



## **SIGMA**

### **Support for Improvement in Governance and Management**

A joint initiative of the OECD and the European Union, principally financed by the EU

# **ASSESSMENT**

## **Bosnia and Herzegovina**

### **2010**

#### **TABLE OF CONTENTS**

DEMOCRACY AND THE RULE OF LAW .....	2
CIVIL SERVICE AND ADMINISTRATIVE LAW .....	6
INTEGRITY .....	9
PUBLIC EXPENDITURE MANAGEMENT AND CONTROL .....	11
PUBLIC PROCUREMENT .....	14
POLICY-MAKING AND CO-ORDINATION .....	19

This document has been produced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union, and they do not necessarily reflect the views of the OECD and its member countries or of the beneficiary countries participating in the Sigma Programme

## DEMOCRACY AND THE RULE OF LAW

The economic situation and consequent fiscal difficulties will have a negative impact on the timing and feasibility of Public Administration Reform (PAR) actions. The authorities may rely more heavily on donor funds to pursue PAR activities, thus making donor co-ordination even more necessary. Current public administration reform efforts are likely to have little impact on real administrative performance because the focal problems are political rather than administrative. The exception may be the Republika Srpska, where the entity's public administration is steadily improving if compared with the other entities, but it still needs major reforms if its governance system is to be aligned with mainstream EU Member States.

### ***Democracy***

The underlying reason for major deficiencies in the governance system is the lack of respect for fundamental democratic tenets (individual political rights versus ethnic or group-based), the disrespect of the law and existing institutions by major actors, whether they be parliament, the executive or the judiciary, or civil society and its organisations. This is a matter of democratic and legal culture. The international community, which itself sometimes overrides constitutional constraints in order to pursue political objectives (however laudable those might be), should cease promoting legal and managerial solutions that do not fit the stage of development of the institutions that exist in BiH or its constitution. Some partial solutions to problems may undermine the rule of law and make current tensions more acute. For example, the international community exercised strong political pressure to present the need for a unified police force as a European standard, when it is not, and when the BiH constitution allows the entities to create their own particular police corps, whereas the common institutions do not have that competence under the Dayton Peace Agreement.

The current electoral system and the institutions formed thereof have been found (again) to be in contradiction of the European Charter of Human Rights, as has been reiterated by the European Court of Human Rights<sup>1</sup>.

The freedom of the media has been further endangered since the last assessment. The Republika Srpska (RS) Government recently approved a subsidy for local media from the Entity budget which amounts to 5 million convertible marks. Reportedly, only the Swiss-owned newspaper Euroblic rejected the subsidy. In the current context, the opposition parties in the RS have only limited possibilities to make their voice heard in the media.

### ***Rule of law***

The extent to which the public governance system adequately respects the Rule of Law (i.e., a set of principles that require a separation of powers between the judicial, executive and legislative branches of government, compliance with the law by government, individuals and economic

---

<sup>1</sup> Recently in the case *Sejdic and Finci v. Bosnia and Herzegovina* (22 December 2009)

operators, the proper functioning of the judiciary and the consistent application of fair procedures by the administration) remains a serious source of concern.

The poor quality of legislation is still a common problem. Major reasons for insufficient quality of legislation include: a fragmented governance system with multiple veto points; deficient law drafting capacity in ministries and administrative bodies; inadequate consultation with regulated communities; poor translations of European laws and adoption of laws drafted by international consultants from alien contexts resulting in a system rich in written laws but poor in laws that effectively regulate in accordance with their intended purpose; inadequate attention to implementation issues during drafting; constrained potential for parliament to scrutinise government proposals adequately.

The international community should better co-ordinate its efforts to ensure a coherent style throughout the legal framework, to make it comprehensive, consistent and transparent. The legal tradition derives from continental European law; there is now a mixture of legal styles from various continental as well as common law traditions. The incompatibilities amongst different laws and legal styles have weakened consistency, accountability and enforcement. They provide scope for subjective interpretation of law, while leaving some parts of the governance framework unregulated. The different legal styles create inconsistent and inappropriate institutions and hinder the development and understanding of democracy, professionalism, transparency, and accountability.

Implementation of laws remains a problem. This is exacerbated because the social and political role of the law is not fully understood. Frequently, public sector institutions do not hesitate to disregard legal provisions or binding procedures as they see fit. This problem seems to be a matter of legal culture, which needs to gradually evolve through a long-term process.

### ***Constitution***

The Dayton constitutional set-up was decisive in ending the war on BiH's territory, but deprived local politicians of responsibility and real accountability, as these were assumed by the international community, mainly through the Office of the High Representative (article 5 Annex X of the General Framework Agreement). This set-up is an unsuitable basis for an effective democratic state, as it pre-empts the possibility of creating a sufficiently empowered central state, while enshrining an ethnic and religious-based polity. Furthermore, the current Constitution has generated an extraordinary and unmanageable collection of legal orders with 14 governments, including the State, the Federation, Republika Srpska (RS) and the cantons (not counting Brčko). The constitutional system distributes veto rights widely amongst political actors and over numerous "veto points" on a multiplicity of so-called "vital national<sup>2</sup> interests". The system is inimical to rational decision-making and prevents the emergence of a habit of political compromise inherent to any democratic regime. The State has, in reality, almost no power to modify the power sharing arrangements, which are protected by the international community. An assessment of the effectiveness of the functioning of the State cannot be decoupled from an assessment of the functioning of the international community, its capacities, and the checks and balances under which it operates. The international community has tried several times, since 2006, to achieve a more workable constitutional set-up but has so far not succeeded. BiH's current constitutional set-up therefore continues to be incompatible with the current requirements for EU membership.

---

<sup>2</sup> Meaning Bosniak, Croat or Serb communities

***Parliament***

The legislative function of the Parliaments is directly affected by the weaknesses of the Constitution and the weak professional policy capacities of both the international community and the governments. The religiously and ethnically based distribution of parliamentary seats, based on 1991 census data, and recurrent ethnic-based voting by the electorate, not only reduces the Parliaments' public legitimacy, but also their ability to contribute solutions to the actual problems affecting the country: poverty, unemployment, ethnic and religious hatred and a dysfunctional public administration and other institutions.

