



## SIGMA

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## BOSNIA AND HERZEGOVINA

### PUBLIC SERVICE

### ASSESSMENT MAY 2008

#### Introduction

This report updates the June 2006 Sigma assessment report *Public Service and the Administrative Framework in Bosnia and Herzegovina*. For the 2008 assessment we have split the two topics into two separate reports: (i) public service; and (ii) administrative law framework for the administration.

Civil service laws exist at state and entity levels (BiH, May 2002; RS, no. 13/2002; FBiH, June 2003; and Brcko District, 2006). However, ethnicity may always overrule merit and is unfortunately often used to cover up political patronage and nepotism. Ethnicity is the legal cornerstone of the administrative and civil service systems. Consequently, these laws do not fully promote a merit-based system. Political parties are also ethnically-based and therefore ethnic and political divides coincide. As a result, ethnicity is invoked on a routine basis to disguise patronage, cronyism and nepotism. This is one of the major reasons why civil services and public administration in Bosnia and Herzegovina (BiH) are failing to develop a Europeanised meritocratic professional bureaucracy along the lines of most EU Member States, especially those which joined the EU before 2004.<sup>1</sup>

The existing civil service laws do not recognise each other's established rights of civil servants thereby hampering the development of homogeneous management standards for civil servants across the country. Such harmonised standards are only possible within the constituent entities, and even then not fully because the cantons within the Federation of Bosnia and Herzegovina (FBiH) are also distributed ethnically.

None of the laws allow for the transfer of employees among the four civil services; acquired rights, especially salary levels, pension and seniority are not mutually recognised or transferrable across the country. This obstructs staff mobility within the public service and has a negative impact on the return of refugees, the status of which is based on the 1991 census. It also obstructs the policy of ethnicity because it means that the constituent populations in the public administration cannot be proportionally represented in certain cantons and entities. The incompatibility among the civil service systems is not only allowed for, but favoured by the country's constitution (Article III-4 in relation to Article III-1) (see below).

During the assessment period we recorded, on the negative side, further politicisation of management in the Republic of Srpska's (RS) civil service, although, on the positive side, there were some salary increases. No significant developments are recorded in the Federation of Bosnia and Herzegovina (FBiH) and the common institutions (BiH). Brcko district (BD) passed its Law during the assessment period, again with no compatibility with the others. However, we did observe a de facto tendency in almost all these politico-administrative entities towards greater politicisation and further departure from the merit system principles. The push for a merit-based system comes mainly from the international community and international donors, which, at the same time, were the main proponents of the ethnicity principle. Domestic politicians are basically unwilling to promote a professional, merit-based bureaucracy.

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<sup>1</sup> In old EU Member States, such as Belgium or Spain, internal fragmentation into regions, ethnics or other divides, has not prevented civil services systems from developing merit-based, professionalised public bureaucracies.

In addition to these very deep problems at the root of the system, there are also certain technical shortcomings in the current civil service legislations. These flaws need to be eliminated, especially the slow, cumbersome and somewhat opaque recruitment and promotion procedures by giving precedence to internal recruitment over the external one so internal recruitment competitions can be countrywide; the contents of the professional examination; the job classifications and grading by taking advantage of the new staff registry that is under development (see below); and the salary system.

A reform of the salary system, which will now include politicians and public employees, is under parliamentary debate at BiH state level. The aim is to raise salaries for politicians (by an estimated 110%), while none or very small increases are foreseen for civil servants. Any salary reform should also eliminate the existing opaqueness from the system of supplements for membership of recruitment or professional examination juries, or working groups.

## 1. Legal Status of Civil Servants

### 1.1 *Does an appropriate legal basis exist, which defines the status of civil servants in a way that is compatible with prevailing standards in EU Member States?*

#### Constitutions

The Constitution of BiH (Annex IV to Dayton Agreements) Article IX-3 states that officials appointed to positions in the institutions of BiH shall be “generally representative” of the peoples of BiH. Therefore, apart from ethnic representativeness, there is no specific constitutional model or foundation for the civil service or public employment in the common institutions of BiH.

