actions is established as a general rule. The HJPC adopted the Code of Ethics for Judges⁶ and Code of Ethics for Prosecutors⁷, which prescribes guidelines, criteria and standards of anti-corruption measures for the holders of the justice functions.

Table 1: Implementation and enforcement summary

UNCAC articles	Status of implementation in law	Status of implementation and enforcement in practice
Art. 5 – Preventive anti-corruption policies and practices	partially implemented	poor

⁶ Code of Judicial Ethics, Official Gazette of BiH, nos. 13/06 and 24/15, available at: <https://portalfo2.pravosudje.ba/vstvfo-api/vijest/download/49137>, accessed on May 18, 2023.

⁷ Code of Prosecutorial Ethics, Official Gazette of BiH, nos. 13/06 and 24/15, available at: <https://portalfo2.pravosudje.ba/vstvfo-api/vijest/download/6258>, accessed on May 18, 2023.

Art. 6 – Preventive anti-corruption body or bodies	partially implemented	poor
Art. 7.1 – Public sector employment	partially implemented	moderate
Art. 7.3 – Political financing	partially implemented	poor
Art. 7, 8 and 12 – Codes of conduct, conflicts of interest and asset declarations	partially implemented	poor
Art. 8.4 and 13.2 – Reporting mechanism and whistleblower protection	partially implemented	moderate
Art. 9.1 – Public procurement	largely implemented	moderate
Art. 10 and 13.1 – Access to information and the participation of society	largely implemented	moderate
Art. 11 – Judiciary and prosecution services	partially implemented	moderate

Table 2: Performance of selected key institutions

Name of institution	Performance in relation to responsibilities covered by the report	Brief comment on performance (for example, inadequate resources, lack of independence, strong expertise)
Anti-Corruption Agency	moderate	Lack of independence and inadequate resources.
Central Procurement Authority	good	Lack of capacities and resources.
Commission on Deciding on Conflict of Interest at the State level	poor	The Commission lacks independence and it is not in line with international standards due to its composition.
Commission on Deciding on Conflict of Interest in RS	poor	Lack of independence, arbitrariness in the implementation of the law.
Central Election Commission	moderate	Lack of capacities for monitoring of finance of political parties, lack of legal provisions for verification of asset declarations of elected officials.

2.4 Recommendations for Priority Actions

1. Urgently adopt an Anti-Corruption Strategy and Action Plan at the state level.

2. Ensure that the necessary material, human and financial resources are available to the APIK and other anti-corruption bodies on entity and cantonal levels to carry out their functions.
3. Improve the monitoring of political party financing and election campaign funding by strengthening the capacities of the Audit Department within the Central Election Commission.
4. Adopt clear legal solutions regarding the abuse of public resources in election campaigns.
5. Publish online information on the assets and interests of elected officials, executive office holders and advisors who fall under the Law on Conflict of Interest, as well as public servants while respecting personal data protection legislation.
6. Strengthen the legal framework related to conflicts of interest by establishing independent bodies for deciding on conflicts of interest at all levels of governance in accordance with international standards.
7. Adopt a law on whistleblowers protection at the level of Federation of Bosnia and Herzegovina in accordance with international best practices and adopt necessary changes of legislation to establish protected reporting channels for whistleblowers at all levels of governance in Bosnia and Herzegovina.
8. Increase the capacities of the Public Procurement Agency and Procurement Review Body in charge of monitoring the implementation of the law.
9. Harmonize criminal laws with regard to criminal offenses of abuse in public procurement, with special emphasis on the equal responsibility of contracting authorities and bidders.
10. Ensure that information on the implementation of public contracts is publicly available.
11. Establish an independent specialized body that decides in cases when applicants' requests for access to information are rejected.
12. Adopt changes in the law at all levels which would include obligatory proactive transparency, in accordance with the Policy and Standards of proactive transparency; and harmonize laws on freedom of access to information at all levels of governance.
13. Implement the concept of the "eKonsultacije" application at lower levels of governance in Bosnia and Herzegovina, which would oblige institutions to obligatorily undergo public consultation processes for all legal acts prepared by the institution.
14. Adopt changes of the Law on the High Judicial and Prosecutorial Council related to the integrity of the judiciary, in accordance with reports published by the EU, related to the improvement of the rules regarding appointment, disciplinary responsibility, career development and conflict of interest of judges and prosecutors.
15. Increase the level of transparency of disciplinary procedures by the High Judicial and Prosecutorial Council and the publication of information during the disciplinary process.

III. Assessment of Review Process for Bosnia and Herzegovina

According to the written contribution by the APIK, based on the Conclusion of the Council of the Ministers (CoM) BiH from 8 December 2016, this was when Bosnia and Herzegovina (BiH) started with activities related to the review process. An initial report was drafted and submitted to the evaluation team of the Secretariat of the Conference of the States Parties in March 2017. The evaluation team of the Secretariat of the States Parties visited BiH from 2 to 6 October 2017. Representatives of 24 institutions and seven civil society organizations participated in the meeting with the review team. On 30 January 2019, CoM BiH adopted information on the completion of the second review cycle of the implementation of the UNCAC in BiH and approved the publication of the Executive Summary and the Full Report on the implementation of the UNCAC in BiH.⁸

3.1 Report on the Review Process

Table 3: Transparency of the government and CSO participation in the UNCAC review process

Did the government disclose information about the country focal point?	yes	
Was the review schedule published somewhere/publicly known?	not available	Only on the day the peer reviewers were in town for the country visit, did the APIK publish a press statement. ⁹
Was civil society consulted in the preparation of the self-assessment checklist?	not available	
Was the self-assessment checklist published online or provided to civil society?	no	
Did the government agree to a country visit?	yes	
Was a country visit undertaken?	yes	The visit took place from 2 nd to 6 th October 2017.
Was civil society invited to provide input to the official reviewers?	yes	Seven anti-corruption and access to information CSOs participated: Transparency International in BiH; Centre for Investigative Journalism; Anti-Corruption network of CSOs – ACCOUNT; Centre for social research – Analytica; Centre for Security Studies BiH; Criminal Policy Research Centre; and INFOHOUSE Foundation.

⁸ Written contribution by the APIK received on April 22, 2022 by e-mail.

⁹ APIK (3 October 2017), The Agency and the MoH BiH are hosting the UNODC Evaluation Team, <http://apik.ba/aktuelnosti/saopcenia-za-javnost/default.aspx?id=1481&langTag=bs-BA>, accessed 2 June 2023.

Was the private sector invited to provide input to the official reviewers?	yes	Six representatives of the private sector participated: Foreign Trade Chamber of Bosnia and Herzegovina; Chamber of Commerce of RS; Chamber of Commerce of FBiH; Employers Association of FBiH; Employers Association of RS; and Foreign Investors Council.
Has the government committed to publishing the full country report?	yes	The executive summary and full country report are published on Bosnia and Herzegovina's UNODC country profile page ¹⁰ , while information and the link to the executive summary and full report were published at the official website of the APIK. ¹¹

3.2 Access to Information

Most of the information was publicly available. During the preparation of the report, researchers consulted official reports and publications of the institutions, research and publications of international organizations, as well as reports produced by Civil Society Organizations and media reports.

Additionally, researchers sent several e-mail requests for information to the Agency for Prevention of Corruption and Coordination of the Fight against Corruption BiH (APIK), which were answered in a timely manner. All requested information was given. The researchers also sent two freedom of information requests, one to the Ministry of Justice of Republika Srpska (RS) and one to the Office for Prevention of Corruption of Brčko District, which were both answered completely and in a timely manner. A table detailing these requests can be found in the annex of this report.

¹⁰ UNODC, Country profile page: Bosnia and Herzegovina, <https://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fbih.html>.

¹¹ Official website of the APIK, The UNCAC Second Review Cycle Ended, available at: <http://apik.ba/aktuelnosti/saopcenia-za-javnost/default.aspx?id=2269&langTag=bs-BA>, last accessed on June 1, 2023.

IV. Assessment of Implementation of Chapter II Provisions

Bosnia and Herzegovina signed the United Nations Convention against Corruption on 15 September 2005 and ratified it on 26 October 2006. According to the Dayton Peace Agreement (DPA), Bosnia and Herzegovina is a state consisting of two entities, each with a high degree of autonomy: Republika Srpska and the Federation of Bosnia and Herzegovina. In addition, the District of Brčko operates as a single administrative unit under the sovereignty of Bosnia and Herzegovina. The criminal legislation and legislation on the criminal procedure are adopted at the state, entity, and Brčko District levels. Each jurisdiction has its own criminal code and criminal procedure code. Entity and Brčko District laws are enforced solely by the courts of the entities and Brčko District, while legislation at the state level is enforced by the court of Bosnia and Herzegovina.

From the constitutional point of view, the governance system in Bosnia and Herzegovina is a highly decentralized federal system in which each entity has its own constitution, president, government, parliament, and judiciary. The specificity of the governance system is that the state constitution was a result of the DPA and an integral part of the peace agreement, which creates a number of peculiarities. The most important institutions for preventing and countering corruption are the Agency for Prevention of Corruption and Coordination of the Fight against Corruption (APIK) and the anti-corruption bodies at the entity and cantonal levels.

4.1 Chapter II

4.1.1 Art. 5 – Preventive Anti-Corruption Policies and Practices

In accordance with its constitutional set-up, the governance system in Bosnia and Herzegovina is highly decentralized, with each entity having its own constitution, president, government, parliament, and judiciary. As a result of the decentralized system, anti-corruption policies and strategies are adopted in such a manner.

Until the end of 2019, all levels in Bosnia and Herzegovina (state, entity, Brčko District and cantonal level) had adopted Anti-corruption (AC) Strategies and Action Plans for their implementation. At the level of Bosnia and Herzegovina, the Anti-Corruption Strategy¹² for the period 2015-2019 and Action Plan (AP) for its implementation were adopted by the Council of the Ministers of BiH on 7 May 2015, which can be understood as being the country's second AC Strategy (the first one covered the period 2009-2014¹³). The process of drafting the AC Strategy was participatory and representatives of 23 relevant institutions¹⁴, academia and civil society organizations participated in the work of an inter-departmental working group. Due to the complex constitutional arrangements of the country, and in order to avoid negative overlapping

¹² Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (2014), Anti-Corruption Strategy for 2015-2019 and Action Plan for implementation of the Anti-corruption Strategy 2015-2019, <http://apik.ba/zakoni-i-drugi-akti/strategije/default.aspx?id=806&langTag=en-US>, accessed on February 7, 2023.

¹³ APIK (2019), Strategy for the fight against corruption 2009-2014, <http://apik.ba/zakoni-i-drugi-akti/strategije/default.aspx?id=153&langTag=bs-BA>, accessed on February 7, 2021.

¹⁴ See APIK (2014), Anti-Corruption Strategy for 2015-2019 and Action Plan for implementation of the Anti-corruption Strategy 2015-2019, page 8.

with the responsibilities of the entities, Brčko District and Cantons, the state-level AC Strategy was not sector-oriented, given the fact that lower levels of governance in BiH have specific responsibilities in the sectoral areas, such as home affairs, justice, health, education, etc. On the other hand, the state-level AC Strategy provides the basis for the lower levels of governance to design their own AC Strategies, and adjust them to the general principles set in the state-level AC Strategy.

In this regard, the Government of the Federation of Bosnia and Herzegovina (FBiH) adopted the AC Strategy¹⁵ for the period 2016-2019 in September 2016 and the Action Plan for its implementation. The Strategy referred to the government authorities, administrative organizations, and legal entities at the level of FBiH. Cantonal governments, which represent regional level governments (10 in total) within the FBiH followed the example of the government of FBiH and adopted AC Strategies and/or Action plans for the period until the end of 2019, in accordance with the state-level strategy.

On the other hand, the level of Republika Srpska (RS) had adopted the AC Strategy of RS for the period 2013-2017 together with the Action plan for its implementation, with clearly defined anti-corruption activities and the timeline for their implementation. After the expiring of the strategic framework of the RS AC Strategy, the Government of RS has adopted a new AC Strategy for the period 2018-2022.¹⁶

APIK, as an institution in charge of the process of drafting the AC Strategy at the state level, during the second half of 2019 started with activities related to the process of drafting a new AC Strategy and Action plan at the state level for the period 2020-2024. The methodology used for the development of the new strategy was the same as during the development of the previous strategy, which included the participation of all relevant institutions from all levels of governance in BiH, as well as representatives of academia and CSOs. Transparency international in Bosnia and Herzegovina (TI BiH),¹⁷ the Centre for Investigative Journalism (CIN)¹⁸ and the Centre for Security Studies (CSS)¹⁹ participated as representatives of civil society organizations in the work of the Interministerial working group. The final draft of the new AC Strategy and Action plan for the period 2020-2024 was sent to the Council of the Ministers of BiH for adoption in the first quarter of 2020, but the new AC Strategy is not yet adopted. This situation resulted in delays in the adoption of the new strategies at the level of FBiH and the cantonal level. "The state-level strategy on anti-corruption expired at the end of 2019 and no new strategy has been adopted since. The anti-corruption strategies and action plans at all levels of government remained outdated, except in

¹⁵ Government of the Federation of Bosnia and Herzegovina (2016), Strategy for the fight against corruption 2016-2019 of the Federation of Bosnia and Herzegovina, https://fbihvlada.gov.ba/uploads/documents/strategija-1_1640952909.pdf, accessed on February 7, 2023.