***Government***

The system of multiple governments with radically opposed political agendas is aggravated by the weak influence and power of the central institutions of the State. The large reform plan – the implementation by the State, Entities, and the Brčko District of a joint programme to reform their Centres of Government (the "Blueprint Project") – is delayed (still in a tendering process).

A Commission on European integration, chaired by the Director of the Directorate of European Integration, manages European Integration (EI). 7 working groups on European integration have been formed. The idea of establishing 14 working groups, in line with the Stabilisation and Association Agreement, has been abandoned, and the plan is now to establish 35 working groups in line with the Negotiating Chapters. There has been some strengthening of coordination mechanisms. Some State ministries established Units for European Integration, but this process is not yet complete.

***Public administration***

The public administration is overall characterised by its ineffectiveness at the State level and by its politicisation in RS and FBiH. The multiplicity of governments, and their internal staffing and organisations, make governance as a whole a severe drain on national resources. The notion of public management – which means skills, authority, responsibility and accountability – is not understood; the merit principle is not assured in staffing and staff are under-qualified. Since the last Sigma assessment, positive developments in civil service and administrative law have generally been limited and uneven across BiH, with Republika Srpska progressing more rapidly than the State level, FBiH, and the Brcko District. Efforts to reform the public administration in BiH have little or no political support from the domestic political forces and have failed to address the acute problems of the administration.

Public expenditure management developments in BiH over the last year were mainly influenced by a Standby Agreement (SBA) with the IMF, to address a severe drop in public revenues and the fragility of the FBiH's position in particular. The arrangement calls for a range of reforms in both entities and requires (among other measures) the adoption of a new Law on Salaries for public sector employees, a Law on Fiscal Responsibility to ensure that no law is adopted without prior analysis of the fiscal implications, and a range of legislation regulating the issue of transfer payments for war veterans and other social categories. The SBA also requires cuts to the wage bill, budget adjustments, and some amendments to the organic budget laws.

However, the lack of co-ordination between the different levels of government in the budget-setting process (e.g. agreement on appropriate fiscal parameters) and at the budget execution level (e.g. lack of co-ordination in the development of treasury systems), together with weak budget planning and management capacities at all levels, seriously weakens the system.

No real progress can be observed with regard to Public Internal Financial Control (PIFC). The most important developments over the last year have been the finalisation of the three PIFC policy papers and the adoption of the BiH's PIFC policy paper in December 2009. The adoption of the policy papers in the entities is still pending. The introduction of PIFC may be inhibited by the lack of understanding and delegation of responsibilities within public organisations. The overall PIFC system shows unbalanced development. External audit has developed strongly at the technical level (supported by the Swedish International Development Agency), but this has had limited impact on the reality of the budget execution. The supreme audit institutions (SAIs) have no constitutional standing and their reports are not fully used by the Parliaments.

The public procurement reform has been stalled for a number of years. Since 2007 all initiatives to modernise the Public Procurement Law have failed in parliament. The regulation of concessions and public-private partnerships (PPPs) remains worrisome; it is fragmented and lacks transparency and openness.

### ***Judiciary***

No legal certainty can be guaranteed in a country where there is no supreme judicial instance empowered to unify legal doctrine and impose its legal interpretation on lower courts. The organisation of administrative justice needs to be done countrywide and needs to be established as a clearly designed hierarchy of courts. The current set-up for administrative justice is unfit to guarantee that the various existing administrations will abide by the rule of law. A countrywide unified law on administrative justice is needed and it should endow administrative courts with full jurisdiction and create better instruments to oblige administrative authorities to "refer the file" to the court and to ensure more effective enforcement of administrative court rulings pronounced against public authorities. However, the constitutional basis for such a court is missing. The relevant authorities have not commenced the implementation of the National Judicial Reform Strategy agreed in the framework of the Peace Implementation Council and Council of Europe.

### ***Anti-corruption***

Corruption remains a very serious problem and government efforts to combat it have been weak. The complexities of the institutional set-up are not conducive to a reduction of corruption or an efficient anti-corruption policy. On the contrary, the complexity and weaknesses of BiH's public governance system make it prone to capture by private (or other) interests.

In 2009, BiH adopted the National Anti-Corruption Strategy 2009-2014 (ACS) and a relevant Action Plan (AP). The ACS focuses on: the capacity-building of the new agency for corruption prevention; preventive measures of a generic nature, such as simplified and stricter administrative rules and procedures and greater transparency and accountability; education and training; law enforcement; co-ordination; and international co-operation. In December 2009, the Parliamentary Assembly of BiH adopted the Law on the Agency for Corruption Prevention and Co-ordination of the Fight against Corruption. However, the establishment of the Agency has been delayed.

## CIVIL SERVICE AND ADMINISTRATIVE LAW

### *Main Developments since the Last Assessment*

Bosnia and Herzegovina (BiH) is a country without a state. All of the problems in the political-administrative framework are derived from this situation. Since the last SIGMA assessment, positive developments in the civil service and in the administrative legal framework have generally been limited and uneven across Bosnia and Herzegovina, with the Republika Srpska (RS) progressing more rapidly than BiH (state level), the Federation of BiH (FBiH) and the Brčko District. Under the pressure or with the assistance of donors, limited steps have been taken towards reaching a consensus. This has been the case, for instance, of the usage of the (donor-financed) Public Administration Reform Fund. The Public Administration Reform Co-ordinator's Office (PARCO) has started harmonising the Memorandum of Mutual Co-operation between the various constituents of BiH.