The 1992 RS Constitution (Article 33), as amended several times and as further amended in 2002 and 2003 by OHR Decisions, establishes citizens’ rights to take part in the conduct of public affairs and to access the public service under equal conditions. Certain general work-related rights are recognised in Articles 39-43, including the right to strike and to form unions. Articles 68-10 and 11 give the RS the powers to regulate and ensure the organisation, competence and work of state bodies and public services. Article 97<sup>2</sup> outlines ethnic representativeness in the civil service: “*Constituent peoples and members of the group of Others shall be proportionally represented in public institutions in RS. As a constitutional principle, such proportionate representation shall follow the 1991 census until Annex 7 is fully implemented, in line with the Civil Service Law of Bosnia and Herzegovina. Further and concrete specification of this general principle shall be implemented by Entity legislation. Such legislation shall include concrete time lines and shall develop the aforementioned principle in line with the regional ethnic structure in the Entities. ‘Public institutions’ as mentioned above are the ministries of the RS Government, municipal governments, district courts in RS and municipal courts in RS.*”

The same amendment (LXXXV) applies to municipal civil services by virtue of Article 102 of the constitution, which establishes ethnic representativeness in the municipal civil service.

The 1994 Constitution of the FBiH establishes the right of all citizens to participate in public affairs, to have equal access to the public service, to vote and to stand for election (Article 2-2-b): “*Constituent peoples and others shall be proportionately represented in municipal authorities. Such representation shall follow the 1991 census until Annex 7 is fully implemented, in accordance with Article IX.11.a of this Constitution*”.<sup>3</sup> Article 11a of Section IX, as amended by amendment LII of the OHR, establishes proportional ethnic representation in all public institutions, including courts, as a general constitutional principle by stating that: “*Constituent peoples and members of the group of Others shall be proportionately represented in public institutions in the Federation of Bosnia and Herzegovina. As a constitutional principle, such proportionate representation shall follow the 1991 census until Annex 7 is fully implemented, in line with the Civil Service Law of Bosnia and Herzegovina. Further and concrete specification of this general principle shall be implemented by Entity legislation. Such legislation shall include concrete time lines and shall develop the aforementioned principle in line with the regional ethnic structure in the Entities and the Cantons. Public institutions as mentioned above are the ministries of the Government of the Federation of BiH and of Cantonal Governments, municipal governments, Cantonal and Municipal Courts in the Federation of Bosnia and Herzegovina.*”

<sup>2</sup> Amended by Decision of the OHR No. 150/ of 19 April 2002 [9], Amendment LXXXV

<sup>3</sup> Article 1 of Section VI on Municipal Governments, as amended by the OHR through amendment LXXXVI of 6 October 2002.

The Statute of the Brcko District of 7 December 1999 establishes that all residents in the district may participate equally in the conduct of public affairs in accordance with the law (Article 13-2). Unlike the other constitutions, Article 21 of this statute clearly establishes the merit principle, through open competition for access to public employment, alongside ethnicity. Article 48 states that the heads of departments shall be selected and dismissed by the mayor based on professional criteria and shall also reflect the “ethnic composition” of the population.

It is to be noted that “ethnic rights” have preserved the power of the three majority ethnic groups, by generally excluding minorities and non-nationalists from politics and high civil service positions, and have undermined the state-building project. Bosnia’s institutional structure also contradicts international human rights norms. The Council of Europe’s Venice Commission (2005) has ruled that Bosnia’s constitutional structure is unfit for democracy and human rights protection, since it is inherently discriminatory.

In summary, all constitutions base their civil services on ethnic representativeness without mentioning in any way the merit principle. All of them guarantee the principle of equal access to public offices. Only the Brcko Statute refers to the merit principle and open competition as constitutional principles for the district civil service, along with ethnic representativeness. Nevertheless, the right to equal access to the civil service is recognised in all constitutions (except in that of the BiH). This could be understood as indirect recognition of the merit system, as the only way to guarantee equal access is through some kind of meritocratic recruitment using open procedures. Whatever the case might be, current constitutional arrangements are not particularly favourable to the merit system, although they do not obstruct it completely either.

