



## **SIGMA**

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

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## **BOSNIA AND HERZEGOVINA**

### **POLICY-MAKING AND CO-ORDINATION**

**ASSESSMENT MAY 2008**

#### **Introductory Note**

Bosnia and Herzegovina (BiH) is a complex state structure composed of three main components: the state level (BiH State) and the two entities: the Republika Srpska (RS), and the Federation of Bosnia and Herzegovina (FBiH). The BiH system is in fact an asymmetrical structure, because one of the two entities, the FBiH, is itself linked in a hierarchical federal structure with ten cantons, which have their own constitutional competences. There is also the Brčko District with its own competences. This report does not treat these additional complexities but focuses only on the state and the two entities.

This report treats Bosnia and Herzegovina as a two-layer governance system, because the Constitution (Dayton) and subsequent court decision created a system where the competences of the Council of Ministers at the state level and of the governments of the two entities are interlinked in a hierarchical manner. At present, the formal division of competences between the two layers as well as the practical methods for executing and sharing competences are still evolving. Many national and international observers believe that the BiH constitutional system is less than optimal. They argue that constitutional reform to strengthen the central state is crucial for making governance more effective, especially in the context of European integration. Nevertheless, it remains a fact that there are forces within BiH that would resist significant reform, especially the weakening of the role granted to the entities by the present Constitution. The underlying structural issues are practical, ideological, and highly politicised, and they affect the development of all of the institutions and practices related to policy-making and co-ordination.

Policy-making in general and the European integration process in particular take place within this context, and the European integration process itself is also, in turn, a tool for bringing about reform in the constitutional structure. Given the special situation in Bosnia and Herzegovina, it was decided to prepare one assessment of Policy-Making and Co-ordination in Bosnia and Herzegovina, covering the Council of Ministers at state level and the two entity governments. Where we judge it to be useful and possible, specific comments are made separately about one or another of these bodies.

#### **1. Coherence of the Policy-making Framework**

The framework for decision-making by the Council of Ministers and the two entity governments is modelled on the Yugoslav tradition. This tradition has three types of normative documents that shape the policy-development and decision-making system: the Law on Government (or CoM); the Rules of Procedure (RoP) pursuant to this Law; and the Rulebook on Internal Organisation and Systematisation of each of the bodies forming the centre of government (CoG), e.g. the (general) secretariats, legislative secretariats, and cabinets of political leaders. Rules for legislative drafting had been adopted by the Parliamentary Assembly of BiH, and these rules include a recommendation to the entities to apply the same rules in their administrations. However, the RS Government adopted separate rules, while FBiH and Brčko District are (more or less) following the unified rules, as recommended.

The RoP is the normative act that regulates in detail all stages of the policy-making process: planning the work of the government (CoM), preparation of documents by ministries, processing of documents through the decision-making system (CoM/government commissions, CoM/government sessions), and the recording and distribution of decisions. As in all ex-Yugoslav countries, the RoPs of the CoM and governments in BiH are significant documents, and the details therein are the foundation of the policy-making system and the role of the centre of government (CoG).

The overall policy-making frameworks in the state and entities in BiH (laws, RoPs, and rulebooks), have not yet stabilised, and continue to be the subject of debate, amendments, and proposed or planned amendments. The most significant impetus comes from the “Public Administration Reform Strategy of Bosnia and Herzegovina (2006)”, which sets as a central objective a commitment “to improve the structure, capacity, and performance of the centres of government and thus strengthening the policy-making systems on all government levels.” The PAR Strategy was agreed by decisions of the CoM and the entity governments. To ensure its implementation, a National PAR Co-ordinator was appointed jointly by the CoM and the governments. The PAR Co-ordinator and her Office have been very active in promoting the reform of the CoGs across BiH in a co-ordinated manner.