¹⁶ Government of Republika Srpska (2018), Strategy for the fight against corruption in Republika Srpska, https://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpr/Documents/Стратегија_борбе_против_корупције_у_Републици_Српској_од_2018.pdf, accessed on February 7, 2023.

¹⁷ www.ti-bih.org.

¹⁸ www.cin.ba.

¹⁹ www.css.ba.

the Republika Srpska entity, and effective implementation continues to be lacking, further hampering a harmonized strategic approach across the country”.²⁰

Also, the Agency for Prevention of Corruption and Coordination of the Fight against Corruption (APIK) is responsible for the coordination and supervision of the implementation of the Strategy and Action Plan. According to the Fourth Report on Monitoring of Implementation of the AC Strategy and Action Plan for the period 2014-2019 published by the APIK²¹, it would be very hard to implement any activities that require an additional budget for their implementation without the participation of international organizations and CSOs which work in the field of AC, which indicates a lack of adequate systemic support for the implementation of AC reforms. The report also states that systemic measures for the fight against corruption were not fully and consistently implemented in order to fulfill strategic goals.

Moreover, the overview document on the level of implementation of the AC Strategy and AP for the period 2015-2019 published by Transparency International in BiH²² states that by analyzing the level of implementation of the strategy, it can be concluded that no significant steps forward were made in terms of implementation. The reason for this can be based on the absence of political will, and on the fact that in the situation of a captured state²³, the interest of political leadership is to maintain the status quo and acquired privileges and control over the public resources, processes, and institutions. The analysis also states that where results have been achieved, they are largely the result of autonomous activities of CSOs with the support and significant activity of international donors through the insurance of technical assistance. Without this, the weak results of the implementation of the strategy would be significantly worse.

BiH has signed and ratified all relevant international documents and conventions relevant to the fight against corruption, such as:

- United Nations Convention against Corruption²⁴ (signed on 16 September 2005 and ratified on 26 October 2006);
- Council of Europe Criminal Law Convention on Corruption²⁵ (of 27 January 1999, signed on 3 March 2000, ratified on 30 January 2002, and is applied from 1 July 2002);

²⁰ European Commission (October 2022), Bosnia and Herzegovina 2022 Report, https://neighbourhood-enlargement.ec.europa.eu/bosnia-and-herzegovina-report-2022_en, accessed on February 7, 2023.

²¹ APIK (2020), Forth Monitoring Report on implementation of the Anti-Corruption Strategy and Action Plan for the period 2014-2019, <http://apik.ba/izvjestaji/izvjestaji-agencije/default.aspx?id=2352&langTag=bs-BA>, accessed on February 7, 2023.

²² TI B&H (2020), Overview of the level of implementation of the Strategy and Action plan for the fight against corruption 2015-2019, https://ti-bih.org/wp-content/uploads/2022/04/Strategija-osvrt_final-1.pdf, accessed on February 7, 2023.

²³ European Commission Report on BiH for 2022 (page 11) states that „Corruption indicators further deteriorated and all levels of government show signs of political capture, directly affecting the daily life of the citizens“.

²⁴ United Nations (2004), United Nations Convention Against Corruption, https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, accessed on February 8, 2023.

²⁵ Council of Europe (1999), Criminal Law Convention on Corruption, <https://rm.coe.int/168007f3f5>, accessed on February 8, 2023.

- Additional Protocol to the Criminal Law Convention on Corruption²⁶ (ETS 191) was ratified on 07/09/2011. The Protocol entered into force on 01/01/2012, and it ensures that bribery of foreign jurors and arbitrators is criminalized unambiguously;
- Council of Europe Civil Law Convention on Corruption²⁷ (of 4 November 1994, signed on 1 March 2000, ratified on 30 January 2002, and is applied from 1 November 2003);
- UN Convention against Transnational Organized Crime²⁸ (of 15 November 2000, signed on 12 December 2000, ratified on 24 April 2002);
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism²⁹ CETS No: 198 (signed on 19 January 2006, ratified on 11 January 2008).

Good practices

- Inclusion of all levels of government in BiH as well as representatives of civil society in the process of drafting anti-corruption strategic documents.

Deficiencies

- Lack of political will for adoption of new anti-corruption Strategy.
- A Law on Whistleblowers Protection which does not provide adequate protection of potential whistleblowers.

4.1.2 Art. 6 – Preventive Anti-Corruption Body or Bodies

Based on the Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption³⁰, Bosnia and Herzegovina established the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (APIK) as an independent and autonomous administrative organization, and central body for the prevention of corruption, which reports to the Parliamentary Assembly of BiH, in accordance with Article 6 of the Convention. APIK is primarily a preventive body and institution in charge of the coordination of anti-corruption activities with other BiH bodies involved in AC on all levels of governance in the country. Article 10 of the Law prescribes the competences of the APIK, which is reduced primarily to the development of an umbrella anti-corruption policy, monitoring and implementation of the policies, initiating changes of anti-corruption laws, raising awareness on the consequences of corruption, and coordination of the fight against corruption among

²⁶ Council of Europe (2003), Additional Protocol to the Criminal Law Convention on Corruption <https://rm.coe.int/168008370e>, accessed on February 8, 2023.

²⁷ Council of Europe (1999), Civil Law Convention on Corruption, <https://rm.coe.int/168007f3f6>, accessed on February 8, 2023.

²⁸ United Nations (2004), United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>, accessed on February 8, 2023

²⁹ Council of Europe (2005), Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, <https://rm.coe.int/168008371f>, accessed on February 8, 2023.

³⁰ Law on the Agency for Prevention of Corruption and Coordination of the Fight against Corruption, Official Gazette of BiH No. 103/09 and 58/13, http://apik.ba/zakoni-i-drugi-akti/Zakoni/Zakon_o_Agenciji/default.aspx?id=195&langTag=bs-BA, accessed on February 20, 2023.

other bodies in BiH. However, the Agency has no operational jurisdiction, and therefore is not in compliance with Article 36 of the Convention.

According to the written contribution by the APIK,³¹ it has 33 employees, out of 41 prescribed by the Rulebook on internal organization and systematization of the APIK. From a total of 41 designated positions, three are appointees – a director and two deputy directors, and five are top civil servants, of which three are assistant directors and two heads of departments. Three appointed persons, 24 civil servants, and six employees are currently working in the Agency. Although the APIK has a crucial preventive role and comprehensive preventive competencies, the allocated budget is limited, and only for funding salaries, material costs, and some capital investments.

Article 23 of the Law on the Agency stipulates that all levels of government shall determine a new or existing administrative structure which, at the level at which it was established, will also create, monitor, and implement anti-corruption policies. In this regard during the previous period, entity governments, Brčko District, and cantonal governments have established “ad hoc” bodies that will work on the development, monitoring, and implementation of anti-corruption policies at the appropriate level of government. Such bodies were formed by the government’s decision and are composed of various representatives of institutions. The Commission for the Implementation of the Strategy for the fight against corruption of the Republika Srpska is composed of the ministers of various ministries, representatives of the assembly, courts, audit and other institutions. The AC Team was formed at the FBiH level, which was made up of various representatives of institutions from the FBiH. Also, cantonal governments have established similar ad hoc bodies in charge of the development, monitoring, and coordination of the implementation of AC policies.

At the lower level of government (FBiH and RS), the entity level, respective bodies with preventive competencies are the Anti-Corruption Team of the FBiH Government and the Commission for the implementation of the Anti-Corruption Strategy of the Republika Srpska. Both of these bodies are ad hoc bodies that do not represent professional bodies in charge of anti-corruption activities but are in charge of the preparation of strategic documents and monitoring their implementation. All preventive bodies at the state, entity and cantonal level are tasked to monitor, supervise and coordinate the process of implementation of anti-corruption strategic documents at all levels of government at which they were established. Those bodies lack adequate material and human resources for their work.

Hence, the APIK has been established in accordance with Article 6 of the UNCAC, while bodies at the other administrative levels in BiH are not established in accordance with Article 6 of the Convention, and most of them are established by executive as ad hoc bodies, and do not have adequate independence in the context of the provisions of the Convention.

The APIK is financed from the state budget, but the APIK’s budget is limited and the budget is related to the salaries, wages and allowances for employees, material costs and capital investments for the basic operation of the APIK.

³¹ Written contribution by the APIK, received on September 23, 2022 by e-mail.

According to the Law on APIK, all institutions and agencies at all levels of governance in BiH have an obligation to cooperate with APIK and provide APIK with all the necessary data and information as requested.

In order to establish and improve clear rules and standard operating procedures, APIK has adopted Code of conduct of employees of the APIK.³² The code covers issues like: general rules, standards and rules for managers of the institution, relations with citizens, complaints, conflict of interest, gifts, etc. APIK regularly publishes reports on implementation of the anti-corruption strategy.³³ On the other hand, the last available annual report of the Agency is the Report for 2021.³⁴

Good practices

- Establishment of specialized anti-corruption bodies at the lower level.

Deficiencies

- Bodies at the lower levels of governance are almost all ad hoc bodies, which does not provide them with enough capacities and independence for their work, in accordance with Article 6 of the Convention.

4.1.3 Art. 7.1 – Public Sector Employment

The Law on Civil Service in the institutions of Bosnia and Herzegovina³⁵ regulates the legal status of civil servants in the ministries, independent administrative organizations, as well as other institutions of BiH established by a special law. The law stipulates that the recruitment and professional career advancement of civil servants shall be based upon open competition and professional skills, and the civil service shall ensure the respect and the application of the following criteria: legality, transparency and publicity, accountability, efficiency and effectiveness, as well as professionalism and impartiality.

According to the Law on Civil Service, the Civil Service Agency of BiH is an independent administrative organization in charge of the implementation of the process of recruitment of civil servants on demand of the institutions, providing assistance to the institutions in realization of their human resource management, organizational development, as well as establishing an information system for human resource management. Also, the Civil Service Agency of BiH is in charge of the training and development of civil servants.

³² APIK (2012), Code of conduct of employees of the APIK, <http://apik.ba/zakoni-i-drugi-akti/ostali-akti/kodeksi/default.aspx?id=311&langTag=bs-BA>, accessed on April 7, 2023.

³³ Four reports on the implementation of the AC Strategy for period 2015-2019 are available at: http://apik.ba/izvjestaji/izvjestaji-agencije/Archive.aspx?langTag=bs-BA&template_id=196&pageIndex=1

³⁴ APIK (2020), Annual report of the APIK for 2019, <http://apik.ba/izvjestaji/izvjestaji-agencije/default.aspx?id=2251&langTag=bs-BA>, accessed on April 7, 2023.

³⁵ Law on Civil Service in the institutions of Bosnia and Herzegovina, Official Gazette BiH No. 12/2002, 19/2002, 8/2003, 35/2003, 4/2004, 17/2004, 26/2004, 37/2004, 48/2005, 2/2006, 50/2008, 43/2009, 8/2010, 40/2012 and 93/2017), <https://www.paragraf.ba/propisi/bih/zakon-o-drzavnoj-sluzbi-u-institucijama-bosne-i-hercegovine.html>, accessed on February 20, 2023.

Considering the constitutional arrangement of BiH, the Civil Service Agency of FBiH, established by the Law on Civil Service in Federation of BiH³⁶, and the Agency for Civil Service in RS, established by the Law on Civil Service of Republika Srpska³⁷ have similar competences related to the civil servants at the entity level.

When it comes to trainings, all three Civil Service Agencies are in charge of training civil servants at the respective level. Civil Service Agencies at the state level and in FBiH conducted 713 trainings in 2020 and 2021.