A Standby Agreement (SBA) with the IMF was signed in 2009 to deal with a severe drop in public revenue and in particular with the fragility of FBiH. The SBA calls for a range of reforms in BiH and requires (among other measures) the adoption of a new Law on Salaries for public sector employees. It also requires budget cuts for the wage bill and budget adjustments. In the **civil service** area, marginal positive changes have been made since the last SIGMA assessment. Central HRM institutions have adopted a uniform HRM information system. This project was supported and promoted by the international community. Its adoption by the various administrations shows that there is a potential for intra-BiH co-operation as long as legal action is not required. In Republika Srpska, limited technical progress in civil service management can be reported: the implementation of performance management has started and a training budget has been earmarked. The civil service is still politicised. At state level, a Code of Ethics is being developed but has not yet been adopted. In the summer of 2009, the FBiH Civil Service Agency (CSA) lost its authority in the West Herzegovina canton when the latter decided to enact its own civil service law and form a separate CSA. This decision set a dangerous precedent. The Constitutional Court of the Federation of BiH recently ruled that the decision was not unconstitutional, basing its argumentation on the fact that the Federation's Constitution stipulates that employment matters relating to civil servants fall under the '*social policy*' segment, which is governed by both cantonal and Federation administration (FBiH Constitution, article 3, paragraph 2). Technically, the Court's decision could have gone either way, as there is no exclusive authority over this matter. Furthermore, the FBiH Constitutional Court's written explanation bears no mention of the likely consequences of such a decision (i.e. that each of the ten cantons could form its own civil service agency and enact an autonomous civil service law, which would lead to the further fragmentation of the political-administrative system).

In the area of **administrative law**, the Parliamentary Assembly adopted in 2009 an amendment to the Constitution of Bosnia and Herzegovina establishing the Brčko District as a unit of local self-governance. This constitutional amendment was one of the five objectives set by the Peace Implementation Council (PIC) for the closure of the Office of the High Representative in Bosnia and Herzegovina (OHR). Numerous technical laws and by-laws or amendments to existing laws have been adopted at BiH State, FBiH, RS and Brčko District levels since Sigma's 2008 assessment. In the Federation of BiH, the Project on Simplification of Activities related to the Issuance of Permits and Inspection Regime was launched and a Chief Federation Administrative Inspector was appointed.

Improvements were made in nine public administration institutions, including descriptions of current positions and new rulebooks on internal organisations. In addition, the decision of the Constitutional Court of the Federation of BiH on the enactment of the West Herzegovina Civil Service Law and the formation of a separate civil service agency at canton level constitutes a possible legal precedent by permitting the lower legislative body (canton) to nullify the legislation of the higher legislative body (Federation of BiH). The consequences of such a decision could be far-reaching and could further weaken BiH's already top-heavy, costly and ineffective administrative system. The RS Government enacted the Rules of Procedure of the Government of Republika Srpska (*Official Gazette of Republika Srpska*, No. 10/09). The RS National Assembly adopted the Law on Amendments to the Law on Republic Administration, which finalised the harmonisation of this law with the Law on General Administrative Procedures (*Official Gazette of Republika Srpska*, No. 11/09). The procedural aspects enabling the reliable, effective scrutiny of the public administration have been reinforced by the passage of the Law on Administrative Inspection (*Official Gazette of Republika Srpska*, No. 01/09). The Rulebook on the Contents and Manner of Maintenance of Records on Inspection Supervision undertaken by Administrative Inspectors is also being introduced, and the Rulebook on the Shape, Appearance, Contents and Manner of Issuing of Official Identification of the Administrative Inspector has been adopted (*Official Gazette of Republika Srpska*, No. 20/09). The Work Programme of the Administrative Inspection for 2009 was also established. The Government of Republika Srpska enacted, during its 113th session of 26 February 2009, the Decree on the Principles for Internal Organisation and Systematisation of Jobs in the Administrative Bodies of the Republika Srpska and the Decree on the Categories and Titles of Civil Servants and the Decree on Jobs of the Employees (*Official Gazette of Republika Srpska*, No. 18/09). The Law on Amendments and Supplements to the Law on Administrative Procedure of the Brcko District was adopted. (*Official Gazette of the Brcko District of Bosnia and Herzegovina*, No. 36/09). This law, which provides for electronic submissions and other possibilities of conducting administrative procedures electronically, represents a considerable step forward in the setting-up of an effective client-oriented public service.

Attempts to adopt a Constitution to replace the Dayton Peace Agreement have failed.

### **Main Characteristics**

The disorganisation of public institutions and wasteful administration are two of the main characteristics of BiH's administrative legal framework and civil service systems. Other international organisations have made similar analyses of the situation. The administrative system is burdensome, expensive and contradictory across the various levels of government. The vested interests of the BiH constituents have resisted changes to the Dayton Peace Agreements (DPA) for longer than initially envisaged, hampering the much needed progress towards the establishment of a modern and efficient government. The few developments since SIGMA's previous assessment of the civil service and administrative legal framework in BiH confirm that the system is heading in the direction of a continuous struggle to enlarge competencies, at all levels and both horizontally and vertically, thereby creating a difficult legal and political/administrative system. Ethnic divides are exacerbated in BiH. They mask political patronage and cronyism in the public administration, which are detrimental to its professionalism. BiH suffers from all of the governance problems of the former Yugoslavia (for example, the lack of delegation), but these issues can only be addressed once the DPA has been reformed. In the meantime, there is room to work on technical, lower-level improvements.

### **Reform Capacity**

Efforts to reform the public administration have received little or no political support from domestic political forces and have failed to address the administration's acute problems. These

problems include inadequate human resources, overlapping competencies, lack of co-ordination between and across levels of government, absence of a consensual or co-operative administrative culture, and continuous political interference in the hiring and management of civil servants.

BiH's institutional complexity makes reform almost impossible. A complex and inefficient administrative structure slows down decision-making processes and is responsible for top-heavy public spending. The lack of consensus on the nature of the state contributes to the slow and uneven administrative transformation in BiH. Many of the public governance reforms are donor-driven. In the absence of strengthened co-ordination, foreign input to reforms at various levels might even increase the existing fragmentation and inconsistencies of the administrative systems of BiH.

Problems also result from BiH's current political/administrative structure, which does not allow for arbitration between competing interests. Given the practical absence of generally accepted arbitration mechanisms, decision-making is based on consensus-building at all levels (therefore with multiple veto points), from canton and entity to state level. The protection of so-called "Vital National Interests" (established - but not defined - by the Dayton Peace Agreement) allows communities to block decision-making in parliament and in most governments. Several decisions of the Constitutional Court have restricted the scope of such actions in recent years, but the "Vital National Interests" continue to paralyse the decision-making process. Many of the attempted reform policies have been internationally imposed or negotiated under international supervision, while implementation has been left to inadequate BiH institutions and to politicians who opposed the reforms. Most of these reforms would not stand without the persistent pressure of the international community.

