

Bosnia and Herzegovina: Building integrity in defence

An analysis of institutional risk factors

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Preface

At the request of the Norwegian Ministry of Defence, the Agency for Public Management and eGovernment (Difi) has prepared this assessment of institutional risk factors relating to corruption in the defence sector in Bosnia and Herzegovina. The report was prepared within the framework of the NATO Building Integrity (BI) Programme.

The current report was written as part of a study covering 9 countries in South-Eastern Europe, 8 of them as a Norwegian contribution to the NATO BI Programme and 1 on a bilateral basis. Difi has prepared a separate methodological document for the study. The latter document provides an in-depth description of the content of international anti-corruption norms and includes a list of close to 300 questions that were used to identify the extent to which the 9 countries in the study had, in fact, institutionalised the norms. The document also provides a rationale for why each of the norms is considered to be important for reducing the risk of corruption.

A national expert in each of the countries involved has collected data in accordance with Difi's methodological document. Three principal types of data sources were used:

- Official documents/statutory texts.
- Interviews with relevant decision-makers and other local experts, as well as representatives of international organisations.
- Analyses and studies already available.

The national experts presented the results of the data collection in a separate report for each country, each one comprising 75-200 pages. The documentation they contained provided a direct response to Difi's approximately 300 questions. A representative for Transparency International UK/Defence and Security Programme (TI/DSP) provided comments to the reports. They were further discussed at three meetings where all of the local experts participated together with representatives from TI, NATO, the Norwegian Ministry of Defence and Difi. At one of the meetings an expert on the topic of corruption/good governance in the EU's expansion processes contributed.

Based on the reports from the national experts, Difi has prepared, with considerable assistance from the EU expert on corruption/good governance, an abbreviated and more concise Difi Report for each country, including recommendations for the Ministry concerned. These reports were then submitted to the Ministry in question for any comments or proposed corrections. The received answers have largely been included in the final reports. However, all evaluations, conclusions and recommendations contained in the reports are the sole responsibility of Difi.

Oslo, October 2015

A handwritten signature in blue ink, appearing to read 'Ingelin Killengreen', with a long horizontal flourish extending to the right.

Ingelin Killengreen
Director General

Abbreviations and acronyms

BD	The Brčko District
BiH	Bosnia and Herzegovina
CHUs	Central Harmonisation Units
CEC	The Central Electoral Commission
CSA(s)	Civil service agency(ies)
FBiH	Federation of Bosnia and Herzegovina
FMC	Financial management and control
GRECO	The Group of States against Corruption
HRM	Human Resources Management
IG	Inspectorate General
LAI	The Law on Auditing Institutions of Bosnia and Herzegovina
LAP	The BiH State Law on Administrative Procedure
OHR	OHR The Office of the High Representative in Bosnia and Herzegovina
PIFC	Public internal financial control
PMC	The Law on the Parliamentary Military Commissioner
PPA	The Public Procurement Agency
PPL	The 2004 Public Procurement Law
PRB	The Procurement Review Board
RS	Republika Srpska
SAIs	Supreme Audit Institution(s)
SFRY	The Socialist Federation of Yugoslavia
SIPA	The State Investigation and Protection Agency
SNAO	The Swedish National Audit Office

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1 Executive Summary

Having ambitions of European and Euro-Atlantic integration, and the NATO Partnership for Peace Program, Bosnia and Herzegovina is committed to carry out reforms required in the defence system. This report assesses the preparedness of Bosnia and Herzegovina for membership in NATO by assessing the integrity protection system in the defence sector.

Bosnia and Herzegovina does not seem to have any particular problem with parliamentary oversight of the defence sector, which is stipulated by the Law on Defence of BiH. The gap between legislation and practices is narrower in this area than in others, and the flow of information from the Armed Forces and the MoD to the Parliament is generally smooth and satisfactory. A major contribution to this is the establishment of a state-level parliamentary defence and security sector oversight committee, even though party and political factors occasionally reduce the inclination of members of parliament to oversee the defence sector sufficiently.

With regard to the Supreme Audit Institution (SAI), the institution has a good reputation as a well-functioning pillar in the national integrity system. The major shortcoming is that it is not "enshrined" in the Constitution which may threaten its independence.

The powers of the Institution of Human Rights Ombudsman of BiH are limited, and the Institution's reports are to a high extent ignored by the parliament and administrative bodies.

Until November 2013 Bosnia and Herzegovina used to have a relatively adequate legal framework for prevention of conflict of interest. The Central Electoral Commission was in charge of the oversight of compliance with the conflict of interest regime for elected officials, executive officeholders and political advisors. The CEC also maintains the records of income and asset declaration. However, this framework has since been severely compromised now that a Parliamentary committee is in charge of the oversight of conflict of interest of elected officials. The practice in this area has never been satisfactory even before the amendments to the law.

The legislative framework concerning the access to administrative documents is considered to be overall satisfactory. Nevertheless, the free access to information regime is not well functioning. The implementation is inadequate, and the application of sanctions is lacking. The general problem seems to be the low acceptance of principle of transparency in public institutions, as well as a lack of clarity concerning the authority in charge of the compliance oversight.

In the area of public procurement and military asset disposal, many organisations tend to regard procurement as merely a formal procedure to be followed, while neglecting the search for best-value outcome. Also, the administrative capacity to implement procurement procedures is unsatisfactory. According to the BH business community the public procurement practices in the country are unprofessional and prone to corruption and political pressure.

The challenges of the Procurement Sector at the MoD are several. They include inadequate planning practices, problems with contract management and IT support, and the lack of standardised specifications for equipment in the Armed Forces which makes the preparation of tender documentation and quality control difficult.

The public internal financial control system in BiH is perceived to be at an early stage of development. Central Harmonisation Units are still weak and the legal basis for internal financial control is imprecise. The internal audit laws are to a great extent in line with international standards but implementation needs to be improved especially when it comes to the follow up on Supreme Audit Institution's reports.

The Inspector General at MoD is responsible for the training of military personnel in the Armed Forces and MoD in the professional and ethic sense. It also carries out investigations into the misconduct of military personnel in the AF and MoD. The current minister has on several occasions expressed his trust in the IG and praised his work.

The meritocratic principle is not fully supported as a basis for professionalism in the civil service. The legal framework is adequate but in reality attainment of a position solely on the basis of merit is not the rule. The ethnic representation system of the Dayton Agreement is inimical to the merit principle. Ethnicity, political affiliation, and private relations tend to override merit considerations to a large extent. The political and organisational culture inherited from the time of the Socialist Yugoslavia, where key positions were reserved for members of the communist party, remains. In the case of protection of whistle-blowers at the time of completion of this report there were no legal measures in place to ensure the protection of civil servants reporting corruption.

Declarative support for the fight against corruption in BiH should not be confused with actual political will. Most shallow declarations have not been sufficiently implemented and anti-corruption efforts remain sporadic. The legal framework which often is internationally imposed is left with inadequate domestic institutions, and lacks implementation. The MoD at the time of conclusion of the report had no specialised unit for anticorruption policy implementation and oversight, and there is room for improvement in anticorruption policies at the Ministry.

The Agency for the Prevention of Corruption and the Co-ordination of the Fight against Corruption lacks resources and necessary competencies to fulfil its mission as a key institution for anticorruption efforts. The agency has not become fully operational. The Agency's director has pointed out that the systemic corruption at the highest level is the biggest obstacle to fight corruption.

2 Introduction

The accession of potential candidate countries to Euro Atlantic structures and in particular to the EU and NATO requires a scrutiny of the main institutional settings and working arrangements that make up their public governance systems in order to assess the resilience to corruption of governments and public administrations. In this vein, the present report assesses the preparedness of Bosnia and Herzegovina for membership in NATO by evaluating the protection of public integrity in the defence sector.

According to a brochure issued in April 2011 by the Ministry of Defence and Armed Forces of BiH (MoD), the Presidency of Bosnia and Herzegovina expressed in July 2001 a clear commitment for accession of the country into European and Euro-Atlantic integration and the NATO Partnership for Peace Program, as well as for the implementation of the reforms required in the defence system and the restructuring of its Armed Forces. With these objectives in mind, the official brochure continues, “major efforts have been made over the past period in order to create the environment necessary for a successful process of reform of the defence system, for attaining internal stability and creating the conditions for a credible NATO bid”.

The point of departure for this analysis is the observation that a holistic approach to security sector reform is increasingly called for. Pro-integrity reforms internal to the defence sector should be set in a wider reform perspective, including appropriate instruments within civilian policy sectors. The current report mainly focuses on the Ministry of Defence and Armed Forces (MoD) of Bosnia and Herzegovina, but not on the Armed Forces as such. It treats the Ministry as part of and as embedded in its environment and takes into account legal and administrative arrangements cutting across national systems of public governance and impacting the MoD as any other ministry.

To a large extent the report concentrates on checks and balances in the public sector; *i.e.*, mechanisms set in place to reduce mistakes or improper behaviour. Checks and balances imply sharing responsibilities and information so that no one person or institution has absolute control over decisions and resources. Whereas power concentration may be a major, perhaps *the* major corruption risk factor, a system of countervailing powers and transparency promotes democratic checks on corruption/anti-integrity behaviour.

We look at the integrity-promoting (or integrity-inhibiting) properties of the following main checks and balances:

- a. parliamentary oversight;
- b. anti-corruption policies;
- c. specialized anti-corruption bodies;
- d. arrangements for handling conflicts of interests;
- e. arrangements for transparency/freedom of access to information;
- f. arrangements for external and internal audit, inspection arrangements;
- g. Ombudsman institutions.

In addition to examining the checks and balances, the gap analysis focuses on two high-risk areas susceptible to corruption or unethical behaviour:

- h. public procurement (and disposal of defence assets);
- i. human resources management (HRM).

Both areas are of particular importance in the defence sector. Defence sector institutions are responsible for large and complex *procurements* that may facilitate corruption. Similarly, in most countries, the MoD is one of the largest ministries in terms of number of staff and is responsible for a large number of employees outside the Ministry. *Human resources* are central to the quality of performance of defence sector organs.

The report mainly concentrates on the same areas as those listed in NATO's Building Integrity Programme launched in November 2007, whose key aim is to develop "practical tools to help nations build integrity, transparency and accountability and reduce the risk of corruption in the defence and security sector". The report identifies a number of areas in need of reform in order to strengthen the protection of integrity in public life and to reduce vulnerability to corruption. The report is action oriented: based on its analysis it proposes a number of recommendations for reform action to be undertaken by the government.

Naturally such reports tend to focus on what is missing, is not functioning properly or needs urgent intervention. This is not to say that reform efforts so far have been fruitless or that professionalism is completely absent. On the contrary, in the course of preparation of this study the expert team has come across good laws and bylaws and has met with many dedicated and professional public servants and officials. Doing nothing to close the gaps identified in this report would be equal to letting down those people who on daily basis try to uphold the best practice in their profession despite all odds.

3 Parliamentary oversight over the executive and independent bodies reporting to Parliament

3.1 Direct parliamentary oversight over the executive

Bosnia and Herzegovina does not seem to have any particular problem with parliamentary oversight of the defence sector. The Law on Defence of BiH stipulates that Bosnia and Herzegovina shall ensure transparent, democratic, civilian control over the Armed Forces (AFs). Articles 10 and 11 of the Law provide for the full control of Parliament and Presidency over the AFs. Most competencies are with the Parliament – other than general defence and security policies, which are the remit of the Presidency. The implementation gap or the gap between legislation and practice is somewhat narrower in this area than in other areas reviewed here.

Parliament receives regular annual MoD reports audited by an independent audit institution. In addition, Parliament can request any information it deems necessary for performing its oversight function. According to Joint Defence and Security Committee staff, the flow of information from the Armed Forces and the MoD to the Parliament is generally smooth and satisfactory although sometimes MPs are not happy with information provided by the Ministry. In addition to regular ministerial reports and external audit reports, committee hearings, MP questions and special investigations are the means most frequently used by the Parliament for obtaining information from the executive. The establishment of a state-level parliamentary defence and security sector oversight committee could be considered the most significant milestone in the country's quest to achieve democratic control of the defence sector. The committee's work is largely transparent and the public is adequately informed about its activities.