Table 4 – Number of trainings organized by the Agency for Civil Service BiH (Annual Report of the Agency for 2021 and 2020)

Year	2021	2020
# of trainings	128	110
# of civil servants trained	2915	3097

Table 5 – Number of trainings organized by the Agency for Civil Service FBiH (Annual Report of the Agency for 2021 and 2020)

Year	2021	2020
# of trainings	147	328
# of civil servants trained	4779	6.359

The Laws on Civil Service in BiH stipulate the general requirement that civil servants must meet cumulatively, namely: to be a citizen of Bosnia and Herzegovina, to be more than 18 years of age, to hold a university degree and other educational or academic qualifications of minimum level VII of professional education or higher education of the first, second or third cycle of the Bologna system of study, which is established by regulations governing the tasks of basic activities and support technical activities and conditions for their performance in the administrative bodies of the institutions of Bosnia and Herzegovina, to be medically fit for the duties assigned to the position, that he had not reached the statutory age for retirement on any grounds, or had not been granted the right to a pension of any kind, not to have been dismissed from the civil service as a consequence of a disciplinary measure at any level of governance in Bosnia and Herzegovina, refusal of taking the oath, arbitrary abandonment of the civil service or giving false and incorrect data on admission to the civil service, within three years before the date of the publication of the vacancy, that there have not been instituted criminal proceedings against that person, and that it is not covered by the provisions of Article IX.1 of the Constitution of Bosnia and Herzegovina.³⁸

³⁶ Law on Civil Service in Federation of BiH, FBiH Official Gazette No. 29/2003, 23/2004, 39/2004, 54/2004, 67/2005, 8/2006, 77/2006, 34/2010, 45/2010, 4/2012, 99/2015 and 9/2017, <https://www.paragraf.ba/propisi/fbih/zakon-o-drzavnoj-sluzbi-u-federaciji-bosne-i-hercegovine.html>, accessed on February 20, 2023.

³⁷ Law on Civil Service of Republika Srpska, RS Official Gazette No. 18/2008, 117/2011, 37/2012 and 57/2016, <https://www.paragraf.ba/propisi/republika-srpska/zakon-o-drzavnim-sluzbenicima.html>, accessed on February 20, 2023.

³⁸ This article refers to the provision that no person who is serving a sentence imposed by the ICTY and no person who is under indictment by the Tribunal may stand as a candidate for any appointive, elective, or other public function in BiH. Constitution of BiH available at

According to the Article 24 of the Law,³⁹ open competition consists of a general exam and a specialized exam. There is no specific requirement and procedures for the selection of individuals to fill certain categories of positions which are considered highly vulnerable to corruption. There are also no procedural checks in place through benchmarking performance or rotation of staff. Similarly, there is lack of analysis of the vulnerable sectors/departments in relation to certain risks.

The legislation provides for a competitive selection process to join the civil service in the four civil service systems, with adequate appeal rights, but the merit principle is not sufficiently guaranteed.⁴⁰ The Civil Service Board of Appeals, as a permanent body of the CoM of BiH, was established by the Decision of the CoM⁴¹ in accordance with Article 63 of the Law on Civil Service BiH, and is in charge of reviewing all final decisions of institutions and the Agency for Civil Service which are related to the status of civil servants. According to the Annual report of the Civil Service Board of Appeals for 2021,⁴² during 2021, the Board received 51 reports related to the competition that is implemented by the Civil Service Agency. The real challenge is the application of the recruitment process in practice. Lengthy procedures of approval for announcements at the State level and ineffective appeals procedures in the FBiH call into question the ability of these administrations to effectively fill vacancies.⁴³

Special salary laws⁴⁴ regulate salaries of civil servants at all levels. Salaries in the civil service lack transparency. At the state level, the FBiH and the Brčko District (BD), job announcements include information on the salary. Nevertheless, publicly available salary reports and information on salaries of civil servants are not easily available online. There are no publicly available government reports with salary statistics, including disaggregation by gender. Salary systems have complex structures with many supplements and allowances that make them less transparent. Internal fairness

https://www.ustavnisud.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_engl.pdf, accessed on February 27, 2023.

³⁹ Law on Civil Service BiH, Official Gazette BiH No. 12/2002, 19/2002, 8/2003, 35/2003, 4/2004, 17/2004, 26/2004, 37/2004, 48/2005, 2/2006, 50/2008, 43/2009, 8/2010, 40/2012 and 93/2017), <https://www.paragraf.ba/propisi/bih/zakon-o-drzavnoj-sluzbi-u-institucijama-bosne-i-hercegovine.html>, accessed on April 8, 2023.

⁴⁰ SIGMA (2022), Monitoring report - The Principles of Public Administration Bosna i Hercegovina 2022, <https://www.sigmaweb.org/publications/Monitoring-Report-Bosnia-and-Herzegovina-May-2022.pdf>, accessed on April 8, 2023.

⁴¹ CoM, Decision on the establishment of the Civil Service Board of Appeals, Official Gazette BiH No. 16/02 and 1/04), https://www.vijeceministara.gov.ba/stalna_tijela/odbor_drzavne_sluzbe_za_zalbe/default.aspx?id=29887&langTag=bs-BA, accessed on May 18, 2023

⁴² Civil Service Board of Appeals (2022), Annual report for 2021, https://www.vijeceministara.gov.ba/stalna_tijela/Odbor_drzavne_sluzbe_za_zalbe/Izvjestaj%20o%20radu%20za%202022.%20hrv.PDF, accessed on April 7, 2023.

⁴³ See SIGMA (2022), Monitoring report- The Principles of Public Administration Bosna i Hercegovina 2022.

⁴⁴ Law on Salaries and Remuneration in the Institutions of Bosnia and Herzegovina, Official Gazette of BiH No. 50/08 with subsequent amendments; Law on salaries and fees in the authorities of the Federation of BiH, Official Gazette of FBiH No. 45 of July 29, 2010 with amendments; Law number 02/1-021-729/18 from 4 July 2018 on salaries of employees in the administrative bodies of the RS with subsequent amendments; Law on Salaries and Compensations in Public Administration Bodies and Institutions of the Brčko District of Bosnia and Herzegovina (Official Gazette of the Brčko District of BiH No. 10/19, 12/19, 39/20, 41/20 and 13/21).

is not ensured due to a lack of well-developed job evaluation systems. Market competitiveness of salaries is not taken into consideration, and the award of one-off bonuses is insufficiently regulated and unevenly applied.⁴⁵

Good practices

- At the State level, the FBiH and the Brčko District job announcements include information on the salary.

Deficiencies

- There is a lack of clear procedures for selecting and training of officials for jobs identified as vulnerable to corruption.
- There are no procedural checks in place through the benchmarking of performance of rotation of staff.
- There is a lack of analysis of the vulnerable sectors/departments in relation to certain corruption risks.

4.1.4 Art. 7.3 – Political Financing

The Central Election Commission (CEC) is responsible for the implementation of the Law on Political Party Financing.⁴⁶ For the purpose of review, control and audit of the financial statements submitted by political parties, the CEC has created the Office for Audit of Political Parties' Financing (in accordance with the provisions of Article 14, paragraph 2 of the Law on Financing of Political Parties).

The financing of political parties in BiH is regulated by the Election Law⁴⁷, the Law on the Financing of Political Parties in BiH, and a number of by-laws. The Election Law in Chapter 15 (Campaign Financing) regulates the obligation to submit pre-election and post-election financial reports, their content, authorized submitters, the powers of the Central Election Commission (hereinafter CEC), the obligation to submit statements on the financial status of candidates, or reports of elected members of the government, and determines the maximum amount of funds that a political entity can spend to finance an election campaign.

The Law on the Financing of Political Parties regulates the manner and conditions under which political parties and members of political parties who act on their behalf provide funds for work, i.e., sources of funding, use of financial resources, prohibited contributions and activities, financial control of political parties, obligation to keep business books and submit financial reports, jurisdiction and role of the CEC, and sanctions for non-compliance with provisions are defined. However, the legal framework contains essential flaws that open up space for numerous abuses:

⁴⁵ See SIGMA (2022), Monitoring report - The Principles of Public Administration Bosna i Hercegovina 2022.

⁴⁶ Law on Financing of Political Parties, Official Gazette BiH No. 95/12 and 41/16, https://advokat-prnjavorac.com/zakoni/Zakon_o_finansiranju_politickih_partija_BiH.pdf, accessed on April 10, 2023.

⁴⁷ Election Law BiH, Official Gazette BiH No. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 77/05, 11/06, 24/06, 33/08, 37/08, 32/10, 48/11, 63/11, 18/13, 7/14, 31/16, 54/17, 41/20, 38/22, 51/22 i 67/22, https://izbori.ba/Documents/documents/ZAKONI/Izborni_zakon_PRECISCENI TEKST-bos.pdf, accessed on April 10, 2023.

- The law does not stipulate the use of specific bank accounts for all receipts and payments of political parties, and allows the possibility of using several bank accounts, which results in the use of cash and makes financial control difficult;
- There is no obligation to publish complete financial statements;
- There is insufficient transparency of accounts and activities of entities that are connected, directly or indirectly, with a political party;
- There is a lack of supervision over the costs of the parties;
- Inadequate sanctions are in place that do not correspond to the offenses committed and hence, do not have the necessary deterrent effect;
- No distinction is made between regular and campaign costs;
- The law demarcates parties from public office, placing heads of institutions in a privileged position.

Additionally, bearing in mind that the previous provisions of the Election Law did not define in detail the ban on the use of public functions and public institutions for the purpose of election promotion, it is necessary to introduce mechanisms for the prevention of misuse of public funds, public functions and public institutions.

The Central Election Commission (CEC BiH) is responsible for implementing the Law on Financing Political Parties in BiH. According to the Law, political parties are obliged to submit annual financial reports, as well as post-election financial reports to the CEC, which has the authority to verify the accuracy of income, but not other submitted data, which is why it is necessary to establish an audit of expenses.⁴⁸

Although the 2016 amendments to the law⁴⁹ expanded the competences of the CEC of BiH, this institution is still faced with the insufficient capacities of the Audit Service, which GRECO, OSCE/ODIHR, TIBIH, and the European Commission have been pointing out for many years in their reports⁵⁰ on BiH. Most of the problems in the implementation of the law and ensuring the transparency of the financing of political parties in BiH stem from deficiencies in the law itself, which must be eliminated in accordance with GRECO recommendations.

Considering that the law does not address the difference between campaign expenses and regular, operational expenses of political parties during the campaign, it is not possible to establish an independent verification of the level of campaign expenses. The current law does not contain two basic elements for the establishment of effective control over party financing: the authority to audit party expenses, and the use of unique bank accounts for political party transactions.⁵¹ During the previous years,

⁴⁸ Transparency International in BiH (2018), Monitoring of election campaign 2018 – General Elections, <https://ti-bih.org/wp-content/uploads/2022/04/TIBIH-Monitoring-Izborne-Kampanje-2018-Web-FIN.pdf>, accessed on March 3, 2023.

⁴⁹ Law on Amendments to the Election Law BiH, Official Gazette BiH, No. 31/16, <http://sluzbenilist.ba/page/akt/b32vHuiDyTI>, accessed on March 3, 2023.

⁵⁰ Council of Europe (2022), Second Addendum to the Second Compliance Report on Bosnia and Herzegovina, <https://rm.coe.int/third-evaluation-round-incriminations-ets-173-and-191-gpc-2-transparen/1680a7acc3>, accessed on March 3, 2023.

Office for Democratic Institutions and Human Rights (2022), Bosnia and Herzegovina – General Elections 2 October 2022, <https://www.osce.org/files/f/documents/0/2/536993.pdf>, accessed on March 3, 2023.

⁵¹ See Transparency International in BiH (2018), Monitoring of election campaign 2018 – General Elections.

through the monitoring of advertising in the media, TI BiH pointed out the discrepancy between the funds actually spent for election promotion and the expenses reported to the CEC.

During the three-month field and media monitoring of pre-election activities before the 2020 local elections, TI BiH determined very high costs of election promotion through means of public advertising.⁵² Due to the lack of an efficient financial control system, political parties allocate significantly more to the election campaign than they report to the CEC, and do not report to the CEC on all available income and their sources. Indicative of this is that the total costs recorded by TI BiH for the 15 largest parties exceeded the amount they stated in their reports submitted to the CEC by at least 1.46 million KM (approx. \$747 939 USD).⁵³

In previous years, the CEC of Bosnia and Herzegovina imposed a significant number of sanctions on political entities that received illegal donations from private companies that concluded public procurement contracts worth over 10,000.00 KM (approx. \$5146 USD) with executive authorities at all levels. Due to the fact that they imposed sanctions on the parties or ordered a return of donations, political parties in the election year report less and less donations received from legal entities to the Central Election Commission, which in previous years made up a significant share of political parties' income.⁵⁴ On the other hand, political parties increasingly report significant debts to certain private companies, which are not settled and which are written off after a certain time, representing the way in which parties receive prohibited contributions from legal entities, bypassing legal prohibitions.⁵⁵

In the period from 2005 to 2020, the Central Election Commission of Bosnia and Herzegovina made 548 decisions on sanctioning political parties and five decisions on sanctioning physical persons (a total of 553 decisions). 437 of these were decisions to impose fines (adding up to a total of 1,424,120, 00 KM, approx. \$732 889 USD), 114 decisions to sanction with an administrative measure denying political parties the right to run in the next elections and two administrative measures ordering political parties to pay part of the funds for charitable purposes.⁵⁶ Although the number of imposed sanctions is significant, the amount of individual monetary sanctions is low in relation to the profits that the parties make by violating the legal provisions, and therefore the current law does not have a deterrent effect for political subjects.