***The constitutional frameworks of the country’s governments do not support the meritocratic principle. This may only be compensated by political resolve to enact civil service ordinary legislation and perform administrative practices that clearly support the merit system as a basis for the professionalisation of the civil services of the country. However, as we describe below, current legislation and practices are not especially favourable to a meritocratic, professional civil service.***

## **Ordinary Legislation**

The OHR imposed a law on the BiH Common Institutions in May 2002 and on the FBiH, including the cantons, in June 2003. The RS adopted a civil service law in February 2002. Brcko District enacted its law on civil service in administrative bodies in 2006. In the Common Institutions of BiH, the legal basis for support staff as well as for political appointees working in the public administration is the 2004 law on labour. As there is no specific labour law at the state level, the general labour law of the entity where the employee resides is applied, which adds further distortion to the legal status of political advisors.

### ***Scope of the civil service***

The various civil service laws define the scope of the civil service and make a distinction between political appointees and civil servants. All civil service laws, except Brcko’s, make relatively clear distinctions between civil servants, political appointees and staff employed under the labour law. They all define specific civil service positions (RS: Art. 32; State: Art. 7; FBiH: Art. 6). There is no fundamental difference 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 (State: Art. 8ff; FBiH: Art. 8ff; RS: Art. 34ff).

The OHR-imposed law on CS in BiH’s institutions (Article 1-2) defines a civil servant as “an individual appointed to a civil service position by an administrative act in accordance with law”. It excludes politicians and politically appointed individuals from the scope of the law (Article 4) while only certain parts of the law apply to political advisors (Article 5). Article 6 regulates the specificities of the diplomatic and consular service and excludes the personnel of the Central Bank from the scope of the CS law.

FBiH’s CS law (Article 1-2), also OHR-imposed, defines a civil servant in the same way, *i.e.* as “an individual appointed to a civil service position by an administrative act in accordance with law” in the FBiH, cantons, municipalities and cities (called civil service authorities). Article 5 excludes politicians, judges, auditors of the Supreme Audit Institution of the FBiH, police and armed forces from the scope of the law.

The RS’s CS law (Article 2) is more confusing: “The employees of the civil service bodies, who occupy the working positions referred to in Article 32 of this law, are regarded as civil servants”. Article 4 states that “a civil servant is an individual employed within the civil service body”. Civil service bodies are defined in Article 2 as ministries, other administrative and republican bodies and organisations. According to Article 32 the positions in the civil service are the following: 1) assistant minister, 2) secretary to the ministry, 3)

inspectors, 4) head of the administrative organisation, 5) deputy and assistant head of the administrative organisation, 6) expert advisor, 7) head of the internal organisational unit (department, section, bureau, group, registry office, accounting office, etc.), 8) senior specialist, and 9) specialist. Article 3 states rather unclearly that: “Civil service activities may also be performed by enterprises, institutions and other non-administrative entities, when these activities are entrusted to them by the law, as the administrative authorisations”. The law does not apply to the local self-government employees in RS, as they fall under the law on local self-government.

Brcko District’s CS law (Article 3) states that “this law shall be applied to civil servants employed in administrative bodies of Brcko District of BiH, public servants employed in the administrative body, due to organization of the administrative body which includes non-administrative organizational parts (hereinafter: ‘servants’) and employees in the administrative bodies of Brcko District”. This law does not distinguish in practice between civil servants, public servants and employees despite the definitions displayed in its Article 2.

All civil services in BiH have to take account of the multi-ethnic nature of society, based on the 1991 census (1991 was chosen as it was the last census before the war and has been used as a reference to avoid embedding the results of ethnic cleansing; see also Annex 7 to the Dayton Agreement). This requirement is stated in the constitution and in the civil service legislation. The governments are required to supervise the implementation of this provision. The ethnicity of civil servants is actually based on voluntary self-declaration. The choice of a particular ethnic origin may be changed at the discretion of the individual at any time, which renders the statistical basis for calculation of ethnic representation potentially unreliable.

There are almost no reliable statistics, but the number of public employees and civil servants in the country represents roughly 8-10% of all people employed, although these numbers differ depending on sources. A plausible distribution of public employment numbers, gathered by comparing various different sources of information and oral interviews, could be as follows:

	BiH whole country	BiH Common Institutions	FBiH	RS	Brcko D
Civil servants	12 000	2 300	6 000	3 500	3 200***
Public employees	43 000	20 000	13 000	1 000	-----
Total	55 000*	22 300	19 000	4 500**	3200

\* Including cantons and municipalities; \*\*Police and local self-government not included; \*\*\* Includes all persons paid from the Brcko District budget.