However, party discipline and other party and political factors occasionally reduce the possible inclination of members of parliament to oversee the defence sector effectively. This is best exemplified in the case of budget adoption whereby in recent years the budget was pushed quickly (within 24 hours) through the Parliament after party leaders reached an agreement outside the Parliament. The effectiveness of parliamentary oversight has faced other problems as well. In 2011, delays in the nomination of new members of parliamentary committees meant that the committees were unable to convene. This instance occurred in the course of implementation of the 2010 election results, when new committee members were not appointed until mid-2011 due to political obstruction, while in the interim no one exercised effective parliamentary control over security sector actors.

In 2009 parliamentary oversight was further strengthened when the BiH Parliamentary Assembly adopted the Law on the Parliamentary Military Commissioner (PMC) of BiH at the initiative of the Joint Committee on Defence and Security, following its visit to the Military Ombudsman of the German Bundestag. The Parliamentary Military Commissioner was established

with the purpose of strengthening the rule of law and protecting the human rights and freedoms of soldiers and cadets in the Armed Forces of Bosnia and Herzegovina and the BiH MoD. The Law on the Parliamentary Military Commissioner¹ stipulates that, in the execution of their duties, the Military Commissioner shall co-operate with the following bodies: MoD, General Inspectorate within the MoD, Armed Forces and Human Rights Ombudsman.

In addition to the above mandate, the Military Commissioner is responsible for the investigation of specific issues, as instructed by the Parliamentary Assembly and the Joint Committee on Defence and Security. The Military Commissioner can visit military units, the headquarters of the Armed Forces and organisational units of the MoD at any moment and without prior notice. The Military Commissioner is empowered to attend sessions of the Parliamentary Assembly and of the Joint Committee on Defence and Security.

The Military Commissioner can demand reports from the Minister of Defence and in the case of disciplinary proceedings can demand access to any necessary documentation. Every member of the Armed Forces has the right to contact the Military Commissioner directly without intermediation of hierarchical official channels. The Military Commissioner must submit an annual report to the Parliamentary Assembly. Other special reports may be submitted at any time to the Parliamentary Assembly or to the Joint Committee on Defence and Security. The Military Commissioner must perform his/her duties impartially and without affiliation to any political party, registered organisation, association or people in BiH.

The term of office of the Military Commissioner is five years, with the possibility of re-election for one further 5-year term. During the 60th session of the House of Representatives, held on 16 September 2009, the first Military Commissioner was sworn into office and – judging by his reports - has since been very active in advocating the human rights and fundamental freedoms of military personnel. The Law on the Parliamentary Military Commissioner (Article 13 - ‘Election of the first Military Commissioner’) stipulates that the first Military Commissioner shall remain in office until 30 June 2012. This was a kind of trial period for a new institution. In October 2012 the Parliament appointed the same person to a five-year mandate.

Secondary legislation such as the Rulebooks on the procedures of the PMC and on its cooperation with the MoD, the General Inspectorate of the MoD and the Armed Forces completes the legal framework for the Military Parliamentary Commissioner. Specific guidelines govern the relationships between the PMC and the Ombudsman Institution.

The 2011 Report by the PMC stated that the matters most complained about by soldiers had been alleged irregularities in personnel promotions, performance appraisal, disciplinary procedures, compensations other than salaries,

¹ Official Gazette of Bosnia and Herzegovina, no. 49/09, available at: http://www.tuzilastvobih.gov.ba/files/docs/Zakon_o_Drzavnoj_agenciji_za_istrage_i_zastitu_iz_mjene_49_09_ENG.pdf

accommodation and living conditions in barracks, and the low quality and quantity of meals. The Commissioner considers that the situation regarding human rights in the Armed Forces is satisfactory. There are no systemic problems, but individual cases. There have been no cases regarding freedom of religion or gender-based complaints. Unlike civilian personnel at the MoD, military personnel are forbidden to have political party affiliation and/or union membership and to go on strike.

The PMC staff is 5-strong including assistants and experts. They have been security-cleared. There is no systematisation of positions. During 2011, the PMC received 58 complaints, out of which 22 were resolved (38 per cent). Investigations and procedures were ongoing for 36 open cases in December 2012, including the backlog rolling from previous years. All recommendations are either already implemented or are being implemented since they are mandatory.

In summary, Bosnia and Herzegovina does not seem to have any particular problem with parliamentary oversight of the defence sector, which is stipulated by the Law on Defence of BiH. The gap between legislation and practices is narrower in this area than in others, and the flow of information from the Armed Forces and the MoD to the Parliament is generally smooth and satisfactory. A major contribution to this is the establishment of a state-level parliamentary defence and security sector oversight committee, even though party and political factors occasionally reduce the inclination of members of parliament to oversee the defence sector sufficiently.

3.2 Control of the Military by independent bodies reporting to Parliament

3.2.1 The State Audit Institution

The general view on how to secure the independence of a Supreme Audit Institution is that the existence of such a body should be “enshrined” in the Constitution. This is not the case in BiH at either state or entity level, and can be seen as a significant shortcoming.

The current legal framework on external audits of state institutions in Bosnia and Herzegovina was created and adopted in 2005–2006. State law was adopted on 31 January 2006. The intention was to rationalise the supporting legal texts of the Supreme Audit Institutions (SAIs) in BiH and to bring improvements to the procedural framework following five years of operation. The main target, however, was to change the terms of management appointments (now seven years, not renewable) and to make it possible for the management then in place to apply again (as a transitory arrangement) for re-appointment. This would have been impossible under the preceding legislation.

In accordance with the initial audit laws of state and entities, a Co-ordination Board of the Supreme Audit Institutions was formed, consisting of a committee

and a secretariat. This method of organisation has been retained in the new legal framework. The Board consists of the three Auditors General and their deputies. The Auditor General of the SAI BiH acts as chairperson. The Brčko District (BD) created its own Supreme Audit Institution.

The SAIs have a clear legal authority to audit all public and statutory funds and resources, bodies and entities. However, SAI BiH has limited resources, given the large number of mandatory audits. With the exception of the SAI BD, all SAIs have a specific but fragile level of functional and operational independence since such independence is not anchored in the Constitution.

External audits in the institutions of Bosnia and Herzegovina are carried out by the Supreme Audit Institution (SAI). It carries out financial and performance audits of public expenditure and must report suspicions of corruption to law enforcement authorities. The SAI has a good and ever-improving reputation as a well-functioning pillar of the national integrity system. Article 4 of the Law on Auditing Institutions of Bosnia and Herzegovina (hereafter LAI) stipulates that “in performing its duties and competencies in accordance with the Law, the Auditing Office is independent and is not subject to management or control by any other entity or institution, unless otherwise stipulated by this Law”.

Given the complex politico-institutional landscape of BiH, the appointment of the Auditor General and his deputies has to follow a convoluted process in Parliament. The procedure starts when a vacancy is announced by the Election Committee (consisting of six members, two of whom come from opposition parties) appointed by the Parliament. The Committee studies the applications and ranks the candidates. The two deputy Auditors General have to belong to the two other ethnic groups than the group to which the Auditor General belongs. Their remuneration is aligned with that of the president of the Constitutional Court.

The SAI has the mandate to carry out both financial audit and performance audit. Financial audit is defined as covering both attestation audit (assessing the reliability of financial statements) and compliance audit (assessing the legality and regularity of expenditure). Performance audit is defined in the BH legislation as reviewing or assessing the efficiency, economy or effectiveness of a programme, activity or a particular aspect of business operations of public institutions. These definitions, which also refer to the relevant auditing standards, are satisfactory as a basis for proper financial and performance audit.

Financial audit has been developed in BiH with the technical support of the Swedish National Audit Office (SNAO) from 2000 up to 2009. Financial audit focuses on the financial statements and underlying accounts of the audited entity, but it also covers internal control systems, internal audit, and the follow-up of previous audit recommendations. Financial audit reports provide audit opinions on each individual entity audited. The SAIs also carry out mandatory annual audits on the budget execution reports that are submitted by the respective ministries of finance.

Performance audit has been developed since 2006, also with support from the SNAO. The approach and methodology applied by the SNAO were introduced in Bosnia and Herzegovina through pilot audits, which were carried out with the close assistance of SNAO staff. The development of performance audit has followed a step-by-step approach, gradually building up capability and experience in this type of audit. Performance audit has reached a satisfactory professional level. The reports so far have had an impact. Performance audit is appreciated by auditees, parliamentary committees and the media. This positive profile of performance audit is an asset for the SAIs in view of the further development of this type of audit.²

In terms of operational functioning, the regulations of the law in general provide the SAI with a satisfactory degree of independence. Nevertheless, audit opinions, although professionally formulated, serve as an instrument used by politicians and the media to criticise politically the responsible manager, mayor or minister. This practice risks placing the SAI and its auditors in the centre of a political struggle and reduces the potential impact of the audit reports, as well as the independence of the auditors. The rationale underlying particular audit opinions may also not be fully understood by politicians and the media. The financial independence of the SAI is fragile in practice, since the executive has been showing a tendency to exert its influence over the SAI, in particular by attempting to undermine its financial independence.³

The audit staff in the SAI of the Republika Srpska (RS) and in the SAI of the Federation of Bosnia and Herzegovina (FBiH) are not subject to the salary structure of the civil service; these SAIs can decide on the salary structure themselves, which allows them the possibility of setting high qualification requirements and correspondingly higher salaries compared to the civil service in general. These arrangements also allow the practice of patronage and may lead to the distortion of the salary scheme in the public institutions. Subsequent imbalances create an upward pressure on remuneration costs, a fact that may explain a decision by the Minister of Finance and Treasury to list the staff of the SAI BiH amongst those subject to the Law on Salaries of the Civil Service, in contradiction to the relevant SAI Law provision. Some observers have raised concerns about the collusive practices of political parties in appointing their affiliates as SAI staffers.⁴

At state level, the two Houses of Parliament each have a committee dealing with the reports of the SAI BiH. In principle all reports with a negative or reserved opinion are discussed by the committees, and hearings are organised, to which the managers of the auditees concerned are invited. The discussions of the committees result in a report to the plenary House of Parliament, usually accompanied by a draft resolution on the follow-up that should be given to the observations and recommendations in the audit reports. The two Houses of

² OECD (2012), “Bosnia and Herzegovina Assessment Report 2012”, available at: <http://dx.doi.org/10.1787/5jz2rqlcrnkd-en>

³ *Ibid.*

⁴ Transparency International BiH (2010), “Monitoring of the implementation of BiH Anti-corruption strategy 2009-2014”, first periodical report.

Parliament also deal with the draft budget of the SAI BiH, which is submitted for approval and for discussion by the committees, together with the annual report of the SAI. Due to the highly politicised environment, audit reports are automatically controversial, which reduces their potential positive impact on improving financial management in the public sector.⁵

In 2011, the state SAI produced a negative opinion on the financial management of the MoD based on several reasons including that the value of movable assets was not shown in the balance sheet; that the amount of default interest could not be established; the liabilities towards suppliers were not accurately presented; some advance payments were not justified afterwards; and the procurement system was not efficient and reliable. In 2012 the state SAI issued a qualified audit opinion citing the following reasons: 1) the Ministry's ledgers do not include the value of military movable property; 2) the Ministry recorded and paid bills from previous years in 2012; 3) an efficient and reliable public procurement system has not been established. Every report includes detailed information on follow-up to the relevant SAI recommendations from the previous report. During 2012 the MoD implemented nine recommendations including the introduction of the practice to request bank performance guarantees from bidders. Another nine recommendations – including cessation of the practice of advance payments - were in progress while 12 recommendations were not implemented at all. One of those was the failure to introduce the practice of preparing reports on finalized public procurement procedures that could be useful for identification of risks and problems in public procurement.

In conclusion, the Supreme Audit Institution (SAI) responsible for carrying out the external audits (financial and performance audits) of the institutions of BiH has a good reputation as a well-functioning pillar in the national integrity system. The major shortcoming concerning the Supreme Audit Institution in BiH is that it is not "enshrined" in the Constitution which may threaten its independence.