Misuse of public resources in the election process is a widespread phenomenon and this was shown by the monitoring conducted by TI BiH during the last election campaign. Thus, during the 2020 election campaign, TI BiH registered 2,459 different

⁵² TI BiH (November 2020), The Parties spent at least 5,9 million KM on TV and billboards alone, an increase in the misuse of public resources, <https://ti-bih.org/the-parties-spent-at-least-59-million-bam-on-tv-and-billboard-advertising-the-misuse-of-public-resources-increased/?lang=en>, accessed on March 3, 2023.

⁵³ TI BiH (2021), Monitoring of election campaign – Local elections 2020, page 20, <https://ti-bih.org/wp-content/uploads/2021/05/TIBIH-Monitoring-Izborne-Kampanje-2020-WEB-FIN.pdf>, accessed on March 3, 2023.

⁵⁴ Transparentno.ba (April 2022), SDA and HDZ donors received jobs from the state, other parties claim that no one finances them, <https://transparentno.ba/2022/04/26/donatori-sda-i-hdz-a-dobijali-poslove-od-drzave-ostale-stranke-tvrde-da-ih-niko-ne-finansira/>, accessed on March 3, 2023.

⁵⁵ See TI BiH (2021), Monitoring of election campaign – Local elections 2020, page 20.

⁵⁶ AC Monitor (2021), <https://acmonitor.ti-bih.org/bs-Latn-BA>, accessed on March 3, 2023.

examples of misuse of public resources, the most common of which are: intensification of public works, distribution of special incentives, use of premises of public institutions for the promotion of candidates, distribution of gifts/money to voters, etc.⁵⁷

The intensification of these phenomena compared to previous years is particularly worrying, so it can be stated that they have become a generally accepted pattern of behavior of most political parties in conducting the election campaign and some kind of buying voter support.

The legal framework still does not address the problem of the so-called "official campaign" which represents one of the main causes of inequality between political subjects from the ruling and opposition parties. Holders of public offices who ran for and obtained a position in the elections use their position for personal or party promotion, and TI BiH has long warned that party functions completely "merged" with public functions during the election campaign.⁵⁸

Good practices

- The Election Law establishes expenses ceilings for political subjects – political parties, coalitions and candidates – taking part in election campaigns.

Deficiencies

- The abuse of public resources is not regulated by the law.
- There are shortcomings in the law that open up space for numerous abuses, like the use of specific bank account, obligation to publish complete financial statements, lack of supervision, inadequate sanctions, etc.

4.1.5 Art. 7, 8 and 12 – Codes of Conduct, Conflicts of Interest and Asset Declarations

Codes of conduct for public officials

In Bosnia and Herzegovina, the issue of ethical codes is normatively regulated. Namely, ethical codes have been adopted and are in force for civil servants at all levels of government⁵⁹ which are transferred to employees in institutions, and deal with issues of prohibition of corrupt practices, prevention of conflicts of interest and disciplinary liability for non-compliance. Also, in BiH at different levels of government there are ethical codes for members of legislative bodies, as well as codes of prosecutorial and judicial ethics for holders of judicial functions.

The Council of Ministers adopted the Code of Conduct for Civil Servants in the Institutions of BiH. This act is a code of ethics governing the rules and principles of

⁵⁷ See TI BiH (2021), Monitoring of election campaign – Local elections 2020, page 41.

⁵⁸ See TI BiH (2021), Monitoring of election campaign – Local elections 2020, page 31.

⁵⁹ Codes of Conduct for Servants in Institutions of BiH, BiH Official Gazette No. 48/13, <http://msb.gov.ba/PDF/28112019.pdf>, accessed on March 3, 2023.

Codes of Conduct of Civil Servants in FBiH, FBiH Official Gazette No. 27/14, <http://www.fmf.gov.ba/v2/userfiles/userfiles/file/Eti%C4%8Dki%20kodeks%20za%20dr%C5%BEavne%20slu%C5%BEbenike%20u%20FBiH.pdf>, accessed on March 3, 2023.

Codes of Conduct of Civil Servants in RS, Official Gazette RS No. 83/02. http://www.podaci.net/qBiH/propis/Kodeks_ponasanja_drzavnih/K-pdsluz03v0283-0983.html, accessed on March 3, 2023.

good conduct of civil servants in their exercise of civil service. The Code contains rules and principles of good conduct of civil servants to the citizens and in mutual relations of civil servants, as well as informing the citizens about the behavior they are entitled to expect from public officials. As part of the training organized by the Civil Service Agency of BiH, training courses are organized on Ethics in Public Administration and Code of Conduct for Civil Servants.⁶⁰ According to the instruction on training for managing civil officers in the institution of BiH,⁶¹ managing civil servants are obliged to attend trainings on ethics in public administration.

Codes of conduct for public officials have the purpose of establishing the rules of conduct of public officials, to increase the degree of predictability of situations in which public officials may find themselves, in which they have dilemmas and the most frequently asked questions they face in the course of their daily work. Codes of conduct provide that irregularities related to the code of conduct are reported to the head of the institution who is in charge to initiate disciplinary proceedings against civil servants for breaching the Code. Also, the Code defines that civil servants must not be put in a disadvantageous position related to other civil servants, nor exposed to harassment while performing their duties and exercising rights in the institution after reporting a code violation. Likewise, signatory states of the UNCAC are required to establish such rules and practices that a violation of the code of ethics constitutes a disciplinary offense and a procedure by which a disciplinary measure may be imposed. In addition, this article asks the signatory states of the UNCAC to consider the possibility of establishing measures and systems that would enable public officials to more easily report acts of corruption to the appropriate authorities when they notice these acts in the performance of their duties.

Article 54, paragraph 1, item f) of the Law on Civil Service in the Institutions in BiH⁶² recognizes violation of the code of conduct as a breach of official duty.

The Parliamentary Assembly of BiH has adopted the Code of Conduct for Representatives/ Delegates⁶³ in the BiH Parliamentary Assembly, which sets the standards of behavior expected from the elected officials in exercising their duties.

There is no information available on how codes of conduct are applied in practice.

Conflicts of interest

⁶⁰ More information on training can be found on the iLearn platform established by the Civil Service Agency BiH at: <https://ilearn.gov.ba/>.

⁶¹ Instruction on Training for Managing Civil Officers in the Institutions of Bosnia and Herzegovina, Official Gazette BiH No. 26/21, <http://sluzbenilist.ba/page/akt/Wgztz5k76kin45hohz4nh78h77vpID2zR4=>, accessed on March 6, 2023.

⁶² Law on Civil Service in Institutions of Bosnia and Herzegovina, Official Gazette BiH No. 19/02, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07, 43/09, 8/10, 40/12 i 93/17, <https://www.ads.gov.ba/bs-Latn-BA/articles/82/zakon-o-drzavnoj-sluzbi-u-institucijama-bosne-i-hercegovine-integralni-tekst>, accessed on March 6, 2023.

⁶³ Parliamentary Assembly of BiH (2015), Code of conduct of Representatives/Delegates in Parliamentary Assembly of BiH, <https://www.parlament.ba/data/dokumenti/pdf/>, accessed on March 6, 2023.

Conflicts of interest are governed by conflict of interest legislation enacted at different levels. The issue of conflict of interest at the BiH level is regulated by the Law on Conflict of Interest in Government Institutions of BiH⁶⁴, which was amended in 2013. With those changes, the authority for the application of the law was placed on the Commission for Deciding on Conflicts of Interest, which is extremely politicized due to its composition and decision-making methods. These changes rendered the institution responsible for managing conflicts of interest meaningless at the BiH level and made the application of its legislation impossible, the law itself covering an extremely narrow circle of persons and functions, and containing a number of other shortcomings.

The current law does not include all holders of public offices. It does not contain clear provisions on the submission of asset declarations and control over them, nor does it contain any detailed restrictions regarding the ownership of private companies that do business with the state. In addition, the law foresees financial sanctions of suspension of payment of 30% to 50% of the net monthly salary for a period of 1 to 12 months, and other non-binding sanctions that are not appropriate in relation to the social damage caused by cases of conflict of interest.

The latest GRECO report on the implementation of recommendations in the field of preventing corruption among members of parliament clearly emphasizes that BiH has not done anything since the last report, and that it has not made progress in improving regulations in the field of conflicts of interest.⁶⁵ Also, in its latest opinion from May 2020, the EU indicated that BiH has not taken a single step towards the adoption of a new comprehensive law on conflicts of interest at the state level in accordance with international standards and GRECO recommendations.⁶⁶

The area of conflicts of interest in the FBiH is regulated by the Law on Conflict of Interest in Authorities in the Federation of BiH, the provisions of which differ to a certain extent from the state law. The most significant difference is in the scope of the persons to whom the law in FBiH applies. At the FBiH level, relatives by collateral line are not considered as close relatives. The law in the FBiH also prohibits elected officials from holding positions in public enterprises at the same time as holding public office, which is an important difference compared to the state level.

However, the key shortcoming of the current law relates to the body responsible for the implementation of the law in this entity. With the amendments to the Law on Conflict of Interest in Institutions of BiH, the competence of the Central Election Commission (CEC) to decide on issues of conflict of interest was taken away. At the state level, the authority was transferred to the newly formed Commission, while the Law on Conflict of Interest in Authorities in the FBiH was not amended to reflect this,

⁶⁴ Law on Conflict of Interest in Institutions of Bosnia and Herzegovina, Official Gazette BiH No. 13/02, 16/02, 14/03, 12/04, 63/08, 8/12, 97/13, 41/16, https://advokat-prnjavorac.com/zakoni/Zakon_o_sukobu_interesa_u_institucijama_vlasti_BiH.pdf, accessed on March 6, 2023.

⁶⁵ Council of Europe (March 2018), Fourth Evaluation Round – Compliance Report Bosnia and Herzegovina, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16808acd50>, accessed on March 8, 2023.

⁶⁶ European Commission (October 2020), Commission Staff Working Document, Bosnia and Herzegovina 2020 Report, https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/bosnia_and_herzegovina_report_2020.pdf, accessed on March 8, 2023.

which led to a situation where no institution at the FBiH level is competent to implement the law.⁶⁷

According to the current Law on Conflict of Interest in Authorities in the FBiH, the CEC of BiH is competent to decide on issues of conflict of interest, which is in contrast to the competences of the CEC of BiH which are defined by laws at the state level. Therefore, there is no institution in the FBiH responsible for the implementation of the law in this entity, and the implementation of the law has been non-existent for the past few years.

In previous reports, GRECO indicated the absence of a system for preventing and sanctioning conflicts of interest in FBiH, which represents the level of government with the largest number of public officials in BiH.⁶⁸

Given that the aforementioned changes to the law at the state level were adopted in 2013, the Law on Conflict of Interest at the FBiH level has not been applied at all for almost 10 years. Nevertheless, the monitoring of conflicts of interest carried out by TI BiH for many years shows that a large number of officials in this entity are in a conflict of interest, abusing the lack of application of the law.⁶⁹

In the Republika Srpska, the Law on Prevention of Conflict of Interest in the Authorities of the RS⁷⁰, which was adopted in 2008 and whose provisions differ from the state law, is in force. In addition, the Law is not harmonized with international standards, as warned by the EU in its opinion.⁷¹ In many of its provisions, the Law is significantly different and milder compared to the Law at the state level, which results in the inconsistency of the legal framework and the inequality of public office holders at different levels of government.

Asset declarations

The elected officials in the governmental bodies of BiH are obliged to submit asset declarations to the Central Election Commission (CEC). The forms of asset declaration are available to the public at the platform Asset Declarations of Elected Officials.⁷²

⁶⁷ Transparency International in BiH (2021), Ending impunity for grand corruption, https://ti-bih.org/wp-content/uploads/2021/04/Nacionalni-izvjestaj-2021_eng.pdf, accessed on March 8, 2023.

