

## 3.2 Human Resource Management

### 3.2.1 Human resources

The RS adopted a *Civil Service Law* in February 2002. The OHR imposed a Law on the State in May 2002 and on the FBiH, including the Cantons, in early June 2002. RS has made some progress, but, as discussed below, the acceptance of the BiH and FBiH laws by the target Governments and Civil Services was very limited because:

- The new laws were imposed by OHR without due consultation of all stakeholders;
- they insisted on “ethnic representativeness” (based on 1991 census statistics);
- they did not take into account the constitutional/political reality of a federal State (at both levels).

The legal base for support staff as well as for political appointees working in public administration is the old *Labour Law in State Organs*.

There is no specific labour law on the State Level. The State Level applies the *Labour Law* of the Entity where the employee resides.

*Civil service legislation is basically in line with EU standards*

The various *Civil Service Laws* are all basically in line with general EU standards. The laws define the scope of the civil service, ensure its basic independence from political interference and promote a professional civil service, based on merit. In addition, the Laws provide for a distinction between political appointees and civil servants.

Each of the laws calls for the creation of a Civil Service Agency as the central management capacity; these Agencies are to be created as statutorily independent bodies under, and responsible to, the Council of Ministers (BiH), or the Government (FBiH, RS). A Civil Service Agency was created in BiH in June 2002, with a Head with the rank of a Secretary with Special Assignment (currently paid by OHR).

The Agency in the RS was created in August 2002 and is headed by a Director with the status of an Assistant Minister. On the State Level the appointment of the Director is limited to 5 years, no renewal is provided by the law. In RS the appointment is for 4 years with possibility for renewal.

The Head of the FBiH Agency was finally nominated in April 2004. The Agency will serve both the Federation and the Cantons. This fact, together with the decision to head the Agency with a single Director rather than a *collegium*, (which would have allowed for more equal representation of the constituent peoples), may have prevented an earlier recruitment of a Director acceptable to all parties.

The responsibilities of the various Agencies are not fully aligned, but each is tasked with central management of the Civil Service for the respective jurisdiction, in particular with developing uniform rules for recruitment and promotion, and ensuring the implementation of the *Civil Service Law*. Each Agency is required to develop and maintain a Civil Service personnel registry.

*Staff registries have been set up on State Level and in RS*

The personnel registries on the State level and in RS have been established. RS used the State Level software adapted to their needs. The registries contain all necessary HRM data, including data determining the basic salary for each position. Not all staff have yet been entered into the database.

The database is intended to be linked to all Ministries during 2004. A link across levels of Government is not foreseen for the time being but would be desirable.

For the time being no adequate registry exists in FBiH.

Since 1998, the EU Delegation has supported civil service reform at the State Level, and the RS has longstanding DfID assistance. However, very limited TA has been provided to the Federation.

Technical Assistance operates mainly at the Canton level (however not in all Cantons): the main international donor is the OSCE with their "capacity building project". It is likely that Civil Service management in the Federation would have been improved if more TA had been provided.

### **3.2.2 Budgeting control of staff numbers, remuneration content, pay determination system**

As in all former Yugoslavia, there are strict staffing rules: each administrative entity has to submit a staffing plan (Rule Book), including positions and categories within the position, which together define the salary for an appointee. The positions are described in the Civil Service law. It is necessary that the Rule Book be adopted by the Government, prior to making decisions in relation to Civil Service management and structure: for this purpose, the MoF has to confirm that sufficient budgetary resources are available to cover the costs of the proposed arrangements.

In principle, this mechanism, together with the CS registry which is the responsibility of the CS Agency on the State and the Entity levels, ensures that approved staffing levels are not exceeded. Funds are only released if a position is included in the approved Rule Book and is actually filled. In principle, the payment of discretionary bonuses out of salary-savings from positions which fall vacant is not available. We are not in a position to assess the extent to which this restriction is observed in practice.

*On the state level staff numbers are increasing constantly*

Staffing levels on the state level have considerably gone up over the past few years. In the early days just after Dayton all staff, including Ministers counted for about 120 persons. In early 2004 the total number of staff paid from the state level budget is between 4500 and 5000. According to the pay role of the 2004 budget it was 4472 staff; however there are local

consultants paid from the operational budget and a few new institutions have been created throughout 2003, the staff of which is paid out of the budget reserve. As of January 2004, 2200 customs officers have been transferred to the state level, adding to the above number. However, their salaries will be paid by the entities during the current year.