In light of the current constitutional limitations, the role of the National PAR Co-ordinator (PARCO) in ensuring progress in this area remains positive and has been crucial for the success of any reforms.



## INTEGRITY

### ***Main Developments since the Last Assessment***

Corruption remains a very serious problem in Bosnia and Herzegovina (BiH), and governmental efforts to combat it have been weak. In 2009, BiH adopted the National Anti-Corruption Strategy 2009-2014 (ACS) and a relevant Action Plan (AP). The ACS focuses on: capacity-building of the new agency for corruption prevention; preventive measures of a generic nature, such as simplified and stricter administrative rules and procedures and greater transparency and accountability; education and training; and law enforcement, co-ordination and international co-operation. It is hoped that this strategy will be implemented and thus avoid the fate of the previous strategy for the Fight against Organised Crime and Corruption adopted in March 2006, which, according to the *Nations in Transit 2009* report “was not implemented, and all the deadlines have expired”.<sup>3</sup>

In December 2009, BiH’s Parliamentary Assembly adopted the Law on the Agency for Corruption Prevention and Co-ordination of the Fight against Corruption. The establishment of the special commission in charge of the nomination of the Agency’s director was delayed. On 5 May 2010, the Deputy Minister of Security was appointed by the House of the People as acting head of the Agency. The working group’s first meeting is scheduled to take place in the week after 17 May 2010, with the objective of elaborating a work plan and developing the rulebook and a budget outline. Once the Agency becomes operational, Bosnia and Herzegovina will have met the international standard regarding the existence of a body in charge of preventing corruption, as expressed in article 6 of the United Nations Convention against Corruption. Through its monitoring and analytical and advisory competencies, the Agency will have the potential to play an important role in the identification of risks and signs of possible corrupt behaviour in the public administration. However, it remains to be seen how quickly and effectively the Agency will become operational and achieve the expected results. It also remains to be seen how effective the co-operation will be between the Agency and its counterparts at the entity level, as the law requires that the entities designate new or existing bodies for the prevention of corruption.

In the civil service, some progress has been made in terms of civil servants’ awareness of the harmfulness of corruption. According to the 2009 report of the Public Administration Reform Co-ordinator’s Office, one-third of the planned activities have been implemented, although with delays. Various institutions are developing their own codes of ethics. However, a code of ethics for civil servants at the national level does not exist, and Republika Srpska has not met the Council of Europe’s Group of States against Corruption (GRECO) recommendation to limit the movement of civil servants into the private sector. Recent amendments to the Law on Prevention of Conflict of Interest in Republika Srpska have led to some changes, but the restrictions apply only to elected representatives and to executives or advisors who, after exercising public functions, are appointed to positions as directors or members of managerial and supervisory boards of commercial companies. This measure is insufficient, as it does not address all categories and levels of civil servants.

---

<sup>3</sup> *Nations in Transit 2009*, Freedom House, p. 141. [www.freedomhouse.org/uploads/nit/2009/Bosnia-final.pdf](http://www.freedomhouse.org/uploads/nit/2009/Bosnia-final.pdf)  
This website was last accessed on 3 March 2010.

Amendments to the legal framework and the implementation of the Law on Conflict of Interest, the Financing of Political Parties and the Election Law are required to close the loopholes and fill the gaps that create opportunities for corrupt activities. The Election Law provides inadequate mechanisms for the timely detection of the illegal enrichment of elected officials and lacks specific mechanisms that would control the accuracy of data on property status submitted to the Central Election Commission (CIK) BiH. The Law on the Financing of Political Parties has not yet been adopted in the FBiH, and the corresponding RS Law remains silent on key issues, such as defining the categories of expenditures that parties can cover from budget funds.

### **Main Characteristics**

The existence of a highly complex constitutional structure, parallel agencies at various levels of governance, and the continuous importance of ethnic cleavages in politics (including civil service appointments) all complicate the consolidation and implementation of a comprehensive and energetic anti-corruption policy in BiH.

BiH's score in Transparency International's Corruption Perceptions Index was only 3.0 (out of 10.0), and it was ranked 99<sup>th</sup> in 2009, far behind all of the EU Member States as well as the other countries in the region. Freedom House's *Nations in Transit 2009* report gives BiH a score of 4.50 (with a score of 7 as the lowest), which represents a slight deterioration from the period 2006-2008 (4.25). BiH's efforts in implementing anti-corruption reforms have so far been judged as being very limited. With respect to the application of the UN Convention against Corruption, little progress has been achieved in recent years, except for the adoption of the Law on the Agency for Corruption Prevention and Co-ordination of the Fight against Corruption. GRECO's report indicates that three-quarters of its recommendations have not been implemented and that those implemented so far have been unsatisfactory.

Political will to tackle corruption appears to be weak. Despite various indications of serious corruption affairs, no corruption-related convictions of high-level officials have taken place so far. Institutions that do make efforts to fight corruption appear somewhat isolated. Illegitimate political interference with anti-corruption activities is commonplace.

### **Reform Capacity**

The adoption of comprehensive strategies to combat corruption (2009-2014), the creation of a central Agency for Corruption Prevention and Co-ordination of the Fight against Corruption, changes in the legislation, and the signature of international agreements do not automatically result in an immediate improvement in the fight against corruption in BiH. The dramatically high level of corruption has not been reduced in the last few years.

The complexities of the institutional set-up derived from the Dayton Peace Agreement are not conducive to the reduction of corruption or to the implementation of an efficient anti-corruption policy. On the contrary, the complexity and weaknesses of BiH's public governance system make it prone to capture by private (or other) interests.