⁶⁸ Council of Europe (February 2016), Fourth Evaluation Round – Evaluation Report Bosnia and Herzegovina, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c4999>, accessed on March 8, 2023.

⁶⁹ Transparentno.ba (2022), Due to non-enforcement of the law, officials in BiH are in conflict of interest, <https://transparentno.ba/2022/04/05/zbog-nesprovođenja-zakona-funkcioneri-sirom-bih-u-sukobu-interesa/>, accessed on March 8, 2023.

⁷⁰ Law on Prevention of Conflict of Interest in the Authorities of the RS, Official Gazette of RS No. 73/08, https://www.sukobinteresa-rs.org/attachments/article/19/Zakon_o_sprecavanju_sukoba_interesa_u_organima_vlasti_u_RS.pdf, accessed on March 9, 2023.

⁷¹ European Commission (October 2020), Commission Staff Working Document, Bosnia and Herzegovina 2020 Report, https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/bosnia_and_herzegovina_report_2020.pdf, accessed on March 9, 2023.

⁷² The online platform Asset declaration of elected officials is published at the official website of the Central Election Commission, <https://www.izbori.ba/IKPublic>.

However, the issue is that the CEC is not responsible for the accuracy of the information contained in the form, and has no authority to act on the basis of the content specified in asset declaration and there is no validation of the provided information.

Under the Law on Conflict of Interest (Article 12)⁷³, elected officials, executive officeholders and advisors are required to file financial reports, as provided by the law and rules and regulations of the Commission for Deciding on Conflicts of Interest (CDCI). The form and the content of the financial report are determined by the Commission for Deciding on Conflicts of Interest and it consists of the following data: personal details of official and close relatives, information on public office held, current income and sources of income, property, liabilities and data on other positions (public enterprises, Agency for Privatization⁷⁴, private company, associations and foundations). They are also required to declare the positions held (in public enterprises, Agency for Privatization and private companies) of their close relatives, but not their assets and income. The CDCI has no competence to check the accuracy of the contents of financial reports or to publish their content. The CDCI submits an annual report on its work to the Parliamentary Assembly of BiH.

Good practices

- The new law on conflicts of interest at the level of Brčko District is in line with international standards.

Deficiencies

- As for state level law on conflicts of interest, the law does not provide for an independent body for deciding on conflicts of interest in accordance with international standards and GRECO recommendations.
- The current law at the state level does not include all holders of public offices and does not contain clear provisions on the submission of asset declarations and control over them.
- There is no body for the implementation of the law on conflicts of interest at the level of FBiH and complete absence of a system for preventing and sanctioning conflicts of interest.
- The law on conflicts of interest of Republika Srpska is not harmonized with international standards.

4.1.6 Art. 8.4 and 13.2 – Reporting Mechanisms and Whistleblower Protection

The issue of whistleblower protection in BiH is regulated by the laws at state, entity and Brčko District level.

⁷³ Law on Conflict of Interest in Institutions of Bosnia and Herzegovina, Official Gazette BiH No. 13/02, 16/02, 14/03, 12/04, 63/08, 8/12, 97/13, 41/16, https://advokat-prnjavorac.com/zakoni/Zakon_o_sukobu_interesa_u_institucijama_vlasti_BiH.pdf, accessed on March 6, 2023.

⁷⁴ The Agency for Privatization (FPA) at entity and cantonal level is a specialized organization performing expert, advisory, promotional, educational and other affairs related to privatization. The main task of the FPAs is the preparation and implementation of privatization procedures for enterprises under its jurisdiction.

The state Law on Whistleblowers Protection in Institution of BiH⁷⁵ provides legal protection to corruption whistleblowers who are employees of the institutions of Bosnia and Herzegovina (and the legal entities that establish the institutions of Bosnia and Herzegovina), which narrows the scope of the persons to whom the law applies. This law foresees the so-called administrative protection through an external model, or protection provided by a special independent institution - the Agency for Prevention of Corruption and Coordination of the Fight Against Corruption (APIK).

APIK, on the basis of a whistleblower report submitted in good faith, grants whistleblower status within 30 days from the day of the address, regardless of whether harmful measures have occurred or if there is only a suspicion that they might occur. A corruption reporter who requests whistleblower status does not have the option of appealing the decision rejecting the request. The most significant competence of the APIK, according to Article 8 of the Law on Whistleblowers Protection BiH, consists in the possibility of reversing a harmful action (such as changing the workplace, reducing salary, initiating disciplinary proceedings, etc.) when such an action is taken against a protected corruption reporter as a form of retaliation, or because of a submitted corruption report.

APIK can issue an instruction to the head of the institution in which the protected whistleblower is employed in order to reverse the harmful action against the whistleblower. Also, the law provides for penal provisions (in the amount of 10,000 to 20,000 KM (approx. \$5 125 to \$10 250 USD)) if the head of the institution does not act on the given instruction and does not perform a corrective measure (rectification of the harmful action).⁷⁶

In the Republika Srpska, the area of protection of corruption whistleblowers is regulated by the Law on the Protection of Persons Who Report Corruption of the Republic of Srpska,⁷⁷ which provides guaranteed protection for all employees in the public and private sector. In addition to the significantly wider range of persons to whom it applies, the law stipulates that external protection proceedings are conducted before courts of regular jurisdiction according to slightly modified provisions of the protection procedure in relation to the Law on Administrative Procedure.⁷⁸

The reporter of corruption is obliged to demonstrate the probability that the act, action or inaction identified as a harmful consequence, and which endangered or violated the rights of the reporter of corruption, put him in a less favorable position as a consequence of reporting corruption. However, the final burden of proof rests with the defendant or the employer, who must prove the legality, expediency and objective

⁷⁵ Law on Whistleblowers Protection in Institutions of BiH, BiH Official Gazette No. 100/13, <http://apik.ba/zakoni-i-drugi-akti/zastita-prijavitelja-korupcije/default.aspx?id=936&langTag=bs-BA>, accessed on March 10 2023.

⁷⁶ See Article 12 of the Law on Whistleblowers Protection of BiH, <http://apik.ba/zakoni-i-drugi-akti/zastita-prijavitelja-korupcije/default.aspx?id=936&langTag=bs-BA>.

⁷⁷ Law on the Protection of Persons Who Report Corruption of Republika Srpska, Official Gazette of RS No. 62/17, <https://www.paragraf.ba/propisi/republika-srpska/zakon-o-zastiti-lica-koja-prijavljuju-korupciju.html>, accessed on March 20, 2023.

⁷⁸ Law on Civil Procedure of Republika Srpska, Official Gazette of RS No. 58/03, 85/03, 74/05, 63/07, 105/08, 45/09, 49/09, 61/13 i 109/21, https://advokat-prnjavorac.com/zakoni/Zakon_o_parnicom_postupku_RS_Integral.pdf, accessed on March 20, 2023.

justification or non-existence of the act, action or inaction that is designated in the lawsuit as a harmful consequence suffered by the corruption reporter. One of the significant aspects of the protection provided in this way is the court's ability to impose security measures before the start of the procedure itself or during the procedure, thus protecting the corruption complainant from harmful actions such as mobbing, professional degradation, etc.

With a verdict, the court can annul a specific act, prohibit the performance or repetition of an action, or order the taking of other specific measures and actions in order to remove the harmful consequences suffered by the corruption reporter, including the restoration of the previous state, and can determine the compensation of material and non-material damage, or the publication of the judgment rendered in that proceedings in the media, at the expense of the defendant.⁷⁹

The quality of judicial protection turns out to be stronger and more substantial compared to administrative protection at the state level, because in the case of the court protection, the court can, among other things, determine compensation for damages to the applicant who is exposed to reprisals for reporting corruption. Although the deadlines are shortened and the procedure is guaranteed to be free from obstacles by somewhat modified provisions in the judicial protection procedure (revision is always allowed as an extraordinary legal remedy, for example), the proverbial slowness of the courts, the inefficiency of court procedures and the possible insensitivity of judges of regular jurisdiction to specific cases of protection (in which urgent measures are necessary) put justifiable doubt on this form of protection as well.

In addition, the definition of corruption, on which the scope of protection of the applicants directly depends, is narrowly defined in Republika Srpska (in contrast to the state level) and reduces corruption only to the quality of a criminal offense (against official duty). TI BiH has on several occasions proposed to extend the deadlines for filing lawsuits in Republika Srpska (according to the example of the Law on Prohibition of Discrimination).⁸⁰ This is because of the dire consequences suffered by whistleblowers, as well as for audit purposes, and to introduce the principle of investigation into the protection procedure to strengthen the (procedural) position of the whistleblower in court proceedings. In addition, the external model of protection would be available to a larger number of people, because according to practical experience, many people decide on this type of protection after a longer period of time has passed since taking harmful actions.

On June 6, 2018, the Brčko District of Bosnia and Herzegovina adopted the Law on the Protection of Persons Who Report Corruption⁸¹, which provides legal protection to reporters of corruption who are employees of public administration bodies and

⁷⁹ See Article 26 of the Law on the Protection of Persons Who Report Corruption of the Republika Srpska, <https://www.paragraf.ba/propisi/republika-srpska/zakon-o-zastiti-lica-koja-prijavljuju-korupciju.html>.

⁸⁰ TI BiH (2020), International Whistleblowers Day: Adopt a law in the FBiH and strengthen the legal protection of all Whistleblowers, <https://ti-bih.org/international-whistleblower-day-to-adopt-a-law-in-the-fbih-and-to-strengthen-legal-protection-of-all-whistleblowers/?lang=en>, accessed on March 20, 2023.

⁸¹ Law on the Protection of Persons Who Report Corruption in Brčko District, Official Gazette of Brcko District No. 04/18, https://skupstinabd.ba/3-zakon/ba/Zakon_o_zas--titi_lica_koja_prijavljuju_korupciju.pdf, accessed on March 20, 2023.

institutions, public enterprises, institutions and other legal entities established by the district, legal entities and entrepreneurs, as well as any other adult, regardless of employment status. This law foresees the so-called administrative protection through an external model, or protection provided by a special independent institution - the Office for Prevention of Corruption and Coordination of Activities to Suppress Corruption (Office).

Based on a whistleblower report submitted in good faith, the Office grants the whistleblower status to the person who submitted the report within 30 days from the day of addressing the Office, regardless of whether harmful actions have occurred or it is only suspected that they might occur. According to Article 8 of the Law on the Protection of Persons Who Report Corruption in Brčko District,⁸² the Office has the authority to remove the harmful action against the whistleblower that is done as a retaliation against them.

The office can issue an instruction to the head of the public administration body and institution, public company, institution and other legal entity established by the District, legal entity and entrepreneur, in order to eliminate the harmful consequences caused to the whistleblower. Also, Article 13 of the Law on the Protection of Persons Who Report Corruption⁸³ foresees fines in the amount of 1,000 to 3,000 KM (approx. \$512 to \$1 537) for the head of the institution if they do not act according to the instructions issued by the Office. The law was adopted and regulated in accordance with the law at the state level.

When it comes to the entity Federation of BiH, there is no adopted law on whistleblower protection which means that potential whistleblowers do not have any kind of legal protection.⁸⁴

The implementation of the laws at the state, Republika Srpska and Brčko District level is not achieved at a significant level. According to the last report on the work of the APIK from 2019, during that year the Agency received three requests for granting the status of a protected reporter of corruption in the institutions of BiH. The Agency, acting on these requests, granted status of a protected reporter of corruption to one individual in the institutions of BiH, while two requests were rejected due to failure to meet the conditions necessary for granting the status of a protected whistleblower in the institutions of BiH.⁸⁵

According to the information provided by the APIK on 7 May 2022⁸⁶, the total number of applications for whistleblower status is 4, and whistleblower status was granted in 2 cases, while in 2 cases the status was not granted. A very small number of persons received whistleblower status, which indicates an endemic lack of trust in the protection mechanisms provided. In the case of the state law, it is particularly

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Focus.ba, Whistleblowers in FBiH bez zaštite: Whistleblowers in fear of dismissal and retaliation (published in December 2022), <https://www.fokus.ba/vijesti/bih/prijavitelji-korupcije-u-fbih-bez-zastite-zvzdaci-u-strahu-od-otkaza-ili-mobinga/2447791/>, accessed on March 20, 2023.

⁸⁵ Annual Report of the Agency for Prevention of Corruption and Coordination of the Fight against Corruption for 2019, <http://www.apik.ba/izvjestaji/izvjestaji-agencije/default.aspx?id=2253&langTag=bs-BA>, accessed on March 20, 2023.