Brcko district counts about 3000 staff in the administration; as there are neither customs officer nor municipal staff this number reflects the grand total.

*In RS staff has been reduced considerably*

Staffing levels have been significantly reduced in RS over the last years. The World Bank calls for a reduction of further 5 per cent to reduce the severe budget problems. The public service in RS numbers some 22,000, of which about 4500 are Civil Servants and further 9187 are support staff; the police service has about 8000 staff, including technical support staff. The 1200 customs officers which have been transferred to the state level are still included in the overall number as they are still on the RS pay role.

Public service employment in Municipalities is not included in these numbers.

The WB calls for a 5 per cent reduction of staff by 2005 for FBiH. In FBiH the Civil Service on the entity level numbers about 8200. No exact numbers for Cantons and municipalities are available before the new treasury system will be fully functioning. However, numbers given to Sigma were 18000 for entity level and Cantons public administration and a grand total for staff paid out of the public budgets, i.e. including courts, police, customs etc. of about 41000. The high staffing levels in FBiH reflect the complex administrative and judicial structure of the Federation. Direct comparison of numbers between RS and FBiH is not valid, in part because of the Cantonal arrangement of service-delivery, and in part because of different definitions of the various statistical categories.

All Civil Services in BiH have to take account of the multi-ethnic nature of the State, based in effect on the 1991 Census. [1991 was the date of the last Census undertaken before the war and the major displacements of populations. It is therefore used as a reference so as to avoid embedding the results of ethnic cleansing. Annex 7 to the Dayton Agreement refers to the rights of return of displaced peoples. ] As a consequence, the following situation has arisen:

- BiH: under the Constitution, the ethnic composition of the civil service is required to “generally reflect” the ethnic structure of the population of BiH, as assessed in accordance with the data from the last Census. National representativeness of the ethnicity of civil servants is actually based upon the voluntary self-declaration of their chosen ethnicity by individuals, in accordance with this law. (BiH *Civil Service Law*, Article 2). The nomination of a particular ethnic origin may be changed at the discretion of the individual at any time: this renders

the statistical base for the calculation of ethnic representation potentially unreliable.

- RS: ethnic representation in State bodies in the Ministries of the RS Government, municipal bodies, country and municipal courts, is required to be based on the 1991 Census. This requirement applied until Annex 7 to the Dayton Agreement (Refugees and Displaced Persons) was considered to be fully implemented. (*RS Civil Service Law*, Article 5). It is understood that Annex 7 has been deemed by the OHR in 2003 to have been fulfilled, as the management functions are being devolved to RS institutions.
- FBiH: proportionate representation is called for the law on civil service of the Federation of Bosnia and Herzegovina (Art. 2) According to Art.2 para 2 this proportionate representation is to be based on the census of 1991 until the full implementation of Annex 7. The government of the Federation is given the task to supervise the implementation of this provision. As the civil service law is not being implemented and a reliable registry does not exist, it is not known if and to what extent this provision has been implemented. The ongoing functional reviews, carried out under a CARDS project should provide information in this regard.

As far as the Entities are concerned, a decision of the Constitutional Court of BiH was necessary to establish the application of the ethnic representation requirement. Based on the Court's decision, an agreement was signed between OHR, FBiH and RS obliging the Entities to implement that decision. While necessary, the reference date of 1991 creates in some areas severe staffing problems for the Entities because of uneven return levels, and the continuing security concerns of "new local minorities".

The differences in salary levels between the Entities and the State level add to this problem: in practice, implementation of the Court's decision is slow, even where it is attempted (as in the CS Agency in RS).

In RS it was reported that – if there are vacancies – very few applications were and are received from the other constituent peoples. As the RS civil service is down sizing the CS Agency is negotiating personnel swaps with the State level CS Agency to meet the ethnic representativeness requirements. However, there are several obstacles: the civil service laws do not provide for such transfers, though in federations they should; as a consequence the preservation of acquired rights is problematic, (e.g. the candidate would have to pass an external competition instead of an internal one), and positions are not defined in the same way in the different systems, etc. In addition, the considerable salary differences severely limit this option.

There is a need to find effective mechanisms and strategies, or to change the laws or their interpretation, so as to enable the reconciliation of the conflicting requirements for staffing based on proportional ethnicity vs a

professional civil service based exclusively on merit. For example, it would seem to be possible to enable transfers between similar positions in different Entities to occur *without* the usual entry examination, where the individual civil servant was assessed as suitable for the duties of the new position.