## PUBLIC EXPENDITURE MANAGEMENT AND CONTROL

### *Main Developments Since Last Assessment*

**Public expenditure management** developments in Bosnia and Herzegovina (BiH) during the last year were mainly influenced by the signing of a Stand-by Agreement (SBA) with the IMF, to address a severe drop in public revenues and the fragility of the Federation of Bosnia and Herzegovina's position in particular. The arrangement calls for a range of reforms in both entities and requires, among other measures, the adoption of a new Law on Salaries for public sector employees, a Law on Fiscal Responsibility for the Federation of Bosnia and Herzegovina (FBiH) to insure that no law is adopted without prior analysis of fiscal implications and a range of legislation regulating the issue of transfer payments for war veterans and other social categories. It also requires budget cuts to the wage bill and budget adjustments. Some progress has been made with regard to required cuts in salaries, benefits and transfers which aim to reduce public expenditure recurrent costs. Substantial progress has been made on improving reporting on fiscal data through the introduction of regular consolidated fiscal reporting for all levels of government in Bosnia and Herzegovina (BiH), including of extra budgetary funds performed by the Indirect Tax Authority's Macroeconomic Analysis Unit (MAU). A working group for consolidated fiscal reporting was established within the Fiscal Council and it is comprised of representatives from the ministries of finance, the Central Bank and the MAU. In March 2010, the Republika Srpska (RS) Government adopted a Pension System Reform Strategy and the RS Ministry of Finance is establishing a Department for Analyses and Projections of the Social Welfare System. In December 2009, the FBiH Government adopted changes and amendments to its Organic Budget Law stipulating that no legislation can be adopted without an analysis of financial implications. However, the budget deficit targets for 2009 were not met because of revenue shortfalls. More time is needed for structural adjustments to show tangible results.

There has been no real progress in the area of **public internal financial control (PIFC)**. The most important developments of the last year was the finalisation of the three PIFC policy papers (BiH, FBiH, RS) and the adoption of the BiH PIFC policy paper in December 2009. The adoption of the entities policy papers is still pending. In RS, five new employees were hired during the first quarter of 2010 and compose the staff of the CHU along with the head of the unit. Twenty internal audit units have now been established in RS. CHUs at state level or in the FBiH are not yet staffed. The FBiH Ministry of Finance has drafted a new Rulebook on internal organisation that provides for the establishment of the CHU within the FBiH's Ministry of Finance, and a vacancy for the recruitment of the Assistant Minister that will head the CHU was published in May. Nine internal audit units have been established in FBiH, 5 will be established shortly and another 4 are planned. The establishment of internal audit units thus seems to be underway, but work on improving internal control and financial management of budget users has barely started. At state level, the Council of Ministers adopted a Decision regarding the establishment and tasks of the CHU, but no staff has yet been appointed.

In the area of **external audit**, the three SAIs continue to perform well but still lack impact on the public financial management. In 2009, the Coordinating Board issued Guidelines for Performance Audit, a Strategy for Human Resource Development and an Exit Strategy to guarantee the sustainability of the Cooperation Project between BiH's SAI and the Swedish National Audit Office (SNAO). The establishment of Committees for Audit improved all three parliaments' interest in the

work of SAIs and their capacity to deal with audit reports. The Committee for Audit of the BiH Parliamentary Assembly for the first time recommended budget changes based on audit reports and the Audit Committee of the FBiH Parliamentary Assembly became significantly involved in securing adequate funding for SAI/FBiH in the 2010 budget. The audit offices in BiH and FBiH are now building capacity for performance audit. The audit offices are all aware of the need to be laid down in the Constitution and the SAI/BIH has started discussions with the Parliamentary Constitution Committee to ensure that any future changes will include provisions for the SAI.

### ***Main Characteristics***

One of the main characteristics of **public expenditure management** in Bosnia and Herzegovina has been the lack of co-ordination between the different levels of government. However, the successful functioning of the Indirect Tax Authority and the strengthening of the Fiscal Council, coupled with the need to address the financial crisis (especially in the Federation) seem to be slowly leading to better co-ordination. If the process suffers a set-back, the present difficulties, exacerbated by the global economic downturn, will be more difficult to address. One of the main weaknesses of the public sector in the area of public expenditure management is the lack of capacity, both in terms of insufficient number and skills of employees, coupled with a generally low motivation. This capacity has recently been stretched very thin due to increased demand for activities as result of the economic crisis and the SBA. In the FBiH, the Budget Department was particularly strained, with 3 rebalances of the budget in one year, changes to the [Organic] Budget Law, and the preparation of the loan to cantons and coordination with them on eligibility requirements.

A key problem for the introduction of a modern **PIFC** system lies in the arrangements that currently exist for the management of public expenditure, and in particular in the lack of delegation of responsibilities within public organisations, where practical recognition of the need for managers to be responsible for obtaining value for money does not exist. Financial management and control currently rests on the controls exercised through the different treasury systems. Internal audit within budget organisations at state level and in the entities is at an early stage of development. Some progress was made in the number of internal audit units established (twenty-nine in total for both entities), but as CHUs are either not established or are working with limited capacity, guidance and support for further development is lacking. Concerns about staffing exist at all levels, but the most significant problems can be found in the FBiH, where the civil service recruitment policy does not seem to be working well. Thus, PIFC is still at an embryonic stage, and making the basics of the concept work in BiH will require considerable time.

**External audit** in Bosnia and Herzegovina rests on a sound legal basis but is not yet anchored in the country's constitutions. The work of the Co-ordination Board of Audit Institutions continues to have a positive impact on the three SAIs and on the development and implementation of common approaches. Following the establishment of Committees for Audit in all three parliaments, which are specifically dedicated to the examination and follow-up of SAIs audit reports, there has been an improvement in the use of audit reports, and the recognition of the roles of SAIs in Parliament has improved. The executive has made, and still makes, attempts to exert influence, in particular on the financial independence of the SAIs, with the latest examples being the changes and amendments to the BiH Law on Ministries and the draft Salaries Law in FBiH. This shows that the independence of the SAIs in BiH is still fragile and that constant attention from both SAIs' management and the assemblies is required in order to maintain their institutional and financial independence.