Since 2006, there has been a growing interest among the top management of the three CoGs (and also of the Brčko District) in strengthening policy systems and making them significantly more harmonised across BiH, in line with the commitments of the PAR Strategy. The process of implementing these commitments came to be known as the “blueprint process”. In 2007, the CoM and the two entity governments endorsed a blueprint for the development of CoG, and agreed to develop their CoGs in accordance with a common model, and to increase co-operation and co-ordination among them in the areas of policy development and decision-making. The full implementation of this blueprint is about to be supported by the EU through IPA funds. It is understood by all concerned that an early critical step in the implementation of the blueprint will be revisions to the legal framework underlying the policy system.

*The legal framework underlying the policy system of the CoM and the two entity governments is still evolving. There are weaknesses in the RoPs with respect to policy preparation, inter-ministerial consultations, policy review and co-ordination, and support for the CoM/governments and their working bodies by the CoGs. In addition, the enforcement of the RoPs by the (general) secretariats is incomplete, largely because of the weakness of the CoGs both structurally and in terms of the number of personnel. Steps are already being taken by the three (general) secretaries to strengthen the legal framework, and this process should get a significant impetus from a forthcoming project of support to the CoGs, to be financed by IPA 2007.*

## **2. Inter-ministerial Consultation on Policy Proposals**

The legal requirements for inter-ministerial consultation exist in all three Rules of Procedure (RoPs), but they are rather minimalist in terms of both the list of ministries to be consulted and the scope of consultation. They tend to require a formal “opinion” rather than encourage discussion and open consultation. The RoPs of the two entities require that material submitted to the government by ministries (or other bodies) should be supported by opinions from the Ministry of Justice, the Ministry of Finance and the Legislative Office. There is neither a general requirement to consult all other ministries with an interest in the matter nor a procedure for checking that such opinions have been solicited. In the case of the CoM, the consultation requirement is more extensive, although it is specified by topic and ministry rather than as an requirement that proposing ministries consult broadly and openly (e.g. the proposing ministry should obtain opinions from “the Foreign Ministry with regard to initiating procedures for concluding and executing international treaties”, article 31). In all three cases there are no requirements for multi-lateral discussion at the policy development or drafting stage.

In the case of state ministries, working groups are normally established when primary legislation is prepared. The working groups include interested ministries, and also the Legislative Office, entity representative, and civil society.

*In practice, policy-development and law-drafting capacity in ministries is weak. The habits and incentives for inter-ministerial co-operation and consultation are insufficient. Some improvements appear to be resulting from the unified rules for legislative drafting that have been adopted in recent years, but these are not likely to be sufficient to address the serious weaknesses in policy formulation capacities in ministries at both levels. The RoPs’ requirements for inter-ministerial consultations should be*

*strengthened, along with the authority of the (general) secretariats to return items for which consultation has been insufficient.*

### **3. Work Planning**

There are reasonable provisions in the three RoPs for annual planning of the work of the CoM (article 18) and the entity governments (RS articles 25-26, FBiH article 32), and these have been made stronger in the last couple of years. In practice, annual planning is still primarily a “bottom-up” process whereby the (general) secretariat collects lists of items planned by the ministries and puts them together as a plan for CoM/government approval. It is important to note, however, that all three (general) secretaries are aware of the need for a better planning process and a more meaningful role for the CoG in this regard. All three are developing procedures and personnel for improving the annual planning process.

At present, the (general) secretariats are able to provide some monitoring of annual plans. Importantly, monitoring of the achievements of the 2007 work plans of the CoM and two entity governments was conducted by an NGO called “The Centre of Civic Initiatives”. The NGO reported a very low level of achievement of the plans by all three. It appears that this monitoring process did not go unnoticed and is in fact exerting some pressure on the CoM/governments to improve their performance under the 2008 plan.

The agenda of the CoM and government sessions are planned only on a weekly basis, based on the documents arriving from ministries. The RoPs require documents to be circulated to ministers for the sessions at least three days in advance. In practice, it is not uncommon for ministers to bring last-minute items to the sessions without following all of the necessary procedures.