3.2.2 The Ombudsman Institution

The Human Rights Ombudsman of BiH State is an independent institution, which was established in order to promote “good governance and the rule of law and to protect the rights and freedoms of both physical and legal persons, as provided for in the BiH constitution, as well as in international treaties appended thereto”. This role of the Human Rights Ombudsman indicates how human rights issues are to be settled from a declaratory perspective, but government departments tend to ignore the Ombudsman's recommendations. The institution is currently regulated by a 2004 Law, as amended in 2006. In January 2007, the ombudsman institutions of the state, RS and FBiH were merged into a single entity by order of the Office of the High Representative in Bosnia and Herzegovina (OHR). As a result the Ombudsman offices were reduced by half and the staff by a third. The remit of the Ombudsman covers

⁵ OECD (2012), “Bosnia and Herzegovina Assessment Report 2012”, available at: <http://dx.doi.org/10.1787/5jz2rqlcrnk-d-en>

the whole public sector, but its powers are limited, and its reports are ignored to a significant extent by the respective parliaments and administrative bodies.⁶ This has been deplored by the Ombudsman Institution⁷ as disrespect for democracy and human rights. In some cases, the Ombudsman brought matters before the Misdemeanour Court.⁸

The Ombudsman now consists of a collegium of three individuals acting collectively and deciding by unanimity. One of them chairs the institution on a two-year rotating basis. The three are appointed by the parliamentary assembly through an ad hoc commission. The procedure starts with a public announcement. The commission, which is open to the participation of non-MPs as active observers, proposes a list of candidates meeting the legal requirements of article 11 of the Law, while ensuring ethnic representativeness. The Assembly holds hearings to assess the candidates. Three of them are appointed for a six-year tenure as members of the collegial Ombudsman institution by majority vote of the Assembly. A member not belonging to one of the three constituent peoples (“others”) has never been appointed. The tenure of an individual member of the Ombudsman institution may end for one of the reasons listed in article 12 of the Law, which in some cases includes a hearing of the incumbent by the parliamentary assembly.

The Ombudsman institution has its own budget. Political squabbles often lead to late or non-approval of the budget as happened in 2010–2011. The institution turned to donors for financial support. The 2012 budget was reduced by 10% from the 2010 budget. The financial independence of the Ombudsman is not guaranteed.

The advisers of the ombudsman institutions are political appointees. They are appointed by the institution according to its bylaws. On 31 December 2011 the staff was 56-strong. The turnover is high, affecting negatively the quality of the institutional performance, including its reports. Salaries are considered to be low if compared with the judiciary, which most staffers aspire to join.

The responsibilities of the institution currently include: the promotion and protection of human rights; the oversight of the freedom to access information; supervision of the anti-discrimination compliance; and acting as a body of appeal for ministerial and other appointments. The military falls within the remit of the Ombudsman concerning the respect of human rights and overlaps the Parliamentary Military Commissioner holding much the same responsibility. Most of the few cases affecting the military have had to do with retirement rights.

According to the 2011 Annual Report of the Ombudsman, the institution intended to strengthen the mechanisms for following the implementation of its recommendations. The indicators show that 71 recommendations were

⁶ *Ibid.*

⁷ The Institution of Human Rights Ombudsman of Bosnia and Herzegovina (2012), *Annual Report on Results of the Activities of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina for 2011*, Banja Luka.

⁸ Case of the Ombudsman vs. Faculty of Philosophy of Sarajevo and its Dean on Anti-discrimination, lodged in court on 3 October 2012.

implemented, while in 60 cases cooperation was achieved, however, without compliance with the recommendation. In five cases a partial implementation of the recommendation was recorded. In 57 cases the competent organs did not provide the Institution with any answer within the prescribed deadline. Twenty-eight recommendations were not complied with. The Ombudsman Institution has generally positive media coverage.

In summary, the powers of the Institution of Human Rights Ombudsman of BiH are limited, and the Institution's reports are to a high extent ignored by the parliament and administrative bodies.

3.2.3 Prevention of Conflict of Interest

The legal framework consists of four pieces of legislation. The Election Law (2001) regulates the declaration of assets by candidates. The 2002 Law on Conflicts of Interest in the Governmental Institutions of BiH deals with the declaration of income, assets, gifts and interests of elected officials, executive officeholders, and political advisers. The 2000 Law on Civil Service in the common institutions regulates the duties of civil servants at the state level. These three laws were imposed by the OHR. The fourth relevant piece of legislation is the Law on Service in the Armed Forces. Therefore the legal regime on conflicts of interest applies to the civilian personnel of the MoD and to the members of the Armed Forces.

The current legal framework stipulates that it is incompatible for the incompatibility of public officials and their close relatives with to have membership in management, administrative, and executive boards of public enterprises; membership in the management board or directorate of the Privatisation Agency or fulfilment of the post of director of the Privatisation Agency and involvement in private enterprises, insofar as it could lead to a conflict of interest. The last incompatibility concerns the situation where the institution that the public official represents has invested in a private company in the course of the four years prior to the official's appointment to public office. The law also forbids public officials from being involved in private companies engaged in business with the government and from receiving gifts in exchange for services. The law states the obligation of public or private companies bidding for government contracts to disclose the political parties to which they have made donations during the last two years as well as the names of any elected public officials who were involved in the enterprise prior to their election or nomination to office. The law establishes the obligation of public officials to submit an annual asset declaration. Until the latest amendments to the law entered into force on 19 November 2013, the Central Electoral Commission (CEC) was in charge of the oversight of compliance with the conflict of interest regime for elected officials, executive officeholders and political advisers. According to the new amendments, the CEC role regarding decisions on conflict of interest will be taken over by a nine-member Commission supported by Anti-Corruption Agency staff. Six members of the Commission will come from the two chambers of the Parliament and the remaining three will be the director of the Anti-Corruption Agency and his two deputies. At least two members including the chairman will be from the

opposition parties. As of mid-March 2014 this Commission has not been established.

The 2001 Election Law, as well as the 2002 BiH State Law on the Prevention of Conflict of Interest, established equal principles for the disclosure of assets at the levels of BiH State, entities, cantons and municipalities, as well as in Brčko District. The CEC reviews personal declarations of conflict of interest and the declarations of assets of officials who fall within the scope of this law at the BiH State level, as well as in FBiH and BD. The CEC maintains the records of income and asset declarations of elected officials, executive officeholders and political advisers, and in the past it has issued fines to several individuals who failed to submit their asset declarations on time or were discovered to have a conflict of interest. There have been numerous media reports about officials not declaring their income and assets. The CEC has the mandate to investigate all cases of conflict of interest. Since the adoption of the LCI the Commission has checked 20,420 persons. In 2011 alone the CEC verified and opened 508 files on public officials.

The verification of the declarations' accuracy is part of the remit of the Anti-corruption Agency, but this agency has no investigative powers (see below). Civil servants submit their asset declarations to the Civil Service Agency BiH. However, according to the Group of States against Corruption (GRECO), these declarations are not verified. The Data Protection Agency ruled that asset declarations should not be made public.

Issues concerning conflict of interest usually attract media attention. There have been proposals to define illicit enrichment as a crime, which currently is not the case, and to review the post-war privatisations, which created some surprising new fortunes. A recurrent theme in the media is that only lower grade local civil servants are normally sanctioned on the grounds of conflict of interest whereas high officials and politicians are not.

Concerning civil servants, the legislation is quite complete and stringent as regards the incompatibility regime, but the practice is somewhat different. In 2004 the BiH State Council of Ministers adopted a decision regulating civil servants' involvement in additional remunerated activities. According to this decision, activity outside the administration is possible if it is not incompatible with the duties of a civil servant. Allowing civil servants to perform simultaneously public and private remunerated activities is a solution to the low salaries in the civil service and to scarce budgetary resources, but it may result in confusion between official duties and moneymaking, thus paving the way to corruption.⁹ A cooling-off period of six months is established for those leaving public office if they are elected officials, whereas if they are civil servants that period stretches to two years. Military personnel are not subject to any cooling-off period.

⁹ OECD (2012), "Bosnia and Herzegovina Assessment Report 2012", available at: <http://dx.doi.org/10.1787/5jz2rqlcrnk-d-en>

Military personnel are also subject to incompatibility rules. The December 2005 Law on the Service in the Armed Forces bans professional military personnel from engagement in any other occupation or activity that is in conflict with official duties and responsibilities (article 86). Article 85 of this Law stipulates that professional military personnel in the Armed Forces should avoid real and perceived conflict of interests between their professional duties and their private, political and financial interests. The Law on Conflict of Interest obliges an official to withdraw from any decision-making process in which the incumbent has an interest. This applies also to personnel in the Armed Forces. However, military personnel seem to be exempt from the obligation to declare assets.

Article 86 also prohibits military personnel from receiving gifts, with the exceptions allowed by article 87 concerning certain customary or protocol donations. In practice, however, institutions seem not to pay much attention to the acceptance of gifts. Sometimes there is media outcry regarding specific incidents, such as the alleged acceptance of a car as a gift by the President of the FBiH, but this has few repercussions.

In general, the administrative and penal consequences of breaching the regime on conflict of interest are relatively lenient and can be “bargained”. Under the newly proposed amendments the new Commission for Conflict of Interest would only have the power to propose sanctions vis-à-vis the authority which employs the lawbreaker.

In summary, until November 2013 BiH used to have a relatively adequate legal framework for prevention of conflict of interest. The CEC was in charge of the oversight of compliance with the conflict of interest regime for elected officials, executive officeholders and political advisors, and also maintains the records of income and asset declaration. However, this framework has since been severely compromised now that a Parliamentary committee is in charge of the oversight of conflict of interest of elected officials. The practice in this area has never been satisfactory even before the amendments to the law.

3.2.4 Transparency, free access to information and confidentiality

Access to administrative documents is regulated in article 72 of the BiH State Law on Administrative Procedure (LAP). At any stage a party to the procedure can request the responsible official to disclose the information in the file (i.e. pertaining to the procedure itself). This request, which can be made verbally, results in the right of the party to access the file and to obtain, at his/her own cost, copies of the documents collected therein – provided, obviously, that their content is not officially classified as a secret protected by legislation (e.g. state, military or business secret or personal data of other individuals).

A separate BiH State Law on Free Access to Information (2000) was imposed by the OHR based on best international practices. It allows any citizen to

submit a written request to obtain, within 15 days of the date of the request, any information held by the administration free of charge if the relevant document is less than 20 pages long. The law is intended to serve as a general law on transparent government that addresses the needs of the public in general, apart from any concern for administrative decision-making in specific cases. This Law was amended in 2009 and 2011 to introduce penalties. Legislation on access to information is different for state and entity levels and not fully consistent. The Law has not had the desired impact on the performance of the administration, and has not been widely used by citizens. In 2012 the MoD issued a set of guidelines to facilitate access to information held at the MoD.

The rules concerning classification of information are imprecise. Institutions tend to classify more information than necessary and the criteria followed tend to be arbitrary. The fear of transparency within officialdom is high and pervasive. Access to information concerning privatisation, public procurement and development banks has been systematically denied. The balance between personal data protection, state secrets and free access to information is not well struck. As stated, the Agency for Data Protection banned the publication of the financial statements of candidates to elected public office.

Information about the MoD's management of the right to access information seems to be scarce. In respect of the country in general, a study by Transparency International conducted in 2012 found that 43 per cent of institutions provided information on time. Altogether 38 per cent needed to be reminded, while 20 per cent never responded. The information was incomplete in 30 per cent of the cases. By law, public institutions must give reasons for denial of access decisions. In practice, usually they do not provide consistent reasons. All in all it may be concluded that the implementation of the law is inadequate.

One of the weakest aspects of the current arrangement is lack of clarity as to the authority in charge of the compliance oversight. Some believe that it is the Ombudsman institution but in fact this institution has no adjudicative powers on freedom of information related matters. Others think that the court is the body to appeal to when access has been refused, but seemingly the court is only the second instance in administrative litigation, but not in this respect. Others again believe that the administrative inspectorate is the authority in charge. In reality, in case of breach of the law on free access to information, the administrative inspection of the Ministry of Justice is the only body wielding active legitimacy to bring a case against a state body.