On the State level, staffing generally complies with the constitutional requirements, as necessary supporting measures (travel allowances, bussing, etc.) have been in place for some time. However, due to the fast growing of the state level administration, the state level would have ample possibilities to accommodate additional Serb staff.

The salary systems in each of the three civil services use a base rate for the position (decided upon by the respective Government) and a multiplier, to define the minimum salary for the position; supplements can be awarded (up to 30% in BiH and RS, and via a second multiplier in FBiH) for different degrees of complexity within the same class of positions. The latter increases are determined by a government regulation for the different categories of position.

Certain services such as the police, customs and external audit benefit from higher total remuneration. The salary scale itself (excluding allowances) in each system is compressed, as in most other former Yugoslav republics.

Each of the systems includes a 0.5% increment in salary for each year of seniority up to 20%. The FBiH *Civil Service Law* stipulates that the primary base for salary calculation should be the same throughout the Federation (Art. 39). None of the salary systems is as yet fully implemented.

All three systems provide for several personal allowances, such as transportation, food, family separation, etc. At the State Level allowances are relatively high. For example, eligible staff, living outside Sarajevo when hired, may more than double their basic salary by becoming eligible for various additional allowances.

While the use of allowances has been effective in some respects, it is open to abuse, and potentially (unnecessarily) expensive for the employer, as people tend to arrange their domestic circumstances so as to maximise their entitlements to various allowances where it is possible to do so.

*Average salaries differ considerably between the State Level, FBiH and RS*

Average salaries are low in comparison with the actual cost of living, and differ greatly between the three Civil Services, e.g. employees in similar positions could earn from 350KM in RS, to 750KM in FBiH, and 1200KM at the State Level, for the same work.

The maximum basic salary on the State Level (senior executive manager with special assignment) is 1440KM; in RS it is not higher than 700KM.

*The large international presence leads to labour market*

The low salaries, given the actual cost of living in the country, is part of the problem of recruiting and retaining qualified staff.

Added to this, the presence of international organisations and NGOs paying expatriate and some local workers at expatriate rates, has led to great

*distortions*

distortions in the labour market.

### **3.2.3 Different status / missions, working conditions**

The current Civil Service Laws make various distinctions between Civil Servants, political appointees, and staff employed under the Labour Law. All three Civil Service laws define specific Civil Service positions (Art.32 RS; Art 7 State; Art.6 FBiH). For example, both the BiH and the FBiH laws require a university degree for appointment to a Civil Service position. The RS law provides for Civil Service positions for which the requirements are secondary school or two-year college education.

There is no fundamental distinction between the three jurisdictions in relation to the basic mission, status, and conditions of the civil service. The tasks to be carried out by the Civil Service are defined in similar terms (Art. 8ff state; Art.8 ff FBiH; Art 34 ff RS), and the laws prescribe similar rights and obligations of civil servants. Among the rights are tenure, career development, equal treatment, and payment of salary. Among the obligations is the duty to refuse an illegal order (Art 14 State; 17 FBiH; Art 86 RS).

The State Level and the FBiH laws provide for a Civil Service Commission which has the power to review decisions of administrative bodies or the CS agencies upon demand by a civil servant, or the administrative body ( Art. 63 state; Art.65 FBiH). In the RS, judicial review and redress of civil service employment decisions are provided in Art. 88 and Art.89 of the CS law.

### **3.2.4 Social rights and fundamental freedoms**

All three systems guarantee the social rights and basic rights of civil servants, e.g. the right to join a trade union, the right to strike (Art. 85 RS; Art. 18 FBiH; Art. 15 State). "Incompatibilities" are regulated in Art. 16 (State); Art.19 (FBiH); Art. 87 (RS). These restrictions are consistent with those in EU Member states: for example, it is forbidden to be on the management board of a political party, but not to be a member of a party.

### **3.2.5 Education and vocational training policy**

As previously, a Civil Service candidate in RS has to pass a professional examination (as a probationer) before he/she can be nominated to a position in the Civil Service (Art 52 RS). On the State Level and in FBiH such an examination is integrated in the recruitment procedure. Training programmes linked to the probationary period are foreseen in all laws.

All three systems require in the relevant CS law that the CSA will develop a training strategy and training modules, and – until a specific training institution is created – will carry out actual training activities.