### ***Reform Capacity***

In the area of **public expenditure management**, the sheer number of reforms envisaged under the SBA conditions will certainly strain the existing capacities within all ministries of finance and in

the FBiH's in particular. The fact that the MoF did not work on the Law on Salaries of employees in the public administration, citing a lack of resources and leaving the Ministry of Justice to handle the task, is a clear sign of the situation. Given these capacity constraints, there are doubts as to how many of these reforms will be implemented, and if those that will be of sufficient quality to have a positive impact. BiH's Fiscal Council currently works well, but it risks being overwhelmed by donors' initiatives when it is seen as a good vehicle for different coordination activities. Finally, the reform of social transfer payments reform has collapsed many times before under the political pressure of the war veterans organisations. If the Government backtracks on this for political reasons (elections will be held in 2010), all expected positive outcomes could be jeopardised.

Concerning **PIFC**, the slow pace of progress, with the adoption of the two entities' policy papers still pending and the CHU's only partial functioning, the political commitment for reform still seems to be low, with priorities currently lying elsewhere. The adoption of the policy papers in the FBiH and RS would allow the political level to send a positive signal. The establishment of the CHU Coordinating Board will be crucial for the creation of a harmonised approach at all levels. However, the most difficult part of the reform, one that will require considerable time and efforts, involves changing the approach to managerial responsibility, and in particular developing an awareness at management level of responsibility for the organisation's efficiency and for active delegation of tasks within the public administration. Finally, the lack of adequately trained staff will continue to be an obstacle to reform. The expected EC technical assistance will have to focus not only on internal audit but also on financial management and control basics, and ensure that both areas take into account weak absorption capacity. This entails being particularly careful in the sequencing of reform steps.

The **External Audit** institutions are in a privileged position compared to the rest of the public administration and ministries of finance in particular. They have significant in-house capacity and desire for continuous improvement and change. SAI/BIH has taken concrete steps to ensure that the SAI question will be included in any future constitutional reform. The entities SAIs can follow this example and launch initiatives in their respective parliament. However, this is unlikely to happen in 2010 as elections will be held and attempts to change the Constitution might not be viable. The SAIs should use the newly established Committees for Audit and support them (by sharing information and providing analysis when needed) to enable the Committees to react to legal changes and to provide opinion on laws that could affect the independence and work of the SAIs themselves. With the long-term bilateral support of the SNAO coming to an end in 2010, taking stock through a peer-review and further defining the next steps for further development might be needed, especially to enhance the contribution that the SAIs can make in improving the quality of the management of public funds in BiH.

# PUBLIC PROCUREMENT

## ***Main Developments Since Last Assessment***

There has been no significant progress in the area of public procurement and concessions. There has been no change in the legislative framework of public procurement. Because of the political deadlock, all the initiatives undertaken in recent years to modernise the Public Procurement Law (PPL) failed to go through Parliament. A new draft PPL, prepared in late 2008, was rejected by Parliament on 23 July 2009. A new text of amendments to the PPL, based on the draft PPL rejected in 2009, was proposed in February 2010 by the House of Representatives. The new draft is currently (April 2010) going through the parliamentary procedure, but prospects for its approval remain unclear.

In November 2009, the Public Procurement Agency (PPA) initiated an overhaul of secondary legislation (most of the corrections considered are of technical character; some amendments proposed aim at strengthening procurement discipline in public institutions). However, at the time of writing (April 2010), the amendments to the secondary legislation were still under discussion.

In October 2009 the PPA introduced new statistical tools (based on an online system for collecting information on contracts awarded, including low-value contracts-). The new system should assist provide assistance in the preparation of future annual reports on the public procurement market.

A new system of electronic publication of notices is in preparation and is planned to be operational as of 1 June 2010). However, since the full implementation of the new electronic tools would require some changes in the (not yet adopted) PPL, it is not clear if and when the new system will be fully implemented as planned.

There has been no significant progress in the area of concessions and Public Private Partnerships (PPP). The system remains highly fragmented, with separate regulations at the state, entities, and cantons levels. All these regulations significantly deviate from EU standards in terms of transparency and access to the market. Amendments to the Concessions Law of Republika Srpska adopted in September 2009 do not remove the main discrepancies and do not bring the legislation closer to the relevant EU provisions.

There is currently no available EU technical assistance for BiH's public procurement and concessions/PPPs institutions, except for support for the development of the electronic system of publication of notices.

## ***Main Characteristics***

The Public Procurement Law adopted in 2004 generally complies with the main principles of the EU public procurement system (with the exception of domestic preferences), although several discrepancies remain (resulting mainly from the fact that the PPL had been modelled on the old EC Public Procurement Directives in force prior to 2004).

The most significant differences with the *acquis* include:

- The existence of domestic preferences for local companies (10% price preference), resulting in discrimination against foreign companies. The decision of the BiH Council of Ministers (adopted on 26 February 2009) extends the duration of preferences until the end of 2012, except for companies from CEFTA countries who enjoy preferential treatment as of May 2010,
- Lack of new procurement techniques and instruments introduced in the EU in 2004 (framework agreements, competitive dialogue, electronic auction, social and environmental considerations),
- Slightly different scope of application (private utilities operating on the basis of special or exclusive rights are not included, but all public undertakings are included, regardless of the sector they deal with),
- Lack of a more flexible system allowed for the utilities sectors by Directive 2004/17,
- Differences in the procurement award procedures (e.g. the restricted procedure, the accelerated procedures).

The implementation of the PPL must be improved. The central public procurement institutions (PPA and Procurement Review Body -PRB) are not sufficiently proactive in disseminating information on the public procurement system and in providing contracting authorities (and economic operators) with practical assistance. The PPA has not published any guidelines or other operational tools since 2007. The PPA's training activities seem to be diminishing. The PRB still does not publish its decisions (despite a legal requirement to make them available on-line).

The administrative capacity of contracting authorities and the professional ability of procurement officers to properly implement the system remain unsatisfactory.

BiH's business community perceives the practice of public procurement practice as frequently unprofessional, prone to corruption and political pressure.