The law requires that every state body appoints an information officer to provide advice on access to information and to report quarterly to the Ombudsman on applications lodged requesting information and their outcome. Some institutions have not yet done so. The archiving of information is generally slovenly. The MoD website contains a guide to access to information and an index of documents. Seemingly the public relations officer is also the person dealing with access to information. There is no record in the Ombudsman's archives on requests for information to the MoD.

General concerns have been raised repeatedly by the European Commission, the US State Department, Transparency International BiH, the Centre for Free Access to Information, and others on the functioning of the free access to information regime. However, those are not MoD-specific concerns. In principle, the legislative framework is positively evaluated although there is some room for improvement (e.g. appeals procedures are not clear). The real problems lie with the implementation, including the application of sanctions. In 2006 for instance, quarterly reports about received applications for access to information were submitted to the Ombudsman only by 3.8 per cent of the state institutions, 50 per cent from District Brčko, 5 per cent from cantons, 7.6 per cent from the FBiH, 25 per cent from RS and municipalities. The total number of applications and decisions is often missing from those reports. The situation was not much better in 2010, as is obvious from the relevant Ombudsman's report.

In its 2009 and 2010 annual reports, the Ombudsman Office stated that a large number of institutions in Bosnia and Herzegovina have failed to fully implement the provisions of the Freedom of Access to Information Act. However, the reports pointed out that some progress had been made, with only five out of sixty-one institutions failing to appoint a point of contact designated to deal with requests for access to information. Some bodies allow personal insight into information but do not provide it in hard or soft copy. It was also noted that some bodies do not perform the necessary test of public interest or harm before releasing information. Public awareness of the law remains low. In effect this right is used mainly by journalists. There have been other problems: Institutions do not respond in the form of administrative decision ("*rješenje*") hence making it difficult to appeal in court against denial of access or incomplete information. They often appoint untrained officers or put them under pressure. Generally the problem is the low acceptance of the principle of transparency in public institutions.

In late 2012, the Ministry of Justice proposed amendments to the Law basically to further restrict the access to information. The OSCE Mission and NGOs in BiH severely criticised these draft amendments. Eventually a small set of amendments was proposed by three MPs including one member of the opposition in July 2013. The House of Representatives adopted them in the second reading on 19 September 2013. There were no public reactions this time. The amendments mainly clarify the appeals procedures and inspection of the process.

In conclusion, the legislative framework concerning the access to administrative documents is evaluated to be relatively positive. Nevertheless, the free access to information regime is not well functioning. The implementation is inadequate, and the application of sanctions is lacking. The general problem seems to be the low acceptance of principle of transparency in public institutions, as well as a lack of clarity concerning the authority in charge of the compliance oversight.

4 Policies under the Responsibility of the Executive

4.1 Public procurement and military asset disposal

The main legal act regulating award of public contracts in Bosnia and Herzegovina is the 2004 Public Procurement Law (PPL), which follows the mostly abrogated Directives 92/50/EEC, 93/36/EEC and 93/37/EEC (services, supplies and works contracts awarded by public authorities), with some elements from Directive 93/38/EEC (utilities). The PPL was drafted by a team of international experts funded by the EU in 2003–2004 and strongly supported by the OHR. EU Directives currently in force (2004/17 and 2004/18) have not been transposed into BiH. (As of March 2014 a new Law on Procurement is in parliamentary procedure).

The scope of the PPL encompasses all public contracts in accordance with the meaning of the term used in the EU Directives – supplies, services and works – awarded by contracting authorities. However, the PPL does not cover contracts for works or service concessions, and it does not make a clear distinction between concession contracts and public procurement contracts.

The authorities included in the PPL are any administrative authority at the State, entity, cantonal, city or municipal level; public entities established for the specific purpose of meeting needs in the general interest not having an industrial or commercial character, having legal personality and dependent, controlled or financed by contracting authorities mentioned above (bodies governed by public law); and public undertakings operating in the water, energy, transport and telecommunication sectors.

Contracts in the area of defence related to the production of or trade in arms, munitions and war material are excluded from the scope of the PPL by virtue of its article 5. In 2004 the Ministry of Defence adopted an internal rulebook for regulating the award procedures for defence contracts. The main procedure applied in this case is the negotiated procedure – without publication of a notice to tender; the Ministry sends an invitation to several economic operators that are considered to be capable of delivering the required military material. The Ministry of Defence is aware of the need to adapt the current rules in line with the provisions of the new Directive 2009/81/EC, but a clear timetable for this adaptation has not yet been established. The BH regime of confidential procurements was criticized by the European Commission for its lack of transparency and competitiveness, and also because of a wide and unclear list of items the procurements apply to. The new Public Procurement Law currently being considered by the Parliament does not offer significant improvements in that regard.¹⁰

¹⁰ Rabrenović, Aleksandra (ed.) 2013, *Legal mechanisms for prevention of corruption in Southeast Europe with special focus on the defence sector*, Belgrade: Institute of Comparative Law, p. 231.

Defence-related procurement continues therefore to be regulated by the specific secondary legislation adopted by the MD, namely the Rulebook on Procurement in the MoD as authorised by article 5 of the PPL and the Rulebook on financial and accounting operations. At present, the MoD does not procure many goods and services exempted under article 5 of the PPL. Hence, the current absence of any legal obligation in respect of prior parliamentary approval of large military procurements may be unproblematic. However, the lack of such a legal provision together with the discretion given to the Ministry will doubtless be problematic if large military procurements take place. According to the MoD, some 90 per cent of the overall value of the procurement budget of the Ministry is carried out through open procurement procedures.

The Public Procurement Agency (PPA) was established by the 2004 PPL as one of two institutions at state level responsible for implementation of the public procurement system. The other institution is the Procurement Review Body (PRB). The PPA has been established as an independent administrative organisation with legal personality that is directly responsible to the government. The PPA's central office is in Sarajevo, and it has two branch offices in Banja Luka (RS) and Mostar (FBiH), but these branch offices do not have legal personality and are not authorised to make decisions without the approval of the PPA's central office.

The PPA plays the central role in developing the public procurement system and in overseeing the application of public procurement procedures. Its function is to ensure proper application of the PPL. The PPA is active in the dissemination of information, issuing written opinions concerning the application of the PPL as well as organising meetings with representatives of contracting authorities. The PPA publishes a selection of its opinions on its website under FAQs. A handbook and models of standard tender documents for supply, works and services are also available on its website and are widely used by contracting authorities. The PPA offers a helpdesk phone answering questions from contracting authorities or economic operators.

The PPA has a director and a board. The PPA Board is composed of seven members and two observers. The role of the Board is to consider Acts that refer to the public procurement system and to give approval for the Implementing Regulations produced by the Director. The Director of the PPA is responsible for the work organisation, internal issues and other operational matters.

The monitoring of procurement procedures is one key competence of the PPA and is regulated by the 2008 Rulebook on Monitoring of Public Procurement Procedures. It defines the scope of the monitoring conducted by the PPA. Monitoring is focused on the legal compliance of individual award procedures carried out by contracting authorities, including procurement notices. It also examines the value of procurement, the seriousness of the irregularities and their likely consequences. The PPA also collects analyses and publishes statistical data on public procurement. It provides a comprehensive overview of irregularities that take place throughout the administration on both the national and the entities' level. The Handbook outlines typical indicators of possible corrupt activities, their consequences and suggested countermeasures.

BiH has adopted the Strategy for the Development of the Public Procurement System (2010–2015), which remains unimplemented. In keeping with the Strategy and Work Plans of the Public Procurement Agency, one of the priorities was the further harmonisation of the legislative framework with the EU legislation. In July 2013 the House of Representatives passed three more amendments through accelerated procedure but Bosniaks in the House of Peoples requested the protection of vital national interests as they considered the opening of offices of PRB in three destinations outside Sarajevo to be against the Dayton agreement. This move came as the EC delegation in Sarajevo criticized Bosnian authorities for pushing forward cosmetic changes to the existing PPL instead of adopting a completely new law which would ensure more transparency and guarantee the independence of the review body. The EC Delegation added that Bosnia was the only country in the region which has not adopted European standards designed to fight corruption in public procurements.

Articles 23-27 of the PPL determine the economic and technical requirements to be met by the bidders in order to guarantee the seriousness of the bid and a sound contract implementation. Article 27 establishes the disqualification of bidders on grounds of conflict of interest or bribery. Subcontracting is forbidden without prior authorisation of the contracting authority. Therefore the same requirements are applicable to the subcontractors. The contracting authority and the members of the public procurement committee which awarded a contract can be reported to the prosecutor if they enter into collusive practices. They can also be fined administratively.

The review system is carried out by the Procurement Review Board (PRB), a body of 6 members appointed by the Parliament and supported by 11 staffers. The public procurement review system is perceived to be overly bureaucratic and time-consuming. In the opinion of business organisations, the decisions of the PRB are often too superficial, overlooking the real irregularities and focusing instead on irrelevant formal considerations. There are also several examples of inconsistent decisions (contradictory rulings in identical or similar situations). Only in December 2010 (five years after its establishment) did the PRB start to publish its decisions online, but this activity stopped in April 2011.¹¹ PRB defends its approach by the fact that the next instance in the appeals procedure is a court which takes all formalities into consideration. In effect, by strictly applying the legislation PRB considers that it benefits everybody and saves time. Another reason explaining this approach may be that the PRB clings to formality to resist pressure both from bidders and from politicians, and also exposure to personal threats as has happened. According to a well-informed source, in at least one case in the past the Council of Ministers is alleged to have asked the PRB to breach the law. Another source of pressure on the PRB comes from the Ministry of Justice, which too often causes legal uncertainty when defining the mandate of the PRB members. The backlog of cases before the PRB is very big, with some 2000 new complaints being lodged per year. The PRB, with only 11 staffers, faces serious problems of staff, premises and IT equipment.

¹¹ OECD (2012), “Bosnia and Herzegovina Assessment Report 2012.”

According to¹², the bureaucratic and simplistic nature of procurement practices in BiH (for instance, unnecessarily detailed requirements for the qualification of suppliers and the frequent rejection of tenders for formalistic reasons, without an analysis of the content) adds to the cost of participation in public tenders for economic operators, and thereby reduces competition. Conflicting regulations at the entity and canton levels and the lack of mutual recognition between them create an additional layer of obstacles. In many procedures, only the lowest price criterion is used. The reluctance to use the most economically advantageous criterion appears to be undermining the effectiveness and economy of public procurement by neglecting quality and long-term costs. Many organisations, although clearly well intentioned, regard procurement as merely a formal procedure to be followed, disregarding the search for best-value outcome. The administrative capacity of contracting authorities and the professional ability of procurement officers to properly implement public procurement procedures remain unsatisfactory. In general, according to PRB, procurement committees do not perform well since experienced individuals avoid membership if possible because of pressures put on the members of these committees. BiH's business community perceives the practice of public procurement as being frequently unprofessional and prone to corruption and political pressure.

The most frequent breaches of the public procurement legislation are the splitting of tenders to keep them below the monetary threshold at which open procedure is compulsory, the manipulation of certain requirements to the benefit of certain bidders; the lack of control of the procedure by the internal control mechanisms of the contracting authority, and adding annexes to the original contract involving substantial sums.

It is said that the main causes of the deficient functioning of the public procurement system are the following: 1) the low level of understanding of the procurement system and often very low level of technical expertise among procurement committee members; 2) the current law is very restrictive and formalistic. In addition, it is often formalistically interpreted and implemented (e.g. the detailed requirements regarding bidder qualification are optional but they are regularly requested); 3) some provisions in the EU directives are unsuitable for Bosnian market conditions. For instance, it is difficult always having to find three bidders for certain types of services or goods; 4) the late adoption of budgets delays all procurement activities. Moreover, many contracting authorities start procurement planning quite late; 5) the rare use of multi-year framework contracts renders the purchasing expensive; 6) the tender documentation is often hastily prepared, which causes many problems afterwards; 7) the review procedure is too long and unreliable.