*There are basic processes for planning the work of the CoM and the entity governments in BiH. There are concrete plans to improve these processes by strengthening the procedures for the preparation and monitoring of annual plans and the competences of the CoG to provide substantive co-ordination in the preparation of annual plans.*

### **4. Dispute Resolution Mechanisms**

The CoM and the two entity governments have ministerial committees (working bodies), which act as filters for the full sessions and help to resolve conflicts. The RoP of the Republika Srpska give the most coherent expression to this approach, as follows: “In order to harmonize the work of the ministries, [and other bodies] in the preparation of enactments and other documents being considered at the session of the Government, the Government shall set up committees and commissions to function as permanent working bodies (article 4). The Committee shall consider the materials before they are presented at a Government session. The materials not having been considered by the Committee may be discussed at a Government session only on an exceptional basis, with the previous explanation of the submitter of the materials (article 11).” A similar practice is followed in the CoM and in the FBiH.

The ministerial committees/commissions are the main bodies for dispute resolution. As their meetings are held immediately prior to the sessions of the CoM/governments, and given the absence of weekly meetings of ministries’ secretaries and the weakness of inter-ministerial consultations, the committees/commissions are not sufficient to ensure that all policy issues are thoroughly addressed prior to the sessions of the CoM/governments.

In the case of other countries, this section of the Sigma assessment of policy-making and co-ordination looks at dispute-resolution mechanisms that are designed to harmonise positions within the same government. As BiH is a multi-level governance system, dispute resolution mechanisms are also needed among the governments and CoM. In the past year, the secretaries of the CoM and the two entity governments turned their attention to establishing consultation and information-sharing mechanism that would facilitate better harmonisation of policy across BiH. (The Brčko District is also a party to this process). They drafted a “Memorandum on Mutual Co-operation”, in which they committed themselves to a series of steps “with a goal of improvement of communication, co-ordination, exchange of materials and other information” (article 1).

Article 3 of the Memorandum specifies the areas of co-operation and exchange of information:

“The co-operation of the General Secretariat of the Council of Ministers and the secretariats of the entity governments and the Brčko District is related to the following areas:

- a) Preparation, revision and execution of the work programme;
- b) Preparation of the government sessions;
- c) Reports from the government sessions;
- d) Consultations on certain questions of mutual co-operation and co-operation with the other levels of authority; and
- e) Harmonisation and legal accordance of own normative acts.”

The memorandum has not yet been approved by the CoM and entity governments, although it is expected to be signed soon. Once signed, responsibility will rest with the (general) secretaries to give it practical force.

*The mechanisms for resolving inter-ministerial disputes are not sufficient. The new mechanism being developed for inter-governmental co-operation and co-ordination is a very welcome initiative and should be signed and put into effect as soon as possible.*

## 5. Central Co-ordination Capacity

The central administrative bodies that support the decision-making process are all in a period of development and transition. There have been improvements since 2006, but there is still a long way to go. As was noted above, the CoM and the two entity governments have adopted a common model for developing the CoG and for building capacities that are lacking, including capacity for policy co-ordination and co-operation across the levels. A brief description of the central co-ordination capacity of each level is presented below.

### *Council of Ministers of Bosnia and Herzegovina*

The **General Secretariat of the CoM** has capacity to prepare the meeting of the CoM and to provide the necessary logistical support to the CoM and its two commissions. At present, it does not have capacity for planning or policy co-ordination. A significant number of new personnel positions have been approved for the General Secretariat, and it is hoped that some of them will be filled in 2008. The purpose is to build the capacity of the General Secretariat to manage the policy process and enforce the Rules of Procedure more fully.

At the moment, the process of preparing the annual work programme of the CoM is carried out by the **Office of the Chair of the CoM**. The division of functions between the Office of the Chair and the General Secretariat does not appear to be optimal, and there is a risk that professional continuity will be lost in the event of a political change.

There is an independent **Legislative Office** with five lawyers, and three more are in the process of being recruited. The plan is to have 14 lawyers by the end of 2008. The Office reviews legislation before it reaches the CoM sessions, and with the new personnel it is likely to be able to provide adequate and timely legal opinions on all drafts before they reach the CoM sessions.