⁸⁶ The information was received by the APIK via the official mail of the APIK.

controversial because corruption whistleblowers who request the status of a protected applicant do not have the opportunity to appeal the decision of APIK, so everything is left to the discretionary assessment and practice of this institution.

According to the information provided by the Ministry of Justice of RS⁸⁷, during 2020 two applications for protective status were reported, where in one case external protection was partially granted, while the second case was resolved within the framework of internal protection.

Although the Law on the Protection of Persons Who Report Corruption of the Brčko District was adopted in 2018, which designated the Office for Prevention of Corruption and Coordination of Activities to Suppress Corruption (Office) as the institution responsible for the implementation of this law, the director of the Office was appointed only in 2021 and the Office began to function at full capacity in 2022. According to the information provided by the Office⁸⁸, in Brčko District, two requests for granting whistleblower status were received in 2022, and in both cases the applicants were granted whistleblower status.

Good practices

- Implementation of the Law on whistleblower protection at the level of Brčko District.

Deficiencies

- There is no Whistleblower Protection Law in place at the level of FBiH.
- There is no possibility to file an appeal against APIK's decision not to grant status of whistleblowers at the state level.

4.1.7 Art. 9.1 – Public Procurement

In BiH, the field of public procurement is regulated by the Public Procurement Law in BiH (PPL)⁸⁹, which was adopted in 2014, with the aim of harmonizing the national provisions and procedures with those of EU countries. Previously, in 2004, a decentralized public procurement system was established in BiH.

With the aim of gradually harmonizing the current Act with EU directives 2014/24/EC⁹⁰ and 2014/25/EC⁹¹, and improving the existing legal solutions, at the end of 2017, the

⁸⁷ Information received based on a request for access to information sent by TI BiH to the Ministry of Justice of RS on June 6, 2022, and information received on June 14, 2022.

⁸⁸ Information received based on a request for access to information sent by TI BiH to the Office on July 7, 2022, and answer received on July 18, 2022.

⁸⁹ Law on Public Procurement BiH, Official Gazette BiH No. 39/14 and 59/22, https://advokat-prnjavorac.com/zakoni/Zakon_o_javnim_nabavkama_BiH.pdf, accessed on March 30, 2023.

⁹⁰ Directive 2014/24/EU of the European Parliament and of the Council (2014), Official Journal of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024>, accessed on March 30, 2023.

⁹¹ Directive 2014/25/EU of the European Parliament and of the Council (2014), Official Journal of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0025>, accessed on March 30, 2023.

Working Group⁹² of the Council of Ministers (CoM) was formed to draft the Law on Amendments to the Law on Public Procurements.

More than two years after the Working Group of the CoM completed the Draft Law on Amendments to the Law on Public Procurement and after all necessary opinions were obtained in December 2020, the Public Procurement Agency of BiH (AJN BiH) submitted the text and materials of the same CoM BiH in the further procedure.

In February 2021, the Council of Ministers of Bosnia and Herzegovina approved the Draft Law on Amendments to the PPL. Although the approved Proposal for Amendments implies certain improvements, the chapter on inspection supervision was removed from it, the provisions of which would significantly strengthen the competences of the Agency in the area of prevention and suppression of irregularities in public procurement processes. This Proposal was adopted by the Parliamentary Assembly in August 2022.

Transparency International in BiH stated that despite certain improvements brought by the Law on Amendments to the Law on Public Procurement⁹³ which are primarily related to the segment of conflicts of interest, collusion and transparency, some of the key mechanisms for the prevention and fight against corruption did not find their place in this regulation.⁹⁴

Thus, even after five years of work on amendments to this law and international pressures, the mechanisms for sanctioning law breakers, both in the domain of misdemeanor and criminal liability, have not been expanded, the possibilities of protecting the public interest by competent bodies have not been expanded, political influences on appointments and the work of the members of the Office for Review of Appeals, and the further development of the e-procurement system and the accompanying transparency, were extended for another year by changes in the law.

The capacities and monitoring mechanisms of the institutions of the public procurement system in BiH have not been strengthened, which is particularly problematic from the point of view of the latest amendments⁹⁵ that were adopted in the Parliamentary Assembly of BiH and which will enable contracting authorities to increase their value by an additional 30% without conducting a new procedure.

⁹² Council of the Ministers BiH, Decision of forming a working group for drafting draft Law on Amendments to the Law on Public Procurement, Official Gazette BiH No. 83/17, <http://www.sluzbenilist.ba/page/akt/sICDNxRohz4nh78h77ohz4nh78h77PA=>, accessed on March 30, 2023.

⁹³ Law on Amendments to the Law on Public Procurement, Official Gazette BiH No. 59/22, <http://sluzbenilist.ba/page/akt/WSYn8ifsOUI=>, accessed on March 30, 2021.

⁹⁴ TI BiH (August 2020), Ovakve izmjene zakona o javnim nabavkama neće suštinski unaprijediti borbu protiv korupcije, iako je to bio prioritet EU, <https://ti-bih.org/ti-bih-ovakve-izmjene-zakona-o-javnim-nabavkama-nece-sustinski-unaprijediti-borbu-protiv-korupcije-iako-je-to-bio-prioritet-eu/>, accessed on March 30, 2023.

⁹⁵ Law on Amendments to the Law on Public Procurement, Official Gazette BiH No. 59/22, <http://sluzbenilist.ba/page/akt/WSYn8ifsOUI=>, accessed on March 30, 2021.

The legal framework defines clear procedures for participation in the tender procedure, and defines the process of checking the bidder's qualifications,⁹⁶ and the conditions that the bidder has to fulfill in order to be qualified for participation in public procurement. Articles 35, 36 and 37 of the law oblige all contracting authorities to announce and publish all relevant information related to the public procurement which enables bidders to participate in the process with sufficient time to prepare their offers. The PPL defines adequate thresholds for a competitive and open bidding procedure. According to the PPL, if the value of the procurement is lower than 50.000 BAM (27.921 USD) for goods and services and 80.000 BAM (44.675 USD) for works, except for direct agreement,⁹⁷ bidders are not obliged to provide information on their beneficial ownership as a condition for participation in public procurement. There is no publicly available information on the list of banned companies.

Through a detailed analysis of the data of the e-procurement system, the Public Procurement Agency of BiH determined that certain contracting authorities do not comply with provisions of the law related to the exemptions and do not submit reports for exemptions according to the law.⁹⁸

A lack of information on the implementation of contracts is often the main shortcoming in covering the entire procurement cycle, although this information best shows the actual costs and quality of works, services and procured products. Any deviations from the agreed conditions or the Law on Public Procurement in the phase of contract implementation, as one of the important phases of public procurement, put other bidders in an unequal position, which renders the entire system of public procurement meaningless.

Good practices

- The mandatory publication of public procurement plans on the portal and website of the institutions

Deficiencies

- The institutions in charge of monitoring the implementation of the law lack human and financial capacities to effectively fulfill this task.
- Information on the implementation of contracts, which best shows the actual cost and quality of works, is not available.

4.1.9 Art. 10 and 13.1 – Access to Information and the Participation of Society

The issue of access to information in BiH is regulated at the state and entity levels, where the state level Law on Freedom of Access to Information in Bosnia and Herzegovina⁹⁹ was adopted in 2000, and both the Law on Freedom of Access to

⁹⁶ Law on Public Procurement BiH, Official Gazette BiH No. 59/22, Section II of the Law, https://advokat-prnjavorac.com/zakoni/Zakon_o_javnim_nabavkama_BiH.pdf, accessed on March 30, 2023.

⁹⁷ Ibid, article 14.

⁹⁸ PPA website (April 2022), Bad practice in the case of exemptions from the application of the law on public procurement, <https://www.javnabavke.gov.ba/bs-Latn-BA/news/317/losa-praksa-kod-izuzeca-od-primjene-zakona-o-javnim-nabavkama>, accessed on April 3, 2023.

⁹⁹ Law on Freedom of Access to Information in BiH, Official Gazette BiH No. 28/00, 45/06, 102/09, 62/11 and 100/13, <https://advokat->

Information in RS¹⁰⁰ and Law on Freedom of Access to Information in FBiH were adopted in 2001.¹⁰¹

According to the Global Right to Information Rating,¹⁰² which measures the strength of the legal framework for the right to access information held by public authorities, based on 61 indicators, Bosnia and Herzegovina ranks at 37th place out of 136 countries with 132 out of 150 points.

The law at the BiH level is considered the most advanced in comparison to other laws, as it contains provisions on inspection supervision through the Administrative Inspectorate of the Ministry of Justice of BiH, as well as fines for offenses by responsible persons and institutions that violate the provisions of the Law. Common to legal solutions at all levels of government is that there is no special independent body that decides on appeals in the case when applicants are rejected with requests for access to information, but appeals are decided by second-level authorities according to valid administrative legal regulations, which are usually the heads of public bodies themselves. Laws in BiH apply to all public bodies of executive, legislative and judicial power, as well as to any legal entity that is owned or controlled by a public body. The laws also contain provisions on the public interest test¹⁰³, and establish the rule that all information is generally available to the public, unless one of the foreseen exceptions is determined by the public interest test.

What is conspicuously missing in the current regulations are provisions that would oblige public authorities to publish information in their possession on official websites, i.e., at no level of government do laws regulate the so-called proactive transparency. Access to information in the possession of public authorities is mainly regulated through the procedure for exercising the right to access information, which implies that citizens/legal entities must submit requests for access to information. Public bodies are obliged to appoint information officers who decide on requests for access to information, and at all levels of government there is the possibility of addressing the Human Rights Ombudsman Institution, which within its regular mandate can issue recommendations in individual cases.

When it comes to the level of RS, the Law on Freedom of Access to Information¹⁰⁴ contains similar shortcomings and elements as the state law, with the difference that it does not contain provisions on inspection supervision, which is an additional limitation in the process of exercising the right to access information. In addition, the law does not specify that institution's response to the requests for access to information are provided in the form of a decision, which is recognized by the Law on

prnjavorac.com/zakoni/ZAKON_O_SLOBODI_PRISTUPA_INFORMACIJAMA.pdf, accessed on April 4, 2023.

¹⁰⁰ Law on Freedom of Access to Information RS, Official Gazette RS No. 20/01, <https://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/muls/Documents.pdf>, accessed on April 4, 2023.

¹⁰¹ Law on Freedom of Access to Information FBiH, Official Gazette FBiH No. 32/01 and 48/11, <http://www.pufbih.ba/v1/public/upload/zakoni/1e78c-zakon-o-slobodi-pristupa-informacijama-ispravan-tekst.pdf>, accessed on April 4, 2023.

¹⁰² Global Right to information Rating Map, <https://www.rti-rating.org/>, accessed on April 4, 2023.

¹⁰³ The public interest test is a procedure that requires a public authority to weigh up the public interest in maintaining the exemptions versus the public interest in disclosure.

¹⁰⁴ See Law on Freedom of Access to Information RS, Official Gazette RS No. 20/01.

General Administrative Procedure¹⁰⁵ as an administrative act, and creates confusion in practice. Through judicial practice, however, the position has been developed in such a way that all acts decided by public authorities based on requests for access to information are administrative acts, and that judicial protection is guaranteed in relation to them.

In several cases, the courts have taken the position that the decisions of the competent authorities on requests for access to information are considered decisions, despite the fact that the Law of the RS¹⁰⁶ designates them as letters, and that public authorities often try to present them as informal acts that are only forwarded or withhold certain information.¹⁰⁷

Nevertheless, it is necessary to specify the law in this regard, in order to reduce the possibility of arbitrary interpretation of the law and ensure timely access to information of public interest.

The law at the FBiH level does not differ significantly from the other two levels of government, except that, as in the Republika Srpska, inspection and penal provisions are missing. Other provisions that define the test of public interest, public bodies to which the law applies, procedure, and other issues, are of similar or identical content. The most significant shortcoming is that there are no provisions for the so-called proactive transparency.

As with the other two levels of government, the law can be considered moderately developed, primarily because it refers to a wide range of public bodies that are obliged to act according to it.

The Human Rights Ombudsman Institution of Bosnia and Herzegovina is responsible for monitoring the application of the law, and in their annual reports they provide data on the number and type of complaints related to the violation of the right to access to information. Based on these data, there is a noticeable downward trend in the number of appeals filed in the procedure of obtaining access to information of public importance.