Procurement and Logistics is one of seven sectors into which the MoD is organised. This sector prepares guidelines, plans and programmes pertaining to readiness of the logistics in the Armed Forces. The Sector establishes standards that need to be implemented within the command chain in order to ensure a harmonized development and implementation of plans and programmes that are

¹² *Ibid.*

compatible with NATO standards. The Sector for Procurement and Logistics consists of the following internal organisational units:

1. Policy, Planning, and Logistical Operations: It develops guidelines and policies for logistical operations of the defence system, regulations and guidelines for strategy planning within the logistics system, and plans for equipping and modernisation.
2. Real Estate and Infrastructure: It develops policies and guidelines for the management of facilities and control of infrastructure, maintains records of the real estate owned by the defence structures, manages infrastructure and establishes records on real estate.
3. Contracting, Procurement and Sales: It develops guidelines and regulations for procurement, selling and disposal of military equipment, and conducts surveys on the national production capacities of military material; it supervises procurement and selling contracts.
4. Supply Provision: It develops guidelines and regulations related to the provision of supplies, and performs administrative and expert tasks related to provision of supplies for the MoD and the AF.
5. Maintenance and Transportation: It takes part in the development of the logistics chart in the area of maintenance, and in the development of procedures and instructions for technical security; it makes proposals for equipping the AF; it participates in drafting regulations on traffic security, regulation and control of traffic at the MoD and AF; finally, it supervises and monitors the condition of vehicles.
6. Department for Sanitary and Veterinary Protection: It develops regulations and other enactments in the area of sanitary and veterinary services and organises sanitary and veterinary safety at all levels. It is in charge of tasks related to inspection and supervision of health protection within the scope of competency of the MoD.
7. Nomenclature, Standardization and Quality Control: It conducts expert and administrative tasks related to the development of the codification system for the needs of the MoD and AF; it develops regulations for the standardisation of materials used by the AF.

The MoD approves procurement plans and one unit within the Ministry is in charge of their implementation. The plans define deadlines, competences, staff, budget and other elements needed for their implementation. However, outside observers consider procurement planning to be a weak spot in the system as various plans do not seem to be well integrated and synchronised. Failure to spend approved budget on time corroborates such an assessment. According to the 2012 External Audit Report, during 2012 the Ministry initiated 46 procurement procedures. Only 27 procedures were successfully concluded in that year. Altogether 21 procedures were repeated once or several times due to an insufficient number of valid offers or due to decisions of the Procurement Review Body. Auditors found that it was poor time planning that resulted in a lower level of implementation of certain budgetary items, notably capital expenditures.

According to the MoD, almost all procurements are made public through publication in the Official Gazette and on the internet. Technical requirements

are determined by the Armed Forces or the unit at the MoD requesting the procurement, but are often made on a case-by-case basis because the Armed Forces have not adopted standardised specifications for most of the goods they use.

This lack of standardised specifications is a source of many difficulties in procurement processes, especially concerning the certification of the quality of the purchased goods. Moreover, inadequate technical specifications cause 30-40 per cent of tenders to fail. Reviewing the individual public procurement procedures in 2012, external audit concluded that the procedures are characterised by a significant number of bidders' complaints and appeals.

Most of the complaints and appeals are justified, and they require changes to the tender documentation, which results in stalling the process of selecting the most favourable supplier. This affects the efficiency of the public procurement procedure and creates difficulties for the contracting authority, thus preventing the prompt procurement of necessary goods, services and works needed to perform the regular activities within the Ministry.

Analysing the reasons for the revocation of the procedure by the Procurement Review Body, the auditors concluded that the most common reason for the revocation is the unclear and inadequate tender documentation. Finally, the lack of standards is a source of corrupt practices since it makes procurement vulnerable to manipulation. Single-source procurements seem to be rare.

The MoD considers that its procurements are based on real needs analyses carried out prior to the budget formation and approval, and that the technical and financial determinations are consistent with the purposes of the procurement. However, doubts arise given the lack of standardised specifications on the equipment of the Armed Forces. The MoD procurement staff participates in training organised by the MoD, the Public Procurement Agency or by private companies. Training is partly funded by the MoD and partly by international donors.

At the MoD, the procurement committee is designated at the same time as the launching of the tender procedure. Article 6 of the Instructions for applying the PPL prescribes the formation and membership of the procurement committee, which is appointed by the minister with a majority of ministerial employees. The latter also specifies their duties and tasks. At least one member has to be an expert on the object of the procurement. Every committee member has to sign a statement of impartiality and is forbidden to be contracted by the winner of the tender during the six months ensuing the award. The procurement committee makes an award proposal to the minister. The minister does not need approval by the Council of Ministers or by the Parliament in any case. The ministerial decision is made public.

There is no known record on the use of offset contracting by the MoD. The Law on Office Working Procedures of BiH Institutions is consistent with article 42 of the PPL, which requires that any procurement procedure and all its documents (contracts, requests, tenders, tender documents and documents relating to examination and evaluation as well as other procurement-related documents) shall be preserved according to the laws related to archiving.

The Procurement Committee at the MoD is in charge of receiving and checking the quality of the goods purchased. The lack of standardised specifications makes the ascertainment of quality often difficult. The SAI has criticised the MoD's management of public procurement in its 2011 and 2012 reports. A number of SAI recommendations have not as yet been fully implemented. In their 2012 report the auditors recommended, *inter alia*, that the Ministry passes an internal regulation on public procurement which would define more precisely, in accordance with the organisational structure of the Ministry, the principal bodies together with their scope of activities, obligations and responsibilities (e.g. initiating a procurement procedure, designing the tender documentation, selecting the most favourable supplier, concluding contracts and monitoring the implementation of the contract). Moreover, it is necessary to define the process of selecting the most favourable supplier through direct negotiations.

In view of the number of personnel participating in the contracting process, the auditors recommended that the Ministry adopts an internal act clearly defining responsible personnel and their obligations regarding the preparation and entry of data on the awarding of contracts into the electronic system. The auditors also recommended that the Ministry adopts a proactive role in designing the tender documentation in terms of defining the tasks and responsibilities of the persons responsible for the preparation of the documentation with the aim of conducting the public procurement procedure more efficiently. Finally, the auditors recommended that transparency and independence should be ensured in the process of forming public procurement commissions which exclusively work on the opening and evaluation of offer. The competencies should be separated so as not to have commission members participating in the procurement process, designing of tender documentation and contract implementation.

The Parliamentary Committee has also criticised the MoD for long-standing problems regarding procurement. During the last six years a total of approximately 27 million Euros was not spent on defence because of problems within the MoD procurement and logistics sector. There have been criticisms of the inability of the MoD to procure equipment, fuel and food on time. In March 2013, the media covered the story of the purchase of fuel for the AFs whereby according to the Auditor's office the MoD paid the supplier about 140 thousand Euros more than envisaged by the contract. The case is in court.

The MoD has attempted to improve its procurement practices in cooperation with NATO and other international partners by drafting the documents related to risk assessment and timely planning for 2013. However, most systemic deficiencies such as the handling of incoming invoices, contract management from planning to payment, and technical specifications have not been adequately addressed yet. The MoD points out that in recent years some problems were caused by late budget approvals and deficiencies in legislation as well as a lack of sufficient human resources in its procurement sector – this currently employs 51 rather than the 67 employees envisaged.

As mentioned, the international community assisted in drafting the PPL back in 2004 but since then public procurement has not been an object of focus. Lately

NATO and some embassies in Sarajevo have been pursuing a more proactive approach because of the visible problems that weaknesses in the procurement system have caused for Bosnian AFs both at home and when participating in peace operations abroad. A draft of a new Law on Public Procurement better aligned with the latest EU directives was prepared some time ago but it has not been adopted yet. It passed the House of Representatives on 13 March 2014. The MoD was consulted and provided its input in December 2012.

The disposal of surplus military material is regulated by the MoD Rulebook on financial and accounting operations. So far the MoD has not disposed of any surplus assets on its own. The MoD's only activity in this respect is the execution of the contracts on disposal of surpluses that the MoD inherited from the Ministries of Defence of the FBiH and RS. This activity is carried out by the Procurement and Logistics sector of the MoD. The procedure applicable to asset disposals is the same as that for acquisitions through procurement. As stated previously, Parliament carried out an inquiry into the ways in which the MoD handles the disposal of assets and the relevant report was forwarded to the prosecutor. No follow up is known to have happened. The MoD claims that the problems lie in the fact that the Ministry now has to manage contracts signed by the entity ministries. These were abolished and their obligations were transferred to the newly established MoD without proper checking of the conditions and the possibility of their realisation.

In summary, many organisations tend to regard procurement as merely a formal procedure to be followed, while neglecting the search for best-value outcome. Also, the administrative capacity to implement procurement procedures is unsatisfactory. According to the BH business community the public procurement practices in the country are unprofessional and prone to corruption and political pressure. The challenges of the Procurement Sector at the MoD are several. They include inadequate planning practices, problems with contract management and IT support, and the lack of standardised specifications for equipment in the Armed Forces which makes the preparation of tender documentation and quality control difficult.

4.2 Internal financial control and the Inspector General

4.2.1 Internal Financial Control

According to OECD/SIGMA (2012)¹³, public internal financial control (PIFC) is still in a very early stage of development. Following the adoption of harmonised internal audit laws by the state and entity governments in 2008, harmonised PIFC policy papers were adopted in 2009 by BiH State and in 2010 by the entities, and these policies are now being implemented. Central Harmonisation Units (CHUs) are operational in BiH State and in the entities. CHUs are still weak. A CHU Co-ordination Board, tasked with harmonising legislation and methodologies for PIFC across BiH, and made up of the heads

¹³ *Ibid.*

of the CHUs, started work in early 2011, but this co-ordination has been on hold since November 2011 due to the disagreements of its members concerning the Board's procedures.

Financial management and control (FMC) currently relies on the existing budget laws. Overall, the legal basis for internal financial control is imprecise. The internal audit laws are broadly in line with international requirements, but their implementation is slow. A key problem in the introduction of a modern PIFC system lies in the arrangements that currently exist for the management of public expenditure, in particular the lack of professionalisation of public servants in public expenditure management, accompanied by the need to distribute responsibilities and delegate authority within public organisations.

Expert knowledge of public expenditure management among civil servants varies significantly from institution to institution, and there is an uneven comprehension of key aspects of administrative decision-making. Apparently the MoD is no exception to this generally negative assessment according to the SAI's latest reports.

The international community has invested considerably in improving the functioning of public expenditure management in BiH. Despite these efforts, since the reforms have no local owner, external assistance is not sustainable unless a shift occurs whereby reforms are driven internally.

The MoD has recently improved its secondary legislation on PIFC. In April 2012, the minister signed a lengthy 72-page Rulebook on Internal Control in the MoD. In September 2010, the previous minister had signed a ten-page Rule Book on Internal Audit which – among other things – provided for a mechanism to ensure the implementation of the auditors' recommendations. Based on publicly available information, it is difficult to ascertain the degree of compliance with those two rulebooks, but external auditors show scepticism as to whether those measures have helped the ministry to achieve an adequate level of financial management and control. The SAI identified a number of aspects of internal control and audit that still need to be improved, and concluded by stating that it is necessary to establish an internal control system at all levels. This must ensure timely submission of financial documents, disposal and entry of military property in terms of assessment and accounting records, carrying out inventories in accordance with relevant documents defining this area aimed at property protection, and implementation of all public procurement in line with the BiH Law on Public Procurement. Furthermore, in cooperation with competent institutions, it is necessary to resolve the problem of disposal of military property without delay as a precondition for precise accounting, and fair and truthful statement of property in the Ministry's financial reports. The auditors again recommended the enhancement of the internal audit function of the Ministry, primarily in terms of staffing of the unit and consistent implementation of the Law on Internal Audit in the Institutions of BiH.

In line with the above observations the Ministry amended the Rulebook on Internal Organization, and in December 2013 established the Internal Audit

Unit in accordance with the Law on Internal Audit and the Decision on Criteria for Establishment of Internal Audit Units in the BH Institutions. With these amendments the Ministry created preconditions for ensuring functional independence of the internal audit.

The public internal financial control system in BiH is perceived to be at an early stage of development. Central Harmonisation Units are still weak and the legal basis for internal financial control is imprecise. The internal audit laws are to a great extent in line with international standards but implementation needs to be improved especially when it comes to the follow up on Supreme Audit Institution's reports.