*In-service training still depends on foreign donors*

In-service training to improve the performance of the existing staff is still not institutionalised. Such training as is undertaken is mainly dependent on foreign donors, and is, more often than not, supply-driven.

The CS agency in RS has developed a training strategy and a training plan which has been adopted by the government and its implementation has

started. However, the envisaged budget for training, i.e. 3 per cent of the pay role was not voted by the Assembly. A fact which has left the CSA totally dependent on donor funds for their training activities

On the State Level no staff were recruited to the agency until January 2003. This has seriously delayed not only the development of secondary legislation but also the development of a training strategy and of training modules. It is now hoped to develop training modules for in-service training in cooperation with certain universities (Bologna, Sarajevo, Banja Luka) and the CSA in RS. Funds are earmarked in the agency's current budget for training.

In FBiH training is still mainly depending on foreign donors: in particular the OSCE provides training for the Cantons.

EI training has started and a strategy has been developed at the State Level, in which staff from the Entities are participating.

In summary, the legal and procedural changes occurring in the administration at each level are very significant and the capacity of the staff to adapt without training seems low.

Systematic training targeted to those aspects of Public Administration most affected by the reform agendas in general, and by new laws and procedures in particular, should therefore be regarded as a priority for all levels of Government.

### **3.2.6 Recruitment policy and career development**

All three *Civil Service Laws* prescribe open competition as the basis for recruitment and promotion. The procedures described are in line with general standards. Internal competition for positions has priority over external open competition (Art 20ff BiH; Art. 44 RS; Art. 23 FBiH). The principle of equal access and the merit principle has however to be coupled with the "proportionate representation" requirement. On the State Level the parity principle has been applied for management positions since quite some time. In the Entities, as mentioned before, the principle of proportionate representation had to be imposed through a court decision and an agreement with the OHR; proportionate representation is far from being achieved in both Entities.

Due to the WB and IMF requirements the Entities are again forced to reduce staff. At the same time they will have to comply with requirement of equal representation, which may mean that any new vacancy may have to be filled with a representative of the underrepresented constituent people. To avoid new tensions, especially in RS where unemployment is very high, it will be necessary to develop transfer schemes with the State and FBiH quickly.

The existing public administration staff is still rather politicised at all levels.

Adequate recruitment procedures in the State Level have only started very recently and there are rumours that ethnicity, which often translates directly

*Transfer schemes may be needed to speed up the implementation of proportionate representation*

*Staff is still rather politicised*

into political affiliation, may override considerations of “merit”.

For FBiH it was stated that recruitment is in general carried out by open competition. However, as the civil service law is not implemented and an Agency not established it was not possible to verify this statement.

The lack of a central management capacity in FBiH and the complex government administration structure has inhibited attempts to carry through a comprehensive program of reform in this area.

Until now none of the civil services in BiH has introduced a Performance Management system nor have any attempts been made to screen the existing staff to ensure that they have the skills necessary for their position or function.

*Real progress has been made in RS but the new government has reduced the remit of the CSA*

Real progress has been made in RS over the last few years. The Agency has been operational since autumn 2002. Recruitment procedures are transparent and performance appraisals are carried out. Training of the staff involved in these exercises has started. Some efforts have been made to introduce a screening procedure to ensure (for example) the competence and qualifications of officials holding positions, and a related redundancy programme for those who fail to meet the required standards.

The incoming Government in RS abolished the civil service status for all professional staff in the Government Secretariat (see under policy co-ordination); whether or not this is a sign of side lining the Agency remains to be seen.

### **3.2.7 Ethnicity & gender aspects**

The three Constitutions call for equal access to public service.

Gender aspects, like in all countries with a “socialist” past do not really play a role. The representation of women in top management positions seems to be higher than in most EU member states.

Proportionate ethnic representation in the civil services of the country continues to pose an important problem. The implementation of the ruling of the Constitutional Court is very slow. However, as the Entity Governments as well as the Cantons have for a long time not observed the principle of proportionate representation, it is now difficult to meet the requirements at a time where public employment is being reduced.

### **3.2.8 Ethics and anti-corruption policy in public sector**

All civil service laws include in some form an obligation of ethical behaviour. Disciplinary regulations are in line with general European standards. The civil service code also includes regulations on avoiding conflicts of interest and requiring disclosure of assets (Art 87 RS; Art.19FBiH; Art.16 state). The respective Election Commissions review the declarations of assets for elected officials and for subject civil servants.