### *Republika Srpska*

The Secretariat of the Government of the RS was renamed the **General Secretariat of the Government**, and is presently undergoing significant strengthening on the basis of a new decree and a new rulebook. The department responsible for the preparation of sessions has been enlarged, and is now generally capable of providing logistical support to the sessions of the government and its commissions, including preparation of materials and recording of decisions.

It is also envisaged to build capacity for substantive policy and planning work, but within the **Cabinet of the Prime Minister**. The division of functions between the Cabinet of the Prime Minister and the General Secretariat does not appear to be optimal, and there is a risk that professional continuity will be lost in the event of a political change.

A **Legislative Secretariat** started to operate in April 2004, and now has a director, eight lawyers and five other staff. The legal opinion of the Secretariat is a precondition before a legal draft can enter the decision-making process.

## *Federation of Bosnia and Herzegovina*

In 2007 the FBiH created a new office in the CoG, the **Principal Office of the Government of FBiH**. At least on paper, many of the important functions that are required in government secretariats have been placed in the new Office, which also includes political (cabinet) functions. The **Secretariat of the Government of FBiH** (previously the Professional Service of the Government of FBiH) continues to exist. Of the basic CoG functions, the Secretariat appears to have maintained only the responsibility for preparation of the sessions of the government. The Secretariat is still able to provide logistical support, but the splitting of the normal CoG functions into two separate bodies and the transfer of many positions to the new Office are likely to create serious co-ordination problems. At this time, as the new Office is not yet fully operational, it is not possible to assess the consequences of this new arrangement. It is also not certain that this arrangement will remain in place beyond the mandate of the present government.

The former Legislative Office was renamed **Office of Legislation and Harmonisation with EU Legislation** (with 12 persons, eight of whom are lawyers). The Office is able to provide a legal opinion on all drafts, but will need to hire additional staff to cover the EU-related function.

*There is capacity to provide logistical support for the sessions of the CoM/governments and sessions of the committees/commissions, including distribution of materials, recording and distributing decisions. There is also reasonable capacity to provide legal analysis and ensure conformity with the Constitution and other legislation. However, the three CoGs lack capacity to fully implement the respective RoP, and do not have the necessary resources and competences to ensure that the rules for preparing documents for decisions are fully enforced. The central co-ordination capacity of the (general) secretariats needs to be further strengthened.*

### **6. Central Capacity to Advise on Policy and Strategic Matters**

The approach in BiH appears to be to place all policy and strategic advice in political offices, and to build no capacity for substantive advice in the civil service part of the CoG.

In the case of the Chair of the Council of Ministers and the Prime Minister of the Republika Srpska, central capacity for advice on strategic and policy matters is found in the respective political offices. In the case of FBiH, the division between political and civil service offices is less clear, but it appears that some of the staff in the new Principal Office will be political advisers. In general, it is problematic to concentrate all policy and strategic advice in political advisers, because a) political advisers tend to leave whenever there is a political change; and b) they are likely to be interested in politics rather than in policy.

At the state level, there is now a Directorate of Economic Policy (DEP). It is placed directly under the Chair of the CoM, and is staffed by expert civil servants. The DEP is now developing a National Development Strategy (NDS) for 2008-2013. The NDS is expected to be discussed and approved by the “Co-ordination Board on Economic Development and European Integration”, which includes the Chair of the CoM and the two Prime Ministers, as well as the three Ministers of Finance. There are efforts to link the NDS to the European integration strategy, and to create active links between the NDS Action Plan and the work programmes of the CoM and the entity governments. If this process is successful, it could provide BiH with a useful process for linking long-term strategies with ongoing policy development in ministries at all levels.