4.2.2 Inspectorate General

The Inspectorate General (IG) at MoD is responsible for the training of military personnel in the AF and MoD in a professional and ethical sense. It ensures that military personnel are aware of and comply with the law, the Code of Conduct, and with other regulations underpinning ethical behaviour and professionalism. It provides assistance to military personnel and citizens in connection with matters within its competence. It carries out investigations into the misconduct of military personnel in the AF and MoD, and provides advice to the Minister of Defence on matters having a bearing on the morale, reputation and effectiveness of the AF.

The Inspector General is a military post with the rank of general, and the mandate lasts four years. The current IG has been in office since 1 March 2013. The appointment process starts with the Minister's proposal. The candidate goes through a security clearance process carried out by both local authorities and NATO and EUFOR. The candidate is then appointed by the Presidency and approved by the Parliament. The IG can be dismissed for non-professional behaviour or involvement in politics.

The IG organisation consists of 15 officers; five of them and the IG are in the MoD. The IG reports to the Minister and inspectors report to commanders. (For comparison, assistant ministers report to one of the two deputies). The IG considers himself and his colleagues to be guardians of the rule of law. At the moment investigations consume three-quarters of their time. The IG has not been the subject of any public controversy. On a number of occasions the current minister has expressed his trust in the IG and praised his work.

Upon receipt of a complaint the IG can initiate procedures on his own and can be instructed by the minister or in the case of ordinary inspectors by their respective commanders. Most of the IG work consists of investigation, assistance and education. IG's investigations end with a finding that a complaint is founded or not and a recommendation of a general nature which the minister or commander can then use as the basis for general improvement of the situation and – if necessary – sanctioning of individuals. If elements of criminal behaviour emerge, the evidence is submitted to the responsible institution.

Since December 2013 the Ministry has run an “Ethical line” through which complaints can be submitted anonymously.¹⁴ The Ministry is said to be the first BH institution to introduce this practice.

The IG investigates all complaints that seem to be based on an observed breach of a standard. The IG cannot sanction anybody but can collect evidence and forward it together with a recommendation to the minister/commander. The IG reports only to the minister who returns IG’s reports to the IG’s office, which then keeps them for future reference. In addition, the Parliamentary Military commissioner may request access to such reports as well as to the person concerned but in the latter case, parts of the report might be censored.

The Inspector General at MoD is responsible for the training of military personal in the Armed Forces and MoD in the professional and ethic sense. It also carries out investigations into the misconduct of military personnel in the AF and MoD. The current minister has in several occasions expressed his trust in the IG and praised his work. Public reputation of the IG is also positive.

4.3 Civil Service and Human Resource Management

According to OECD/SIGMA (2012)¹⁵, the overall politico-administrative configuration of the country does not clearly and fully support the meritocratic principle as a basis for the professionalisation of the civil service. BiH State, FBiH and RS do not recognise the principle of a professional civil service based on merit in their respective constitutions. In fact, the opposite is true, as the constitutional clauses imposing ethnic representation are inimical to the merit system. Although the right of equal access to public employment is guaranteed to all citizens at all levels, the insistence on ethnic representation clearly favours the main three ethnic groups at the expense of “other” minorities and of the merit system. While ethnic representation is the reality of the Dayton Agreement’s BiH, the country would benefit from the development of a modality for balancing the principles of merit and proportional ethnic representativeness.

The status of civil servants, as defined in the existing legislation, is not compatible with prevailing standards in EU Member States. Furthermore, the way in which the legislation is applied prevents the country from developing a professional, politically neutral and impartial, merit-based civil service. Civil service legislation was imposed by the Office of the High Representative in Bosnia and Herzegovina (OHR) on common BiH State institutions (2002), with several later amendments.

¹⁴ <https://etickalinija.ba/Home/About>

¹⁵ OECD (2012), “Bosnia and Herzegovina Assessment Report 2012”, available at: <http://dx.doi.org/10.1787/5jz2rqlcrnk-d-en>

Existing civil service laws define differently the scope of the civil service in BiH administrative structures and levels of government. These differences result in a civil service system that is incoherent, full of legal uncertainty, and extremely difficult to manage in any efficient way, thus adding difficulties to already difficult public governance arrangements. Most of these incoherencies have their origins partially in the governance arrangements resulting from the Dayton and Washington Agreements, but also in the various foreign influences that have affected the various civil service legal regimes established in the country. In any case, the harmonisation of working conditions across all administrations in the country may not be politically feasible and may not be necessary as a condition for increasing professionalism in the civil service. More professionalised civil services are also possible in fragmented countries with separate governments.

However, attempts have been made recently by the government coalitions at the BiH and FBiH to further politicise the civil service by classifying civil service posts such as assistant ministers, chiefs of cabinets and secretaries of ministers as political positions and by introducing performance appraisal every quarter with the possibility of dismissal after two consecutive appraisals. Given the lack of a reliable performance appraisal system, increasing the frequency of the performance appraisal exercise to every three months is conducive to disruption and arbitrary dismissal. For the time being these attempts have not borne fruit. The practice is, however, that the higher the position in the hierarchy, the more it is politicised. Post such as Director of the Directorate for EU Integration, the Head of Anti-Corruption Agency and similar are highly politicised. In fact, some of these posts are part of political parties' distribution quotas even though they are civil service posts.¹⁶

Civil service agencies (CSAs) have strived for transparency and fairness in recruitment and selection procedures. Vacancy notices are widely accessible, as are the reading materials for prospective candidates to prepare themselves for the general examination. All information relevant to a vacancy can be obtained from the relevant CSA, including the names of the panel members. However, there have been repeated allegations of questions being disclosed in advance to preferred candidates. It is important to mention that political divisions are less important than the ethnic ones. In essence, it is the national balance that needs to be preserved. Political affiliations come second. This is at least the common perception. However, party life during the last two years has proven that this might not always be the case. Many party leaders are ready to trade "their" ethnic quotas for political support from coalition partners in other ethnic groups.

The publication of the vacancy announcement does not guarantee per se that recruitment is based on merit and that the right to equal access is respected. Many artifices, mostly in the guise of ethnic representativeness, are used to

¹⁶ Almir Terzić, "Komisija svjesna povrede zakonitosti u imenovanju Vijeća RAK-a, ali: Oštećenima preostali samo sudovi," available at: <http://www.oslobodjenje.ba/vijesti/bih/komisija-svjesna-povrede-zakonitosti-u-imenovanju-vijeca-raka-ali-ostecenima-preostali-samo-sudovi>.

circumvent the requirements of the merit system. Ethnicity, which in the BiH context generally translates into political affiliation, usually overrides considerations of merit. This situation is especially true of managerial appointments. Existing recruitment and promotion mechanisms and practices are not effectively contributing to the professionalism of the civil service. Party politics continues to play a major role in civil service recruitment and promotion, even though often disguised as ethnic representativeness.¹⁷

Nevertheless, rank and file civil servants are recruited with due respect for competitive procedures, unlike managerial posts in which political interference is common and the best qualified are not guaranteed recruitment since ministers can choose from within the shortlist. Political advisers are appointed on completely discretionary grounds and form a parallel administrative power competing with the established civil service. No apparent political will exists to introduce or reinforce the merit system.

The Civil Service Law of the common BiH institutions applies in full to the civilian personnel of the MoD. The Law on the Armed Forces was passed in 2005 also with the strong involvement of foreign experts and foreign political weight. Apart from the Minister and two deputies, at the MoD there are also a number of advisers employed by the minister and deputies. They are political appointees. Highest civil service posts are those of assistant ministers and the secretary of the MoD. Nominally they do not belong to the political sphere but a certain degree of political correctness is on display here as well. For instance, it is almost impossible to have all five assistant ministers from the same ethnic group. As for the military personnel the Law on Service in the AFs (article 10) stipulates that recruitment of persons to professional military service in the Armed Forces shall be conducted on the basis of vacancy notices, i.e. announcements, except for cadets and scholarship holders after graduation. However, a person may enter the professional military service without a vacancy notice or announcement if he/she is required to perform certain tasks and duties of special importance for defence. Those tasks and duties are determined by the Minister of Defence – this is a legal loophole contravening the merit principle.

On average the recruitment process for the civil service is completed in 1-2 months. There are usually a large number of applicants for vacant positions at the MoD – 100 to 150 for each vacancy. Because vacancies are advertised in groups (the latest announcement included 13 positions) the number of applicants may swell to 500-600, which in turn significantly increases processing time duration – often to 6 months. The way in which the recruitment process takes place weakens the merit principle in the MoD and elsewhere in the BiH civil service. The current system cannot be changed by the MoD alone. Responsibility for preparing reform proposals rests with the Civil Service Agency (CSA). But experience and suggestions from a large ministry with

¹⁷ OECD (2012), “Bosnia and Herzegovina Assessment Report 2012”, available at: <http://dx.doi.org/10.1787/5jz2rqlcrnk-d-en>

political weight such as the MoD will doubtless be beneficial to the CSA reform efforts.

As for the military staff, the Law on Service in the AFs (article 111) stipulates that the procedure for the promotion of professional military personnel shall be transparent and shall ensure that the most deserving professional military personnel are promoted based on past performance and future potential to serve in positions of greater responsibility.

Article 107 of the Law on Service in the AFs regulates promotion (contract extension). It stipulates that the Minister of Defence shall appoint a five-member Contract Extension Commission. The President of the Commission shall be at least two ranks higher than the person being considered for contract extension, and the members of the commission shall have at least the same rank or higher. All three constituent peoples shall be represented in each commission, and decisions of all commissions shall be made unanimously. When considering a candidate for contract extension the presidents of contract extension commissions shall be presented with a file containing the following details for each candidate: a) annual evaluations, b) certificates of courses and schools attended and completed, c) disciplinary records, d) a summary sheet containing a synopsis of civilian and military qualifications, and e) a record of assignments and incentives.

A contract extension commission shall consider each candidate for contract extension on the basis of the documentation submitted, and shall submit a list of those recommended for contract extension, ranked in order of merit, to the Minister of Defence who shall approve contract extensions in accordance with the list submitted by the Contract Extensions Commission. As in most other areas, the legal framework seems to be adequate. However, that has not ensured unbiased and flawless recruitment. According to MoD sources, a brigadier and an adviser have been indicted for corruption in the recruitment process but the legal proceedings are progressing very slowly. Media also reported that in May 2013 the Appeals Commission of the Council of Ministers found that 152 officers and non-commissioned officers had been incorrectly promoted. However, according to the MoD, that does not seem to involve corruption but is a matter of different interpretation of legislation.

An employment decision in the civil service may be appealed to the Civil Service Appeal Board no later than 15 days after the appointment has been made (LCS article 67). The decision of the Appeal Board may be brought before the Administrative Court. According to the provisions of the Law on Administrative Procedures, the Administrative Inspection makes regular reviews of the ways in which the recruitment procedures are implemented. For military personnel the second instance is the Appeals Board of the Council of Ministers.

According to local qualified observers, these guarantees tend to ensure that appointments are not completely arbitrary but the practice leaves much to be desired. Cases where a position is attained solely on the basis of merit are relatively rare. So what the current legislative framework achieves is to exclude

the appointment of people who are completely incompetent. However, it does not ensure that the best and the brightest are always recruited or promoted. In April 2010 *Glas Srpske*, a newspaper, wrote about corruption at the MoD stating that employees had paid 2500-5000 Euros for the extension of their employment contracts. The Ministry and Armed Forces have not commented. In August 2011, *Nezavisne novine*, another newspaper, reported a similar allegation, quoting the then Minister Selmo Cikotić, that the Ministry is aware of the allegations and that several investigations were underway. Similar cases have previously ended without incriminating court decisions. As mentioned above, in May 2013 the Appeals Commission of the Council of Ministers found that 152 officers and non-commissioned officers had been incorrectly promoted.

Only two decades ago Bosnia and Herzegovina was one of the six republics of the Socialist Federation of Yugoslavia (SFRY) – a one-party state with the Communist party in power. Although in theory, all posts in the public administration were open for all Yugoslav citizens, key positions were reserved for members of the Communist Party. In practice, it was always possible for the Party to have its preferred candidates appointed. The selection panels regularly included party members, and often there were clear instructions from the Ministers' cabinets about who should be selected. Promotion to higher positions was largely dependent on the candidates' "personal characteristics", which *de facto* meant the quality of their service and loyalty to the Party.