Thus, in 2021 the Ombudsman received 304 complaints related to the violation of the right to access to information and issued 74 recommendations to the competent authorities. The Ombudsman received 231 complaints related to irregularities in access to information in 2020, 275 in 2019, and as many as 340 complaints of this nature in 2018.¹⁰⁸

¹⁰⁵ Law on General Administrative procedure RS, Official Gazette of RS No. 12/02, 87/07, 50/10 and 66/18, <https://www.paragraf.ba/propisi/republika-srpska/zakon-o-opstem-upravnom-postupku.html>, accessed on April 4, 2023.

¹⁰⁶ See Law on Freedom of Access to Information RS, Official Gazette RS No. 20/01.

¹⁰⁷ TI BiH(2015), Positive court judgments on free access to information, <https://ti-bih.org/positive-court-judgments-on-free-access-to-information/?lang=en>, accessed on April 4, 2023.

¹⁰⁸ The Institution of Human Rights Ombudsman of Bosnia and Herzegovina (2022), Annual report on activities of the Institution of Human right Ombudsman of BiH for 2021, https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2022041413104027bos.pdf, accessed on April 4, 2023.

The institution of the Ombudsman for Human Rights of BiH prepared a special report on the application of the law at all levels of government,¹⁰⁹ highlighting a number of obstacles that make the application of this right difficult. According to the Ombudsperson's assessment, the most significant shortcomings for the effective application of the law are:

- A high level of uneducated staff in public bodies;
- misunderstanding of the law on freedom of access to information; not understanding the relationship between the public body and citizens and that public bodies are citizens' services;
- poor explanations of the decisions made on the request for access to information;
- failure to make decisions within the deadlines established by law;
- non-compliance with the legal provision on the form of decision-making (written decision with all elements in accordance with the provisions of the law on (general) administrative procedure);
- the decision-making act does not contain provisions on the possibility of filing an appeal and the name of the second-instance authority that decides on the appeal;
- Rejected requests for access to information often do not contain an explanation of the reason for the refusal or an explanation of the public interest test, but most often contain only a statement that information is refused due to the protection of the privacy of third parties, etc.

Deficiencies in implementation noted by the Ombudsman, as well as a large number of complaints from citizens to this institution, indicate that the enjoyment of the right to access information is significantly hampered, despite the fact that special laws in this area have been applied for more than two decades.¹¹⁰

The law in the Republika Srpska does not foresee the possibility of inspection supervision over the application of the law by public authorities. In addition, a significant obstacle in the effective implementation of the law is the insufficient precision of the law regarding the type of act that responds to the request for access to information. According to the information collected by the Ombudsman Institution in BiH from public authorities, "the imprecise definition of the type of act for deciding on requests for access to information in public authorities" represents a challenge for public authorities in the RS.¹¹¹

In addition to this, the Institution of the Ombudsperson noted that the challenges in practice are also the unclear definition of the second-level body for handling complaints and the issue of charging the costs of duplicating materials when providing

¹⁰⁹ The Institution of Human Rights Ombudsman of Bosnia and Herzegovina (2019), Special report on experiences in the application of the law in BiH, https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2020020515415139bos.pdf, accessed on April 4, 2023.

¹¹⁰ Bosnia and Herzegovina Radio Television (2020), Access to information is difficult for the media and the public, <https://bhrt.ba/medijima-i-javnosti-otezan-pristup-informacijama/>, accessed on April 4, 2023.

¹¹¹ See The Institution of Human Rights Ombudsman of Bosnia and Herzegovina (2019), Special report on experiences in the application of the law in BiH.

photocopies to applicants.¹¹² It is important to note that in addition to the challenges faced by public bodies, the Institution of the Ombudsperson found that in the application of the law at all levels there is a delay in the decision-making process in the first and second instance proceedings. Furthermore, the adoption of decisions that do not contain all elements prescribed by law, the formal fulfillment of requests in the absence of ensuring real access to information, and the practice of denying access to information without actually conducting the public interest test are all common phenomena.¹¹³

The Law on Freedom of Access to Information in FBiH also does not contain provisions on inspection supervision and penal provisions, which affects the application of the law in this entity, similarly to the RS. Deficiencies in the application of the legal framework, which the Institution of the Ombudsman for Human Rights in BiH observed during the supervision of the application of the law at all levels of government, are also present in the FBiH entity.

However, in this entity, the lack of education of information officers on the implementation of the public interest test and knowledge of the application of the Law on the Protection of Personal Data¹¹⁴ in the context of providing access to information of public importance stands out. In particular, the Institution of the Ombudsperson, based on the information collected in the FBiH, noted challenges in the interpretation of these legal provisions, especially with the cantonal authorities, which significantly affects the guaranteed right of access to information of public importance.¹¹⁵ The institution of the Ombudsperson also records from year to year a number of cases in which public authorities refuse access to information citing the provisions of the Personal Data Protection Act, without truly conducting the public interest test.¹¹⁶

TI BiH's research on the application of the Law on Freedom of Access to Information¹¹⁷ showed that a large number of ministries and local governments, including those from the FBiH, still do not comply with requests for access to information within the time limit stipulated by the Law.

For example, TI BiH sent 122 requests for access to information to relevant ministries at all levels of government, as well as the largest municipalities (including those from FBiH), asking them to provide information on the funds they have allocated to civic associations and foundations. 73 public authorities acted within the deadline stipulated by the law, 49 authorities acted after the legal deadline, while 24 authorities ignored the request, which is why TI BiH submitted complaints due to the "silence of the administration".

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Law on Protection of Personal Data, Official Gazette of BiH No. 49/06, 76/11 and 89/11, <https://www.paragraf.ba/propisi/bih/zakon-o-zastiti-licnih-podataka.html>, accessed on April 4, 2023.

¹¹⁵ See The Institution of Human Rights Ombudsman of Bosnia and Herzegovina (2019), Special report on experiences in the application of the law in BiH.

¹¹⁶ Ibid, page 15.

¹¹⁷ Transparency International in BiH (2021), Report on implementation of the Law on free access to information in 2021, <https://ti-bih.org/wp-content/uploads/2021/09/Izviestaj-FOI-2021-odvoijene-tabele-WEB.pdf>, accessed on April 4, 2023.

Civil society organizations and media are very active in the promotion of the right of access to information. The latest campaign implemented by Transparency International in BiH aimed to raise awareness among citizens about the right of access to information, as well as influence institutions to implement the law. An exhibition was held in three cities in BiH.¹¹⁸ CSOs regularly organize public events¹¹⁹ on the International Right to Know Day on 28 September, in order to promote and advocate for better implementation of the right of access to information.

Since 2014, Bosnia and Herzegovina is a member of the Open Government Partnership,¹²⁰ an international initiative which aims to provide an international platform for domestic reformers committed to make their governments more open, accountable and responsive to citizens. As a result of the activities conducted within the OGP framework, the Council of the Ministers BiH in 2018 adopted Policy¹²¹ and Standards of Proactive Transparency.¹²² These standards define a list of information that institutions should have available at their official websites.

The Ministry of Justice BiH, with support of the European Union, has developed the web application entitled “eKonsultacije”,¹²³ with the goal of providing complete and timely information to citizens and representatives of civil society online about the process of passing certain legal acts, and ensure a reliable communication channel for their participation in the creation of public policies.

Good practices

- There is a policy and standards of proactive transparency at the state level.
- Bosnia and Herzegovina is part of the OGP initiative.
- The application “eKonsultacije” at the state level, which provides citizens and representatives of civil society with complete and timely information online about the process of passing certain legal acts, and ensures a reliable communication channel for their participation in the creation of public policies.

Deficiencies

- There is no specialized independent body that decides on appeals in the case when applicants’ requests for information are rejected.
- The misuse of the law on the protection of personal data by public institutions as an excuse for not providing information.

¹¹⁸ Deterktor.ba (2022), An exhibition of negative responses from institutions for access to information of public importance opened in Banjaluka, <https://deterktor.ba/2022/09/19/izlozba-odgovora-kojim-se-odbija-pristup-informacijama-od-javnog-znacaja-transparency-international/>, accessed on April 4, 2023.

¹¹⁹ TI BiH (2022), TI BiH organizes conference called „Access to public information in BiH – between law and practice“, <https://ti-bih.org/ti-bih-organizuje-konferenciju-pristup-javnim-informacijama-u-bih-izmedju-zakona-i-prakse/>, accessed on April 4, 2023.

¹²⁰ Open Government Partnership official website: <https://www.opengovpartnership.org/>

¹²¹ Council of the Ministers BiH, Policy of proactive transparency in public administration in BiH, <https://parco.gov.ba/wp-content/uploads/2016/07/politika-proaktivne-transparentnosti-u-javnoj-upravi-u-bih-1.pdf>, accessed on April 4, 2023.

¹²² Council of the Ministers BiH, Standards of proactive transparency in public administration in BiH, adopted on December December 3, 2018, available at: https://bhas.gov.ba/data/Dokumenti/pdf/StandardiProaktivneTransparentnostiUJavnojUpraviUBiH_HR.pdf, accessed on April 4, 2023.

¹²³ Official website of online platform e-Konsultacije: <https://ekonsultacije.gov.ba/>.

4.1.10 Art. 11 – Judiciary and Prosecution Services

In BiH, there are four, organizationally and by competence, completely independent judicial systems. According to the constitutional structure of BiH, the judicial system is divided into several levels, with the fact that these levels are not interconnected. The High Judicial and Prosecutorial Council (HJPC) is the single self-management body for the entire judiciary. The mandate of the HJPC covers all four judicial systems and is intended primarily to shield the judiciary from political influence and guarantee the proper functioning of all judicial systems. However, over the past years, the HJPC has begun to become part of the problem it is tasked to avoid due to the allegations of politicization and conflict of interest, inefficient organization, as well as failure to implement reforms. The result of this is the fact that in December 2020, the president of the HJPC resigned due to the scandals.¹²⁴

The EU Report on BiH for 2022¹²⁵ states that “The independence and impartiality of the judiciary did not improve. Executive and legislative authorities failed to adopt additional safeguards [...]. Rules of appointment, disciplinary responsibility, career development and conflict of interest of judges and prosecutors continues to be applied inconsistently and with overly broad discretion.” According to current legislation, the rules of conflict of interest for the entire judiciary are still non-binding. When it comes to the asset declarations of judges, prosecutors and HJPC members, the current system only gathers information on paper without carrying out any checks and this information is not available unless the holder of the justice function voluntarily gives permission to publish the financial statement/asset declaration.

The law on the HJPC¹²⁶ prescribes the process of appointment and dismissal of judges and prosecutors. The law stipulates that the HJPC is an independent institution, which appoints and dismisses judges and prosecutors in courts and prosecutors’ offices at all levels, except judges of constitutional courts at the state and entity levels.

A comprehensive legal framework enables the public, either general or professional, to get information about the functioning of the judiciary and on the decisions made by the courts. On the one hand, general laws on freedom of access to information also refer to the judiciary, while on the other procedural laws (criminal procedure and civil procedure) introduce the principle of publicity in the work of the judiciary. Public access to all court actions is established as a general rule. Legal restrictions exist and are related to the public aspect of proceedings, existing in cases of criminal proceedings against minors and marital and family disputes. However, in practice, the culture of transparency and accountability is under-developed.

¹²⁴ N1info.ba (2020), Milan Tegeltija officially resigned from the position of president of HJPC (December 2020), <https://n1info.ba/vijesti/a495641-milan-tegeltija-i-sluzbeno-podnio-ostavku-na-mjesto-predsjednika-vstv-a/>, accessed on April 6, 2023.

¹²⁵ European Commission (2022), Commission Staff Working Document – Bosnia and Herzegovina 2022 Report, <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Bosnia%20and%20Herzegovina%20Report%202022.pdf>, p. 19, accessed on April 6, 2023.

¹²⁶ Law on High Judicial and Prosecutorial Council of BiH, Official Gazette of BiH No. 25/04, 93/05, 48/07 i 15/08, <https://www.paragraf.ba/propisi/bih/zakon-o-visokom-sudskom-i-tuzilackom-savjetu-bosne-i-hercegovine.html>, accessed on April 6, 2023.

The HJPC adopted the Code of Ethics for Judges¹²⁷ and Code of Ethics for Prosecutors¹²⁸, which prescribes guidelines, criteria and standards of anti-corruption measures for the holders of the justice functions. According to the law, the Office of the Disciplinary Prosecutor, as a part of HJPC with a certain degree of autonomy in its work, is in charge of the initiation of disciplinary procedures. Disciplinary responsibility is decided by the disciplinary commissions (first instance and second instance) composed of judges and prosecutors who are members of the HJPC. The HJPC may choose a designated number of judges and prosecutors from the judiciary who will be members of disciplinary commissions.