*There is limited capacity for strategic and policy advice in the three CoGs, and such capacity is placed entirely with political advisers. Full implementation of the blueprint, which was approved by the CoM and by the two entity governments, is expected to lead to the development of capacity for strategic and policy advice within the (general) secretariats. Full integration of the NDS into the annual planning cycle might provide strategic direction to the ongoing policy work of the CoM/governments.*

### **7. Co-ordination of European Affairs**

The system for managing the European integration (EI) process in BiH is set out in the Decision of the Council of Ministers of Bosnia and Herzegovina dated 3 December 2003. This Decision “On the Manner of Implementation of Co-ordination in the Process of Integration of Bosnia and Herzegovina into the European Union” is referred to locally as the “decision on horizontal and vertical co-ordination”. The Decision deals primarily with the process at the level of the administration, in an effort to address the unique co-ordination

requirements arising from the multi-level structure of BiH. For this purpose, it creates a system based on two types of co-ordination:

- Horizontal co-ordination refers to the co-ordination among state ministries and other state institutions, and between these ministries/institutions and the Directorate of European Integration (DEI).
- Vertical co-ordination refers to co-ordination between state ministries and other state institutions and their counterparts in the entities.

In addition, at the political level, there is the Co-ordination Board of Economic Development and European Integration, which is chaired by the Chair of the CoM and the two Prime Ministers and includes the three Ministers of Finance as well as other ministers.

The current institutional system for EI management and co-ordination in BiH comprises the standard elements, adjusted to meet the special conditions in BiH, as follows:

**a) Minister with lead responsibility for EI matters:**

Ministerial responsibility for European integration is held at state level by the Chair of the Council of Ministers, and at the entity level by the Prime Ministers.

**b) Mechanism for collective ministerial direction and strategic co-ordination:**

These tasks are entrusted to the Co-ordination Board of Economic Development and European Integration, chaired by the Chair of the CoM and the two Prime Ministers and including the three Ministers of Finance and other ministers. The Board is supported by the Directorate of European Integration (DEI).

**c) Inter-ministerial committee of senior officials from ministries:**

In BiH, the inter-ministerial horizontal co-ordination and decision-making body for the management of EU affairs at the level of the state administration is the Meeting of Co-ordinators (MoC). According to the CoM Decision of December 2003, DEI is responsible for “organizing and convening regular meetings with Coordinators for European integration in order to determine priority activities in the European integration process, its follow up and realization”. The meetings take place weekly on Mondays, chaired by the Director of DEI. MoC is made up of representatives of the state administration – state secretaries of ministries and directors of other state-level administrative bodies (referred to as EI co-ordinators). The two entities can each send a representative. MoC is used as the forum for DEI to provide information, instructions and guidance on EI issues. Common issues and problems are discussed.

**d) Administrative body to manage and co-ordinate the European integration process:**

At the state level, the Directorate of European Integration (DEI), directly subordinated to the Prime Minister, is the administrative body responsible for management and co-ordination of the European integration process in BiH. The DEI is a well designed body, comprising all of the important aspects required of such bodies. It has been agreed to raise the DEI staff allotment to about 100, and currently there are about 50 staff, which is certainly a good number in comparison with other countries pursuing accession to the EU. Based on the decision on vertical and horizontal co-ordination, the DEI considers that it should deal directly with the entities, and that vertical co-ordination must be strictly carried out by line ministries and institutions at the state level.

In the last year or so, the RS has begun to develop its own institution to co-ordinate European integration. The RS is transforming its Ministry of Economic Relations and Co-ordination into a full-fledged Ministry of European Integration, with a structure parallel to that of DEI. The FBiH has not taken similar steps, and has so far confined itself to establishing a new Sector for EU Harmonisation within the Office of Legislation.

**e) Designated body responsible for checking legal compliance:**

Officially, certification of the compliance of legal drafts with the *acquis* is the responsibility of the Department for Legal Harmonisation within the DEI. In addition, as noted above, both entities are establishing capacity to co-ordinate legal harmonisation.

**f) European integration units in ministries:**

In BiH, most of the ministries at state level do not yet have a European integration unit. At the moment, responsibility for EI in state institutions is assigned to the administrative head of the institution (ministry secretary, director of institution), but this designation is rather formal and is additional to the extensive

management responsibilities of the position-holders. In most cases no staff have been specifically assigned to EI co-ordination within the institutions. Proposals to create and staff EI units have been rejected by the CoM a number of times, apparently at the insistence of the Minister of Finance.