All legislations foresee the adoption of a Code of Conduct. A code of conduct was adopted by RS in December 2002.

Neither the State nor the Entities have national plans to fight corruption, however discussions are under way to develop anti corruption action plans.

### **3.2.9 Role model of top management**

Top management positions are more often than not filled in taking account of ethnicity and political affiliation.

There seem to be very few top civil servants who are pro-actively promoting reform and change. However, informal co-ordination and co-operation across Entity borders and ethnic divide seems to become more frequent. It has been recognised by some senior officials that closer links will be necessary and that legal frameworks will have to be aligned in order to foster economic development.

### **3.2.10 Accountability, assessment of personnel**

All CS laws regulate in an adequate way the accountability of civil servants (Art.55 FBiH; Art. 54 ff state; Art. 70 ff RS). The RS law also regulates personal liability (Art. 68, 69). Citizens have a redress procedure and the possibility to appeal to courts against administrative decisions.

*Delegation of responsibilities has not taken root in the country*

In practice these rules are not yet very important as delegation of responsibility has not really taken root in the country, and it is still usually the Minister who signs even routine decisions.

*Only in RS has performance appraisal taken place*

The performance appraisal of civil servants is also regulated by law (Art.30 state; Art 33 FBiH; Art. 49 RS). The necessary bylaws are only adopted in RS and, until now, only in RS performance appraisals have been carried out.

Appraisals are foreseen at least every year. The CS laws foresee that the performance appraisal will have an impact on career prospects, e.g. according to all three laws, two successive unsatisfactory appraisals will initiate the dismissal procedure. In FBiH and the State Level, the results of the performance appraisal are to be taken into account for promotion and transfers. Only the CS law of the Federation provides for performance-related pay based on the performance appraisal (Art. 40)

Some training to carry out performance appraisals has been carried out in RS, however it is not yet sufficient.

### **3.2.11 Assessment**

The existing legal frameworks governing the staff in the different administrations provide a good base for reform. However, important efforts will be necessary, in particular in FBiH and on the State Level to implement the legislation.

Overall, professionalism and efficiency in the public administration are still lacking. This is partly due to the complex structures and overlapping responsibilities, and partly due to inappropriate training. It may be caused by

a lack of needs-based training which could improve professionalism and performance of day to day work.

The salary discrepancies between state and entities are hampering the development of a cohesive civil service across the countries

Human Resources Management skills seem to have improved only in RS. As concerns the State Level and FBiH systems and procedures are still missing or are not fully applied.

Politicisation and corruption is a problem and up to now, especially in the Cantons, little real effort has been made by the Bosnia authorities to remedy this situation. New incentives may however come through the implementations of the pledges.

### **3.2.12 Recommendations**

As already foreseen by the CS Agency in RS the law should be reviewed; the other two laws should only be reviewed in the medium term, i.e. after sufficient implementation experience.

It has to be ensured that any review takes into account the need for harmonisation of the three civil service laws.

The three *Laws on Administrative Procedures* will need a thorough review and be harmonised and adapted to general European standards, in particular in regard to transparency, public hearings, legal certainty and discretion. Special administrative procedures laws will have to be reduced to the absolute minimum.

The CS legislation on State Level and FBiH needs urgently to be implemented to promote a professional civil service.

During the introduction phase a comprehensive screening process of existing staff should take place, linked to training, performance appraisal and transfer processes as appropriate to the outcomes in individual cases.

Systematic training has to be institutionalised in all Entities, co-ordination and co-operation between state and Entities should be fostered to achieve economies of scale.

To improve absorption capacity of donor assistance, in particular in the Entities, the EU should consider supporting language training.

### **3.2.13 External assistance**

There is a considerable number of bilateral projects, mainly providing training in different HRM topics. On the State Level several EU projects have supported Public Administration Reform and the development of a professional civil service. In RS there was a DfD project on public administration reform which comes to an end in December 2003 but is expected to be extended as of mid 2004 on a smaller scale for another year. No such project is in place in the Federation. The Open Society Foundation

and OSCE work in this area with some Cantons; it is not clear if this is co-ordinated and aligned with other programmes.

A salary review covering most Western Balkans, including all levels of government in BiH is being carried out by Price Waterhouse for DFID.

The EU has – end of 2003 - launched several projects to support the development of a comprehensive administrative reform strategy for BiH. These projects are focussed on functional reviews; however they will also provide some technical assistance, in particular to the Government Secretariats of BiH, and possibly to FBiH.