According to the EU Report on BiH for 2022¹²⁹ disciplinary procedures continue to have little dissuasive effect. The Report underline importance of providing the Office of the Disciplinary Counsel with a sufficient degree of separation of premises and infrastructure to enjoy a sufficient degree of autonomy and independence, guarantee the confidentiality of data, and protect staff and witnesses from intimidation risk. The Report states that there has been no progress in addressing the shortcomings concerning the composition and potential conflict of interest in the formation of disciplinary panels. Targeted amendments to the Law on HJPC which foreseen a special regime of disciplinary accountability of all members of the HJPC, including its President, that were rejected in the Parliamentary Assembly of BiH in May 2022, were again adopted by the CoM of BiH on the session held on May 11, 2023.¹³⁰

Good practices

- The general rule to allow for public access to court actions.

Deficiencies

- There is a lack of independence and impartiality of the judiciary.
- There are shortcomings in the law related to the judiciary, such as inconsistent implementation of the rules related to the rules of appointment, disciplinary responsibility, career advancement and conflict of interest.
- The Office of Disciplinary Counselor lacks sufficient independence and autonomy.

¹²⁷ HJPC, Code of ethics for judges, Official Gazette BiH No. 13/06, 24/15 and 94/18, <https://portalfo1.pravosudje.ba/vstvfo-api/vijest/download/49137>, accessed on April 6, 2023.

¹²⁸ HJPC, Code of ethics for prosecutors, Official Gazette BiH No. 13/06 and 32/15, <https://portalfo1.pravosudje.ba/vstvfo-api/vijest/download/47692>, accessed on April 6, 2023.

¹²⁹ See European Commission (2022), Commission Staff Working Document – Bosnia and Herzegovina 2022 Report, page 20.

¹³⁰ Council of the Ministers of BiH, Press rls: Council of Ministers of BiH Holds Its 11th Session, available at:

https://www.vijeceministara.gov.ba/saopstenja/sjednice/saopstenja_sa_sjednica/default.aspx?id=40377&langTag=bs-BA, published on May 11, 2023, accessed on May 18, 2023

V. Recent Developments

Positive developments

High-level government representatives from the Western Balkans jurisdictions met in Ohrid, North Macedonia, on 25 June 2021, to adopt a Regional Roadmap on Anti-Corruption and Illicit Finance¹³¹ Flows to fast-track the implementation of the United Nations Convention against Corruption (UNCAC) in support of the achievement of Sustainable Development Goal 16 in the Western Balkans jurisdictions.

This platform builds on the momentum generated in the context of the Berlin process, which was set up in 2014 as a platform for high-level cooperation between high-level official representatives of the Western Balkan Six (WB6) and their peers in Berlin Process host countries. The process also involves the EU institutions, international financial institutions and the region's civil society, youth and private sectors. The goals of the Berlin Process are: (1) Resolution of outstanding bilateral and internal issues, (2) Achieving reconciliation within and between the societies in the region, (3) Enhancing regional economic cooperation, and (4) Laying the foundations for sustainable growth.¹³² On 9 July 2018, the United Kingdom welcomed Interior and Security Ministers of the Berlin Process to London for the first meeting of such Ministers convened under the auspices of the Process. The Ministers concluded that corruption, money laundering and financial crime are shared security threats and committed to deepening regional cooperation and strengthening collective response. They agreed that the Security Commitments Steering Group (SCSG) would be established to drive delivery of security commitments agreed through the Berlin Process.

The roadmap focuses on three shared priority areas that were determined through jurisdiction-based consultations and a regional consultation that took place in Ohrid, North Macedonia, from 21 to 23 June 2021, where representatives from the Ministries of Interior, Ministries of Justice, Financial Intelligence Units, Procurement Agencies, Prosecutors, specialized Police, Anti-corruption Agencies, and sports experts agreed on the Roadmap at the technical level.

Each jurisdiction re-affirmed its commitment to implement three goals in the following areas:

- Goal 1: Preventing and countering corruption in public procurement, including in times of crises;
- Goal 2: Further strengthening conflict of interest and asset declaration system; and
- Goal 3: Enhancing criminal justice responses to corruption and economic crime through the creation of a regional network of specialized prosecutors, law

¹³¹ UNODC, Regional Anti-Corruption and Illicit Finance Roadmap for the Western Balkans Jurisdictions, adopted in Ohrid, North Macedonia on 25 June 2021, available at: [https://www.unodc.org/documents/southeasterneurope/AC and Illicit Finance Roadmap Full 25.06 PDF.pdf](https://www.unodc.org/documents/southeasterneurope/AC_and_Illicit_Finance_Roadmap_Full_25.06_PDF.pdf) accessed on May 16, 2023.

¹³² More information on Berlin process available at: <https://www.berlinprocess.de/>, accessed on May 16, 2023.

enforcement and financial intelligence units in the Western Balkans Jurisdictions.¹³³

Negative developments

The National Assembly of Republika Srpska adopted the draft law on the amendments to the criminal code that would re-criminalize defamation on March 23, 2023.¹³⁴ This is an alarming development that would endanger free speech and allow for the prosecution of journalists, civil society and anyone who speaks up. “The Council of Europe, the OSCE’s mission to Bosnia, and an EU delegation all called for the amendments to be dropped, pointing out that they were against international recommendations. The U.S. Embassy in Bosnia said repressive authorities use such laws to the detriment of journalists.”¹³⁵

Among the first international organizations to react was the Delegation of the European Union to BiH that stated that the criminalization of defamation would represent a setback in terms of guarantees of freedom of expression as a fundamental right. “Criminalization of defamation would seriously affect the efficiency of civil society and the freedom of expression and media in RS, which would negatively affect progress in fulfilling the key priorities stated in the opinion of the European Commission on BiH application for EU membership.”¹³⁶ The Draft Law is currently in the process of public consultation, in which media and CSOs, including Transparency International in BiH, are inviting the proponents to withdraw the proposed solution and note that the public discussion can only be used to withdraw the disputed provisions, because any criminalization of defamation represents a big step back in the protection of freedom of expression.¹³⁷

Besides the criminalization of defamation and insult, the Government of Republika Srpska on the same day, March 23, 2023, adopted a Draft Law on Special Register and Publicity of the Work of Non-Profit Organizations in Republika Srpska, that is based on the Russian model and would require nonprofit organizations funded from abroad and active in Republika Srpska to register and report on their work and submit their “financial flows” to the Ministry of Justice of RS. A group of 33 CSOs reacted to the draft law by sending open letter¹³⁸ and stating that the Draft Law on the Special

¹³³ See UNODC, Regional Anti-Corruption and Illicit Finance Roadmap for the Western Balkans Jurisdictions.

¹³⁴ N1info (March 23, 2023), Bosnia’s Serb entity parliament adopts controversial Criminal Code Changes, available at: <https://n1info.ba/english/news/bosnias-serb-entity-parliament-adopts-controversial-criminal-code-changes/>, accessed on May 16, 2023.

¹³⁵ Radio Free Europe (March 2023), Journalists Protest Possible Criminalization of Defamation in Republika Srpska, <https://www.rferl.org/a/republika-srpska-defamation-protests-bill/32317348.html>, accessed on April 12, 2023.

¹³⁶ Capital.ba (2023), Criminalisation of defamation leads to bowed heads and closed mouths <https://www.capital.ba/kriminalizacija-klevete-vodi-ka-pognutim-glavama-i-zatvorenim-ustima/>, accessed on April 11, 2023.

¹³⁷ Transparency International in BiH (March 23, 2023), Adoption of the Draft Amendment to the Criminal Code of the Republic of Srpska, criminalizing defamation and insult is a prelude to open repression, available at: <https://ti-bih.org/adoption-of-the-draft-amendment-to-the-criminal-code-of-the-republic-of-srpska-criminalizing-defamation-and-insult-is-a-prelude-to-open-repression/?lang=en>, accessed on May 16, 2023.

¹³⁸ Transparency International in BiH (April 11, 2023), Reaction to the Draft Law on the Special Register and Publicity of the Work of Non-Profit Organizations: Attack on the Work of Citizens’

Register and Publicity of the Work of Non-Profit Organizations represents discrimination against citizen associations financed by foreign donors and clearly shows that the intention of authorities in the Republic of Srpska is to restrict the work of organizations that criticize their work. Also, the group of CSOs stated that this draft law represents a continuation of activities aimed at suppressing freedom of expression and association, which began with the initiative to criminalize defamation and insult, and continued through attacks on journalist, activists and NGOs.

Associations, available at: <https://ti-bih.org/reaction-to-the-draft-law-on-the-special-register-and-publicity-of-the-work-of-non-profit-organizations-an-attack-on-the-work-of-citizens-associations/?lang=en>, accessed on May 16, 2023.

VI. Recommendations

1. Urgently adopt an Anti-Corruption Strategy and Action Plan at the state level.
2. Ensure that authorities from lower governance levels implement the same or a similar methodology to the Agency for Prevention of Corruption and Coordination of the Fight against Corruption (APIK)'s in drafting strategic documents.
3. Ensure that the necessary material, human and financial resources are available to the APIK and other anti-corruption bodies on entity and cantonal levels to carry out their functions.
4. Implement an analysis of the vulnerable sectors/departments and adopt clear procedures for selecting and job training for jobs identified as vulnerable to corruption based on that analysis.
5. Improve the monitoring of political party financing and election campaign funding by strengthening the capacities of the Audit Department within the Central Election Commission.
6. Implement the GRECO recommendations related to the financing of political parties.
7. Adopt clear legal solutions regarding the abuse of public resources in election campaigns.
8. Harmonize and unify the legal framework for the financing of political parties and election campaigns.
9. Publish online information on the assets and interests of elected officials, executive office holders and advisors who fall under the Law on Conflict of Interest, as well as public servants with respect to personal data protection legislation.
10. Strengthen the legal framework related to conflicts of interest by establishing independent bodies for deciding on conflicts of interest at all levels of governance in accordance with international standards.
11. Harmonize legislation on conflicts of interest at all levels of governance.
12. Ensure necessary independence and impartiality of bodies in charge of the implementation of the conflict of interest legislation.
13. Implement promotional activities related to the application of codes of conduct.
14. Adopt a law on whistleblowers protection at the level of Federation of Bosnia and Herzegovina in accordance with international best practices.
15. Adopt necessary changes of legislation to establish protected reporting channels for whistleblowers at all levels of governance in Bosnia and Herzegovina.
16. Increase the capacities of the Public Procurement Agency and Procurement Review Body in charge of monitoring the implementation of the law.
17. Harmonize criminal laws with regard to criminal offenses of abuse in public procurement, with special emphasis on the equal responsibility of contracting authorities and bidders.
18. Ensure that records on implemented contracts are published on the public procurement portal.
19. Ensure that information on the implementation of the contracts is publicly available.
20. Establish an independent specialized body that decides in cases when applicants' requests for access to information are rejected.

21. Adopt changes in the law at all levels which would include obligatory proactive transparency, in accordance with the Policy and Standards of proactive transparency.
22. Increase activities related to the promotion of the right of access to information by institutions.
23. Increase the capacities of institutions in the implementation of the law on access to information.
24. Harmonize laws on freedom of access to information at all levels of governance.
25. Implement the concept of the “eKonsultacije” application at lower levels of governance in Bosnia and Herzegovina, which would oblige institutions to obligatorily undergo public consultation processes for all legal acts prepared by the institution.
26. Adopt changes of the Law on the High Judicial and Prosecutorial Council related to the integrity of the judiciary, in accordance with reports published by the EU, related to the improvement of the rules regarding appointment, disciplinary responsibility, career development and conflict of interest of judges and prosecutors.
27. Increase the level of transparency of disciplinary procedures by the High Judicial and Prosecutorial Council and the publication of information during the disciplinary process.

VII. Annex

7.1 Table on information requests

Identification number	Institution	Date of request	Date of answer	Information requested	Information provided
434/22	Ministry of Justice of RS	June 6, 2022	June 14, 2022	Number of reports and cases of whistleblowers in 2021	Yes
436/22	Office for Prevention of Corruption and Coordination of Activities on fighting Corruption	July 5, 2022	July 18, 2022	Number of requests for whistleblower protection	Yes
435/22	APIK	July 5, 2022	July 15, 2022	Number of protected whistleblowers	Yes
E-mail request	APIK	April 22, 2022	April 22, 2022	Information on UNCAC Second Review Cycle in BiH	Yes
E-mail request	APIK	September 21, 2022	September 22, 2021	Information on resources of APIK for 2021	Yes
E-mail request	APIK	May 22, 2023	May 22, 2023	Information on involvement of CSO and private sector during UNCAC Second Review Cycle	Yes

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