Arguably, the practices described here are present in today's Bosnia and Herzegovina, although the socio-political conditions no longer are the same as in Communist Yugoslavia. The generation that learned its ways in the last decades of communism is the one that still pulls the strings in BiH since this country has not carried out a lustration process. Arguably, the mentality, habits, ethical values, and political and organisational culture of this generation of decision-makers have not really changed much. Party affiliation is still important and political influence pervasive, especially in the selection of senior civil servants. Heads of institutions are given the authority to choose any candidate who meets minimum criteria regardless of his/her score in the professional examination. Such arrangements make the system vulnerable to discretionary and arbitrary appointments.

During the last decade there have been massive lay-offs of personnel from the MoD in the wake of defence reform. These have been controversial politically because of the enormous financial burden on various budgets but those controversies were not primarily corruption related.

BH' pensions system is not in great shape but it functions. The pensions of retired military personnel are quite generous by Bosnian standards. The average military pension in the country is approximately 500 Euros, while that of a brigadier is a little over 1000 Euros. However, there are ongoing problems with the pensions of veterans and former military personnel who were laid off up to 2010 in the wake of AFs reductions. Compensation matters are regulated by articles 35-43 of the Law on Service in the AFs according to which professional military personnel and members of their families have the right to health care

and health insurance in accordance with the valid regulations on health care and health insurance. Military personnel have the right to all forms of health care after discharge from the Armed Forces for injuries or illness sustained during the service in the Armed Forces, the cost of which shall be borne by the Ministry of Defence. In the event of death, members of the immediate family have the right to compensation for funeral expenses. The spouse of a professional military person killed under conditions described in the Law, who does not meet the requirements for a family pension may be sent for training upon his/her request in order to acquire Level IV educational qualifications if, at the time of the death, he/she did not have any qualifications and was unemployed.

Pay and pension rates are not published openly. Although salaries are not very high in the AFs, they are paid in time. Working in the AFs is considered to be advantageous.

The salaries in the MoD and the AFs are regulated by the Law on Salaries and other benefits in BH institutions. Under certain clearly defined conditions (e.g. flying bonus, de-mining bonus), the salaries of military personnel may be increased by up to 30% of the basic salary provided such bonuses do not amount to more than 20% of the total salary budget. Professional military personnel may receive bonuses for managerial roles provided that the total of such bonuses does not exceed 3% of the total salary budget. The Council of Ministers adopted a temporary decision regulating these matters. In its 2010 report for the MoD, the SAI (External Auditor) opined that the decision should be revised so that bonuses would be paid only when a person actually performs the function for which the bonus is provided. There is no indication that CoM is working on any bylaw on bonuses.

As for the remuneration system for the Armed Forces, salaries are based on standard coefficients which are multiplied by the basic salary. In addition, every staff member is entitled to an increase of 0.5% per annum (this is in line with Labour Law provisions). However, the Law on Salaries allows for additional increments in the case of highly specialised jobs (where difficulties arise in finding sufficient numbers of qualified personnel) such as aircraft pilots. In these cases, an additional 50% can be allocated (article 26 of the Law on Salaries). Such allocation depends on a discretionary decision of the minister and, therefore, the predictability principle of the remuneration is compromised.

Military personnel are prohibited from engaging in ancillary employment. As for civil servants they may do so under certain conditions specified in the 2004 “Decision on cases in which permission may be obtained by public officials to perform an additional activity” from the Council of Ministers. Pursuant to this decision a civil servant may be a member of the administrative or other boards of legal or charitable entities at any level in Bosnia and Herzegovina, provided that the total monthly fees from all these sources does not exceed an average monthly net salary in the last three months in the entity in which the head office of the legal entity is situated. In the case of sports organisations, the fee cannot exceed 50% of the monthly average salary. However, no fee limits are set for cultural or teaching activities or for “participation in the activities of the

establishment and development of local government". These provisions seem to leave the door open for certain unreasonably high compensations. In fact, during the 27 October 2011 parliamentary session, a MP requested clarification regarding the increase in salaries of pilots in the AFs, given the fact that they were not flying. Some media picked up the story but the MoD denied it was paying bonuses to aircraft pilots who were not flying.

The SAI External Auditor's report for 2011 (page 14) found that the MoD in that year on average paid 9,496 employees. Employees in the MoD were paid by the Ministry of Finance while those in the AFs were paid by the MoD. Random sampling by the Auditor did not show any irregularities but the Auditor recommended integrating all payments into the Ministry of Finance system and software.

Performance appraisals, as mentioned previously, are very subjective. A new rulebook, adopted in 2011, is intended to render them more objective. Managers are required to set performance objectives for their staff. Fifty per cent of the overall assessment should depend on the extent to which these objectives are met. However, as long as managers tend to give the highest grades to all employees (regardless of their real performance), the credibility of the whole exercise will continue to be questioned. The recent (May 2013) adoption of a Code of Ethics for civil servants in BH institutions is expected to positively contribute to the resolution of this issue, at least in part.

The problem of performance management is just a small part of the larger problem regarding inadequate management practices in the MoD and the lack of relevant skills and abilities in the case of those who are supposed to manage. The existence of this problem has been documented in the recently completed analysis of work performance in the Ministry. The results show that heads of department and assistant ministers spend on average 30% less time on typical management functions (i.e. planning, organising, leading and controlling) than is expected of them. Thus the MoD would benefit from undertaking further capacity building measures designed to address planning practices as well as focusing on the utilisation of human resources in the Ministry.

As for the protection of whistle-blowers, in addition to the general obligation for all citizens to report suspicions of criminal offences (including corruption-related offences, article 230 of the BiH Criminal Code), civil servants are specifically subject to this obligation (articles 126-148 of the BiH Criminal Code). The failure to report wrongdoing is punishable by a fine or imprisonment for a term not exceeding three years. According to article 88 of the Law on the Service in the Armed Forces, reporting corruption is a special obligation of military personnel. However, there are no legal measures in place to ensure the protection of civil servants or military servicemen who report corruption.

Various BH laws protect witnesses, but no specific law provides for the protection of whistle-blowers. The Anti-Corruption Strategy envisaged the adoption of the necessary legislation by 2012. No such law has been passed yet. At the proposal of the Ministry of Security, the Council of Ministers created a

working group tasked with the drafting of a law on the protection of whistle-blowers, which is currently at the consultation phase within various relevant institutions. Whistle-blowers are currently protected to some extent under several instruments of criminal, administrative and civil laws, and by-laws. The Anti-Corruption Strategy obliged public institutions to create by the end of 2010 the procedures that will guarantee protection to public officials and clients who report irregularities. As a result of the current legal gaps, civil servants and the public appear to be comfortable reporting corruption practices only if they can remain anonymous.

A coalition of civil service organisations monitoring developments in the integrity area regularly points out the absence of legal protection for whistle-blowers, including the issue of actual problems facing those who report corruption. The situation in the MoD seems to be no different from the rest of the public administration system. In June 2013 the current FBiH government coalition made public the first draft of Federation law on the protection of whistle-blowers. There are no indications when the draft laws could be adopted. The USAID actively supports the preparation of the drafts. However, the readiness or maturity of the BiH to protect whistle blowers effectively raises many sceptical eyebrows since whistle-blowers are considered to be reminiscent of the former police denunciators and are problematic from a cultural point of view. In addition, public management systems do not seem ready to handle an efficient sound whistle-blowing protection policy no matter how sound the regulation might eventually be.

In conclusion, the meritocratic principle is not fully supported as a basis for professionalism in the civil service. The legal framework is adequate but in reality attainment of a position solely on the basis of merit is not the rule. The ethnic representation system of the Dayton Agreement is inimical to the merit principle. Ethnicity, political affiliation, and private relations tend to override merit considerations to a large extent. The political and organisational culture inherited from the time of the Socialist Yugoslavia, where key positions were reserved for members of the communist party, remains. In the case of protection of whistle-blowers at the time of completion of this report there were no legal measures in place to ensure the protection of civil servants reporting corruption.

5 Anticorruption Policies and the Anticorruption Agency

5.1 Anticorruption policies and strategies

Declarative support for the fight against corruption is almost universal among Bosnian political parties. However, those declarations have not been translated into practical measures to fight corruption. Probably even more serious than the absence of political will is the use of the fight against corruption in daily politics. The spectacular manner in which the current President of the Federation of BiH was apprehended by the police and the pro-government media reporting on the case is the most recent example of this. The whole operation was perceived as a form of pressure on the President and an expression of opposition to the change of government. Such misuse of state institutions in the “fight against corruption” might lead to more cynicism among BH citizens.

However, mainly because of external pressure Bosnia and Herzegovina has taken several steps to combat corruption. These include directly relevant laws and policies and other reforms that have positive implications on reducing corruption. Nevertheless, insufficient implementation of the legal framework constitutes the main obstacle to battling corruption. The country faces a major challenge in implementing and subsequently enforcing the legal and institutional measures to curb corruption. A key challenge has been the fact that many of the reform policies have been internationally imposed or negotiated under international supervision while implementation is left up to inadequate domestic institutions. As a result, the country has relatively good legislation and institutions in a number of fields, but fails to implement these laws and policies and to make the institutions work.

Up to the present the approach to anti-corruption has been highly 'technical' in the sense that it has focused on legal or institutional reform of individual pillars or institutions and has not adopted a broader countrywide approach by engaging various political stakeholders in promoting solutions. The public disillusionment and scepticism further exacerbates the situation. As a result, observers report that the absence of political will to deal with corruption is not adequately addressed and that the lack of reforms in some sectors is in danger of upsetting reforms in others.¹⁸

According to the Centre for the Study of Democracy¹⁹, the analysis of corrupt practices in BiH, as well as of the anti-corruption policies and measures implemented so far, points to two fundamental deficits: namely, a lack of

¹⁸ Thompson Reuters Foundation (2012), *Anticorruption Profile Bosnia and Herzegovina*, available at: <http://www.trust.org/trustlaw/country-profiles/good-governance.dot?id=9fe19e20-5fc2-4cb1-8741-c06e4a31e296>

¹⁹ CSD/CIN (2011), *Counterring Corruption in Bosnia and Herzegovina: 2001-2011*, available at: <http://www.csd.bg/files/Full.pdf>

political will and of insufficient punishment in the case of corruption. Thus far, the Centre's experience demonstrates that political will is not to be confused with shallow declarations, nor should it be limited to the formulation of anti-corruption strategies or the formal creation of anti-corruption institutions and mechanisms. One of the most notable shortcomings of all anti-corruption efforts is their sporadic nature. The fight against corruption requires consistency (i.e. policies, programmes, measures, and the general discourse). Anticorruption measures are typically stepped up under certain (internal or external) pressures. If pressures subside, anticorruption efforts often diminish as well.

Bosnia and Herzegovina has a comprehensive anti-corruption strategy, which does not make any special reference to the defence sector. The first attempt to substantiate the commitment of BiH to tackle corruption was the adoption of the 2006–2009 Strategy for the Fight against Organized Crime and Corruption. It proved to be ineffective. In 2009 a new Strategy for the Fight against Corruption 2009–2014 was adopted under significant international pressure, especially from the EU, since it was one of the conditions for the liberalisation of the visa regime for Bosnian citizens.

The current state of implementation of this Strategy is limited despite earlier estimates by the observers that national authorities were now more experienced in the field of anti-corruption legislation and were better equipped with enforcement capacity, which should have supported the success of the new Strategy. In addition, the Strategy was accompanied this time by a feasible Action Plan that was adopted simultaneously with the Strategy. However, several risks have also been present from the start. No operational monitoring mechanism exists as yet for overseeing the progress towards the implementation of the Strategy. This role is reserved for the new Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (the Agency), the law for which was finally adopted in 2010 after years of delay. The Agency is yet to become fully operational. Because of delays, the current situation bears a realistic possibility that the new Strategy on countering corruption would do no more than replicate the failure of the 2006–2009 initiative.