The existing legal framework for **concessions** is characterised by fragmentation. The award of concessions by competent authorities is regulated by concessions laws and accompanying laws and decrees in force simultaneously at state, entity and cantonal levels (14 laws altogether). All the laws diverge substantially from EU requirements, in particular with regard to fundamental principles of the EC Treaty. The system dramatically lacks transparency and openness. There is a tendency to award contracts even for big infrastructural projects by using an "unsolicited proposal method" (single-source contracting). The lack of open and competitive processes means an opportunity to invite additional potential candidates and to expand the basis for competition is missed. This in turn is likely to lead to a lack of real price competition, as tenderers are under little pressure to deliver better value for money, both in terms of concession fees and quality of delivery. On the other hand, the concessions legislation does not provide for sufficient legal protection of the rights of economic operators, since there is no independent review of the concessions award procedure.

The administrative set-up for regulating and managing concessions appears to be extremely complex. Relatively large institutions (Concessions Commissions) are replicated at each level of government – state, regional (entities), and local (cantons). The administrative cost of the system is high. The competences of the various institutions are not clearly defined and tend to overlap.

***Reform Capacity***

Although Bosnia and Herzegovina's public procurement system was developing in the right direction four-five years ago when the first Public Procurement Law was adopted, there are obvious signs of weakness and inertia. No serious reform of the public procurement system has been successfully implemented since 2005, and it is not certain whether the latest, rather modest attempt to improve the legal framework will be successful. The main reasons for that failure can be found in BiH's political deadlock (members of parliament from RS keep proposing changes aimed at establishing separate institutions (PPA and PRB) in the entities (Republika Srpska and Federation of BiH) instead of single institutions established at the BiH State level; this proposal is rejected by the Bosniak and Croat sides) and the lack of genuine political commitment to change the situation. Amendments aiming at closer harmonisation of the PPL with the *acquis* are currently (April 2010) once again in the parliamentary procedure (the third attempt since 2007). This is yet another test of the existence of political will in parliament to undertake serious reforms of the public procurement system in line with the EU requirements.



PROCUREMENT/CONCESSIONS STATISTICS for 2009<sup>i</sup>

<b>A. Number of contracting entities<sup>ii</sup></b>		
NIVO BIH	56	
NIVO FBiH	1100	
NIVO RS	565	
NIVO BD	18	
Total number of contracting entities	1739	
<b>B1. Awarded<sup>iii</sup> public contracts/Contracting entities</b>		
	<b>Total (BAM)</b>	<b>Total %</b>
NIVO BIH	110.430.920,83	5,20
NIVO FBiH	1.316.972.720,89	61,98
NIVO RS	657.793.437,35	30,96
NIVO BD	39.616.838,34	1,86
Total public contracts awarded	2.124.813.917,41	100,00
<b>B2. Awarded concessions/Contracting entities</b>		
Central Government	-	-
Regional and local authorities	-	-
Other (bodies governed by public law)	-	-
Utilities	-	-
Total concessions awarded	-	-
<b>C1. Dodijeljeni ugovori postupcima iz Poglavlja II Zakona o javnim nabavkama BiH</b>		
Works <sup>iv</sup>	463.078.790,73	25,48
Services <sup>v</sup>	205.558.941,36	11,31
Goods <sup>vi</sup>	1.104.913.772,16	60,80
Mixed contracts	43.703.282,33	2,41
Total public contracts above the EU thresholds	1.817.254.786,58	100,00
<b>C2. Awarded concessions above the EU thresholds</b>		
Works <sup>vii</sup>	-	-
Services <sup>viii</sup>	-	-
Other	-	-
Total concessions above the EU thresholds	-	-
<b>D. Procurement methods used<sup>ix</sup> (above the national thresholds<sup>x</sup>)</b>		
Open procedure	1.507.306.001,68	82,94
Restricted procedure	34.806.813,94	1,91
Negotiated procedure with prior publication of a notice	24.311.544,54	1,35
Negotiated procedure without prior publication of a notice <sup>xi</sup>	250.830.426,22	13,80
Design contests	0,00	0,00
<b>TOTAL</b>	1.817.254.786,58	100,00
<b>D1. Dodijeljeni ugovori postupcima iz Poglavlja III Zakona o javnim nabavkama BiH</b>		
	307.559.130,83	
<b>E. Participation rate (average number of submitted tenders)</b>		
Works		
Services		
Goods		

F. A list of 10 biggest procuring entities (name, main activity, (estimated) annual procurement budget):

1. ....
2. ....
3. ....
4. ....
5. ....
6. ....
7. ....
8. ....
9. ....
10. ....

G. A list of 10 biggest public contracts/concessions awarded and/or advertised in 2009 (subject of the contract, name of the contracting authority and contractor (if selected), (estimated) value, time of execution):

R/b	Nivo	Ugovorni organ	Predmet nabavke	Postupak	Vrijednost ugovora
1	RS	MINISTARSTVO ZDRAVLJA I SOCIJALNE ZAŠTITE RS BANJA LUKA	Robe	Otvoreni	82.379.560,00
2	FBIH	JP ELEKTROPRIVREDA BIH SARAJEVO	Robe	Pregovarački	49.157.456,40
3	FBIH	JP ELEKTROPRIVREDA HZ HB MOSTAR	Robe	Otvoreni	38.487.730,25
4	FBIH	JP ELEKTROPRIVREDA HZ HB MOSTAR	Robe	Otvoreni	28.865.797,68
5	RS	RUDNIK I TERMOELEKTRANA UGLJEVIK	Radovi	Otvoreni	25.157.199,96
6	RS	OLIMPIJSKI CENTAR JAHORINA PALE	Robe	Otvoreni	21.420.547,20
7	FBIH	JP ELEKTROPRIVREDA HZ HB MOSTAR	Robe	Otvoreni	19.815.053,49
8	FBIH	JP ELEKTROPRIVREDA HZ HB MOSTAR	Robe	Otvoreni	19.243.865,12
9	FBIH	JP ELEKTROPRIVREDA HZ HB MOSTAR	Robe	Otvoreni	16.118.384,63
10	RS	MH ELEKTROPRIVREDA RS TREBINJE	Robe	Otvoreni	15.547.048,33