The RS is currently proceeding to establish and staff small EI units in all ministries.

***g) Network of acquis-related working groups:***

The DEI plan is to create 14 working groups, eight of which have already been established. However, to date for the great majority of laws that have been harmonised external technical assistance has been involved. Local capacity to work with EU legislation remains insufficient.

***BiH has a comprehensive system for managing European integration, with most of the elements normally found in candidate or potential candidate countries. However, the system is starting to experience difficulties due to the constitutional complexities of BiH. Some rethinking of the system may be inevitable.***

N.B. Developments in the RS – referred to by the DEI as the “two-track system” – is causing concern at the state level. Sigma can only repeat the observation it made in previous reports: given the constitutional structure of BiH, greater involvement of the entities in European integration (although it might complicate matters) is unavoidable. Accordingly, the CoM Decision on horizontal and vertical co-ordination might eventually need to be revised.

## **8. Involvement of the Council of Ministers in Budget Decisions**

The involvement of the CoM in budget decisions was not assessed.

## **9. Impact Assessment**

At present, the Rules of Procedure of the CoM and the entities do not require ministries proposing materials for a decision to conduct an impact assessment. The DEI is developing a CoM Decision on regulatory impact assessment (RIA) in view of the fact that RIA is one of the commitments in the European Partnership Agreement.

## **10. Better Regulation**

There is no specific policy to address issues of better regulation at this time.

## **11. Transparency, Consultation and Communication with the Public**

In BiH, the amount of public consultations carried out as part of developing policy and legislation varies greatly from case to case. The three RoPs do not include extensive requirements with regard to public consultations. However, as was already noted above, in the case of primary legislation, working groups are normally established to prepare the draft, and these groups include representatives of outside interests.

The three RoPs include requirements that the CoM/governments inform the public regularly of the results of their sessions. To perform the function of informing the public, the General Secretariat of the CoM has an Information Service (four staff). In the F BiH, there is an independent Public Information Office (about 10 staff). The newly designed General Secretariat of the Government of the RS includes an Information and Public Relations Office (12 staff are foreseen).

***Arrangements for informing the public and the media are generally adequate. Consultations with the public and with NGOs need to be improved.***

## **12. Summary and Next Steps**

The policy-making and co-ordination system at all levels of BiH is a system in transition. There is significant recognition at the top leadership levels of the need to reform the policy system, and especially to strengthen capacity for strategic advice and policy co-ordination. There is commitment to building closer co-operation and consultation among the CoM and the two entity governments in all areas of policy and legislation. To achieve these objectives, the CoM and governments have endorsed a blueprint for the parallel development

of their CoGs. The three (general) secretaries have drafted a memorandum on co-operation, which the CoM and governments are expected to endorse very soon. These are positive and promising developments.

In practice, too, some strengthening of the capacity of the general secretariats of the CoM and the RS is taking place through the creation of new units and the recruitment of additional staff. In the FBiH, a new Principal Office of the Government was established recently, with a broad mandate to ensure policy co-ordination. However, as the Office is not yet operational, its contribution cannot be assessed at this time.

BiH has developed a centralised system for co-ordinating activities related to EU integration in the state and the entities. The system is presently experiencing stress as the RS is developing its own system. It is not clear how this two-track system will operate in practice, especially once the Stabilisation and Association Agreement (SAA) is signed and needs to be implemented. Discussions aimed at ensuring that the mechanisms for co-ordination of European integration are effective should take place soon in an open and co-operative manner.

The most important step to be taken in the next couple of years is the full implementation of the blueprint for the development of the CoGs, to which the CoM and the entities are committed. Full implementation will require legislative changes (at least at the level of the RoPs), and also some restructuring of the (general) secretariats, recruitment of new staff, and training. Procedures and methodologies for policy development and co-ordination will also need to be drafted, implemented, and enforced by the (general) secretariats. It is expected that the EU, through the IPA programme, will soon provide significant technical assistance across BiH for the implementation of the blueprint.