In terms of preventive anti-corruption measures, the Strategy identifies three main areas: 1) public sector reform (involving transparency and accountability), 2) anti-corruption/integrity plans, and 3) streamlining the business environment (i.e. instituting simpler rules for doing business). The objectives of the strategy are ambitious and broad, which means that a dispersion of efforts in addressing all of the objectives simultaneously would probably lead to inefficient implementation of the Strategy and ineffective results. There is already evidence that the latter is happening. Little progress has been made with regard to public sector reform, as is also the case when it comes to boosting transparency and accountability. Attempts at reporting corrupt practices which bear no consequences are similarly weak.²⁰

²⁰ Transparency International BiH (2010), "Monitoring of the implementation of BiH Anti-corruption strategy 2009-2014," first periodical report.

Many of the norms included in the legislative framework have been adopted as a necessary evil, as they were part of various conditions set by the EU. As such, they have not been fully internalised by the elite or even citizens. ‘Susceptibility to corruption’ is higher than the tolerance of corruption, as citizens are more likely to engage in corrupt practices under pressure, and practical needs often win over personal values. While increased public awareness of the prevalence of corruption has led to a slight decrease in corruption practices between 2001 and 2011 the “corruption pressure from the public administration has increased, and the society has grown more disillusioned with public institutions' ability to tackle corruption effectively.”²¹ In addition, the anti-corruption mechanism is rather weak, fragmented and often politically dependent.

In late 2012 and throughout 2013 the then ruling coalition seemed determined to reverse the gains made in this field because the current framework, despite all its weaknesses, prevented it from gaining a rapid and unrestricted hold of the economic resources of the state. An even more disturbing development was the apparent attempt by the same coalition to take over a segment of the police and the judicial apparatus. For instance, many observers have expressed suspicion about the manner in which the President of the Federation of BiH was apprehended in April 2013. Too many cameras were on the spot as soon as the operation started; some politicians knew about the operation beforehand and apparently there was an attempt to plant evidence.

The MoD has no unit specialised in anticorruption policy implementation and oversight. That role is partially performed by the MoD General Inspectorate. The defence sector is often overlooked in the governance reviews of BiH as if it was not part of the system. Until recently there has not been much anticorruption activity within the ministry either. Reportedly the preparation of anti-corruption policy and the accompanying action plan is in progress. The target is to adopt these two documents by the end of 2013. Whether these documents will result in the adoption of the integrity plan mentioned in the Anti-Corruption Strategy remains to be seen. Occasionally international organisations and institutions organize training activities in which the MoD takes part.

The Defence White Book provides that officers cannot have financial interests which are in conflict with the conscientious conducting of their duties, or be engaged in activities outside their current duties, or be involved in any other activity that is in conflict with official duties and responsibilities. They are also obliged to protect public property, to use it only for lawful purposes, and to report through the line of command irregularities or corruption that they may observe. The Ministry does not seem to have a complete integrity assurance system. Certain aspects of it are in place however. For instance, procurement

²¹ CSD/CIN (2011), *Counterring Corruption in Bosnia and Herzegovina: 2001-2011*, available at: <http://www.csd.bg/files/Full.pdf>

commissions' members are asked to sign statements indicating that they are not subject to conflict of interest.

There is considerable room for improvement in anticorruption policy at the MoD since there are clearly many shortcomings. How much these should be attributed to the lack of political will or to an organisational culture inherited from the past and how much to the lack of experience, expertise, and resources is difficult to say. While the lack of human resources is evident, unnecessary delays in the adoption of bylaws or recruitment of new staff give the impression that the necessary political will might be lacking as well.

Nevertheless, given the low esteem in which strategies in general are held and their non-binding nature in the BH legal system, no political party has particular interest in changing them. Unlike the laws, they envisage no sanctions in case of non-implementation. In light of that, while ruling parties have invested considerable energy in amending laws on conflict of interest, freedom of access to information and election law, they have simply neglected the anti-corruption strategy since its adoption. This will bear no major consequences unless international actors insist on them.

Declarative support for the fight against corruption in BiH should not be confused with actual political will. Most shallow declarations have not been sufficiently implemented and anti-corruption efforts remain sporadic. The legal framework which often is internationally imposed is left with inadequate domestic institutions, and lacks implementation. The MoD at the time of conclusion of the report had no specialised unit for anticorruption policy implementation and oversight, and there is room for improvement in anticorruption policies at the Ministry.

5.2 The Anticorruption Agency

A Law passed on 30 December 2009 created the Anticorruption Agency under the name of *Agency for the Prevention of Corruption and the Co-ordination of the Fight against Corruption*. Its director and deputy directors as well as a minimum number of staff were appointed some 19 months after its creation. At the end of 2012 the staff had increased to four and the budget to 474,000 Euros. Its human resources and budget seem to be inadequate. In June 2013, the recruitment of nine civil servants to the Agency was in progress amidst suspicions of favouritism.

These resources are completely inadequate for the Agency to carry out any meaningful work in accordance with its mandate which identifies it as the key institution tasked with 89% of the activities of the Strategy Action Plan. The fact that the Agency has not yet become fully operational is only one sign of lowered expectations, and this has already resulted in several restrictions being imposed on the implementation of the Strategy, such as: 1) lack of coordination and oversight, 2) missing implementation deadlines, and 3) contradictions between the Strategy and its Action Plan. As a result of the lack of political will to address corruption, it has not yet been made fully operational.

The procedures for appointing and dismissing the head of the agency and the highest ranking staff are relatively clear. The Director is appointed by the Parliament of BiH at the proposal of a special Committee by way of open competition as provided by the Law on Ministerial Appointments, Appointments of the Council of Ministers and Other Appointments, following the same scrutiny as for the appointment of the members of the Council of Ministers. The Committee is made of nine members: three representatives from the Parliament's House of Representatives and three from the House of Peoples, two representatives of the academic community and one representative of the non-governmental sector. The appointment of the first director and deputies was very protracted and politically controversial. This has had lingering effects on the legitimacy of the Agency's management, especially because one of the Deputy Directors is publicly suspected of war crimes.²² The recruitment of the Agency's rank and file staff is carried out either according to the Civil Service Law or the General Employment in BH Institutions Law, and therefore suffers from the same deficiencies already identified in this report.

The Agency is an independent and autonomous body reporting to Parliament, with a mandate to prevent corruption both in the public and in the private sectors. The Agency is entitled to comment on draft laws, but cannot formally propose legislation despite the fact that its main mandate is to prevent corruption, i.e. to initiate anticorruption policies and to monitor their implementation (article 5). No report from the Agency to the Parliament has been made public so far.

The Agency has no investigative powers. The Law (article 10) only says that the Agency is to "take action upon receiving notice of corrupt behaviour, pursuant to applicable legislation". It seems sensible to conclude that the only power it has is to forward the matter to the police or to the prosecutor, as the Agency cannot be said to have administrative competences to investigate corrupt behaviour.

The media reports have focused on the delays and politicisation of the appointment of the management, approval of the budget and its amount as well as the bylaws on internal organisation. Transparency International BiH has repeatedly warned that the main obstacle in this regard could be 1) the absence of the subordination and control mechanisms between state, entities, and cantons, 2) lack of financial resources, and 3) inability to monitor the Anti-Corruption Strategy implementation in responsible institutions at all levels. So far it does not seem that all relevant parties are sufficiently involved, the necessary resources are not planned, and there is insufficient commitment to the operational aspect of Anti-Corruption Strategy measures. Of particular concern is the fact that the Strategy has never been adequately presented to the institutions at entity, cantonal and local level. Consequently, many institutions are not aware of the objectives of the Strategy or their role in its implementation. This might change once the Agency becomes operational but

²² <http://www.nezavisne.com/novosti/bih/Dom-naroda-BiH-Ratna-proslost-kost-u-grlu-delegata-99710.html>

the delays are already significant and make the timely implementation of the strategy a near impossible mission.

A number of other agencies in the country have been tasked with anticorruption. Anticorruption law enforcement in the country is split among police, ministries, and the Prosecutor's Office (16 agencies, 19 prosecutors, and 50 courts). At the state level, the State Investigation and Protection Agency (SIPA) has a separate Department for Prevention and Detection of Financial Crime and Anti-Corruption, while the regional SIPA offices have their own anti-corruption teams. In addition, the country's two entities' (FBiH and RS) Ministries of the Interior have Departments for Fighting Organized Crime. At the prosecution stage, the fight against corruption is entrusted to a Special Department for Fighting Organized Crime within the Prosecutor's Office.

At the policy level the fight against corruption has so far been mainly coordinated by the Ministry of Security of BiH and the State Investigation and Protection Agency. Despite the basic enforcement infrastructure already being in place, the courts have been reluctant to investigate and prosecute alleged cases of corruption. Cases resulting in convictions are still more of an exception rather than the rule. Leaders of five big political parties have been at the centre of various corruption-related affairs. The charges against them are usually dropped on technical grounds.

The Agency's director has repeatedly stated that systemic corruption, i.e. corruption at the highest level where decisions are made, is the biggest problem.²³ According to the Agency's director, the problem is the implementation of the regulations. There is nothing in the current legislative framework obstructing a more effective fight against corruption. This effort would benefit from general reforms in the public sector which would increase the transparency in the public institutions, transparency of party funding, prevention of conflict of interest and transparency of public funds spending.

In conclusion, the Agency for the Prevention of Corruption and the Coordination of the Fight against Corruption, lacks recourses and necessary competencies to fulfil its mission as a key institution for anticorruption efforts. The agency has not become fully operational. The Agency's director has pointed out that the systemic corruption at the highest level is the biggest obstacle to fight corruption.

²³ "U pravosuđu privilegije za nerad", available at <http://www.vijesti.ba/vijesti/bih/138874-pravosudju-privilegije-nerad.html>.

6 Recommendations

6.1 Recommendations for the MoD

1. Public procurement

There is a need for comprehensive efforts to strengthen defence-related arrangements for public procurement. It is crucial that the defence procurement system is set up in such a way that it enables the Ministry and the Armed Forces

- to accurately assess their needs;
- to prepare adequate procurement plans and tender documentation;
- to initiate and conduct procurement procedures professionally within an appropriate timeframe;
- to be fully able to manage contracts.

2. Internal control and corruption risk management

There is a need to establish a more comprehensive and reliable system for corruption risk management. Such a system should include mechanisms for assessing and mitigating corruption risks. In order for such a system to be adequately developed and implemented, specialised professional functions need to be created or significantly strengthened within defence institutions. More specifically, it is necessary to strengthen the internal audit function of the Ministry in order to ensure consistent implementation of the Law on Internal Audit in the Institutions of BiH.

3. Human resources management

The Ministry of Defence of Bosnia and Herzegovina needs to continue efforts to strengthen meritocratic HRM. The problems and challenges identified in this report can only be adequately addressed by truly professional institutions. More particularly, the Ministry should:

- strengthen capacities for HRM planning, as well as strategic planning in all areas of the Ministry;
- strengthen the managerial capacities of the ministry;
- take steps to ensure that the MoD staff is used efficiently and effectively to solve the most pressing problems in the defence area;
- take steps to ensure that the competence of MoD staff is strengthened and fully utilized and that clear and realistic performance requirements for all MoD officials are formulated and integrated into a coherent scheme of HRM.

6.2 General recommendations

1. Overall, the system of public procurement does not function properly. Specifically, there is an urgent need to strengthen the capacity and independence of the Procurement Review Board.
2. The current conflict of interest regime suffers from major deficiencies. In general, the administrative and penal consequences of breaching the conflict of interest regulations are relatively lenient and can be “bargained”. The conflict of interest policy and regulations need to be improved.
3. The promotion of more transparency at every level of government and in the functioning of every public institution should be tirelessly and permanently pursued. The need for more transparency is particularly important when it comes to party funding and public spending. Constant checks on the degree of transparency in decision-making and working procedures should become customary.
4. Institutions with overall responsibilities for fighting corruption are not working satisfactorily. In order for the situation to improve markedly, general reforms in the public sector are urgently needed, especially as regards transparency.
5. The civil service needs to be depoliticised and professionalised by clearly implementing the merit system.
6. Internal financial control needs to be strengthened, and a culture of managerial accountability must be developed.

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Key words:	Parliamentary control, control of intelligence and security institutions, ombudsman, freedom of access to information, internal and external audit, anti-corruption bodies, anti-corruption policies, human resources management, public procurement, asset disposal, corruption, integrity, good governance, corruption risks.
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