<sup>i</sup> Statistics should cover contracts awarded in the period 1 January 2008 – 31 December 2008

<sup>ii</sup> As for 31 December 2008

<sup>iii</sup> Statistics should refer to contracts awarded (based on contract award notices), if not available, please give the data on contracts advertised (based on contract notices)

<sup>iv</sup> above 5.150.000€

<sup>v</sup> above 137.000€ for public institutions, 412.000€ for utilities

<sup>vi</sup> above 137.000€ for public institutions, 412.000€ for utilities

<sup>vii</sup> above 5.150.000€

<sup>viii</sup> above 137.000€

<sup>ix</sup> Both for public contracts and concessions

<sup>x</sup> Including contracts above EU thresholds

<sup>xi</sup> Including single-source procurement

## POLICY-MAKING AND CO-ORDINATION

### *Main Developments since the Last Assessment*

#### *General context*

There have been no dramatic changes in the policy-making and co-ordination system in Bosnia and Herzegovina (BiH) over the past two years. The large reform plan – implementation by the state, entities, and Brčko District of a joint programme to reform their centres of government (the “Blueprint Project”) – is unfortunately still in a tendering process. While in early 2008 it was assumed that implementation of the project would begin soon with IPA 2007 funds, this financing was replaced by the multi-donor PAR Fund operating in accordance with the BiH Public Procurement Law, which has proved to be slow and difficult to apply.

Nevertheless, inter-governmental co-operation has continued to improve and was given some impetus by the ratification (on 13 February 2009) of the Memorandum on Mutual Co-operation between the Secretariat of Council of Ministers BiH, Secretariats of the Entity Governments and Secretariat of Brčko District Government. The objective of the memorandum is “improvement of communication, co-ordination, exchange of materials and other information” between the four governments in all areas related to the management of the policy system.

In 2009 the Parliamentary Assembly adopted an amendment to the Constitution of Bosnia and Herzegovina that establishes the Brčko District as a unit of local self-governance. This constitutional amendment is one of the five objectives set by the Peace Implementation Council (PIC) for the closure of the Office of the High Representative in Bosnia and Herzegovina (OHR).

At state level a Directorate of Economic Policy (DEP) is placed directly under the Chair of the Council of Ministers (CoM) and staffed by expert civil servants. It was reported in 2008 that the DEP was developing a National Development Strategy. A draft of this strategy is now available, but it has not yet been approved by the Council of Ministers.

In the area of European integration, the most significant development during the period under review was the signing of the Stabilisation and Association Agreement (SAA) in June 2008 and the entering into force of the Interim (trade) Agreement in July 2008. The SAA has not yet been ratified by all of the EU Member States, but the Interim Agreement is being implemented through the meetings of its common bodies, where the Directorate of European Integration (DEI) plays a key role.

#### *Government Secretariats*

There was also some increase in staff within government secretariats and offices for legislation, as well as in the DEI.

The legal framework in Republika Srpska (RS) was strengthened with the adoption of new Rules of Procedure of the Government of Republika Srpska in January 2009.

In 2008 it was noted with concern that the Federation of BiH (FbiH) had created a new Office at the centre of government (CoG), the Principal Office of the Government of FBIH. The concern was that many of the important functions required in government secretariats were thus placed in a political Office and that the splitting of the normal CoG functions between two separate bodies was likely to create serious co-ordination problems. Since the last assessment, this approach has been reversed, and the functions that had been withdrawn from the General Secretariat of the Government have been recuperated, and therefore co-ordination is again exercised by a single body.

### *Ministries*

In a number of ministries at state and entity levels that have participated in the UNDP project on “Strengthening National Capacities for Strategic Planning and Policy Development” (SPPD), there has been a growing awareness of the significance of policy development and of strategic and work planning. The participating ministries have produced three-year strategic plans and annual work plans for 2010 that stemmed from the strategic plans. In addition, the strategic plans were used for the preparation of their budget submissions. However, this approach can only go so far unless it is institutionalised across BiH at all levels, incorporated into the rules of procedure, and managed and enforced by the governments’ (general) secretariats. The SPPD project has made efforts to assist in such institutionalisation, but success depends critically on the development of the centres of government through the “blueprint approach”.

### *Management of European Integration*

In line with the requirements of the Stabilisation and Association Agreement (SAA), a new Commission on European Integration was established, chaired by the Director of the Directorate of European Integration (DEI), and seven working groups on European integration were formed. Also in line with the SAA, the idea of establishing 14 working groups was abandoned, and the current plan is to establish 35 working groups in line with the negotiating chapters.

There has been some strengthening of co-ordination mechanisms. For example, DEI staff increased from about 50 to 81, out of a total of 104 planned positions. In RS the Unit on European integration was created, attached to the Cabinet of the RS Prime Minister. Brčko District also formed an EI unit, while in FBIH there is still a single Co-ordinator on European Integration. Some state ministries have established units for European integration, but this process is not yet complete.

### ***Main Characteristics***

Policy-making in general and the European integration process in particular take place within a complex constitutional context, which is itself still subject to debate. The policy management system at all levels remains a system in transition, and concrete progress is slow and uncertain. There are foundations on which to build, such as the legal framework and legal capacity. As the policy system is interlinked across governments, the signing of the Memorandum on Mutual Co-operation is a good sign. However, policy and co-ordination capacity in the government secretariats and in ministries remains insufficient. The Directorate of European Integration has solid foundations and good staff, and it has improved its capacity in recent months.

### ***Reform Capacity***

There is obviously an interest in reform in BiH, a good understanding of the shortcomings of the system, and a clear willingness to undertake reform projects. Nevertheless, international support remains critical for progress and success in the next few years. The continuing support of the general secretaries and senior staff for the “blueprint project” – despite the lengthy delays, and the active

participation of ministries in the SPPD project demonstrate this interest. There is now a reasonable chance that the project to reform the centres of government will be underway by the summer 2010, but this project will need to co-operate closely with the SPPD project. The role of the National PAR Co-ordinator (PARCO) in ensuring progress in this area remains positive and is crucial for success.