Bosnia and Herzegovina employs one official for every 500 inhabitants, compared to the European average of one public official for every 2 000 inhabitants. The financing of public bodies takes up a total of 54% of the country’s GDP, 30% of it being spent on salaries. These figures are supported by the fact that, as a result of its unique political system, Bosnia and Herzegovina has 14 constitutions (13 constitutions plus the Constitution of Brcko District, which stipulates the direct application of the BiH Constitution), the same number of governments and parliaments, and 180 ministers and ministries.<sup>4</sup>

*The existing legislation fails to define the status of civil servants in a way that is compatible with prevailing standards in EU Member States. Furthermore, the way in which it is applied is preventing the country from developing a professional, politically neutral and impartial, merit-based civil service, as we will see below.*

## 2. Professionalism of the Civil Service

### 2.1 *Are civil servants’ recruitment, rights and obligations defined, regulated and enforced in such a way as to ensure their commitment to constitutional and public law values, such as legality, impartiality, political neutrality and integrity?*

#### **Recruitment**

All CS laws prescribe civil services independent from political interference, while at the same time keeping the ethnic proportionality in the civil service and public employment based on the 1991 census. In practice,

<sup>4</sup> Radagic, E.K. (2006), “Government Effectiveness and Accountability”, in Open Society Fund BIH (eds.), *Democracy Assessment in Bosnia and Herzegovina*, Sarajevo 2006, page 186.

ethnicity is usually the cover up for patronage. As far as the entities are concerned, a decision of the BiH Constitutional Court was necessary to impose the application of the “ethnic representativeness” requirement within the entities. Based on the court’s decision, an agreement was signed between OHR, FBiH and RS, obliging the entities to implement that decision. The reference date of the 1991 census creates severe staffing problems for the entities in some areas because of uneven refugee return levels and the continuing security concerns of the “new local minorities”.

Article 2 of the FBiH CS law states that: *“The Bosniaks, Croats and Serbs, as constituent peoples, along with Others and the citizens of Bosnia and Herzegovina, shall be proportionally represented in the civil service authorities of the Federation, canton, city and municipality. Being a constitutional principle, such a proportionate representation shall be based upon the 1991 census until the full implementation of Annex 7, with the exception of civil service authorities of those municipalities certain parts of which were, according to the Dayton Agreement and the decisions of the High Representative, awarded to the other entity or other municipality.”* Similar provisions are to be found in the other CS laws.

The Brcko District law (Article 19-3) attempts to establish a balance between the ethnicity and the merit system by stating a slight preference for professionalism: *“In the case that several persons have the same total score in the process of selection of the most successful candidate, a ranking list must be drafted reflecting the population composition (national, gender, age, vocational and other composition) and these cases must not be abused, which can lead to the selection of the less professional candidate.”*

Since the defeat of the civic political parties in 2002, the ethnic parties have dominated the political landscape in the BiH Common Institutions and also in the entities. It has become common practice that in order to fill the ministries with personnel they trust, the parties use the legal option of appointing political advisers for the duration of the appointing official’s term of office. These advisers do not have civil servant status. The simplicity of appointing political advisers makes it the favourite option for giving party activists or personal affiliates managerial positions while escaping the control of the civil services agencies. There are almost no constraints on the number and qualifications of appointed advisers. Moreover, advisers are only accountable for their actions to the official who appointed them. *“De facto, advisers constitute a sort of a parallel administrative service absolutely loyal and accountable to particular ministers and heads of offices and existing outside the jurisdiction of the Civil Service Agency”*.<sup>5</sup> Furthermore, advisers tend to remain in the administration by unduly transforming themselves into permanent civil servants by the time their principal’s tenure comes to an end.

Even the Civil Services Agencies’ (CSAs) recruitment processes are questionable. A 2007 study<sup>6</sup> found that “the recruitment process for new positions has also been subject to much criticism. There are continuing and widespread claims that the recruitment process for vacant positions run by the civil service agencies is subject to political manipulation, particularly in the case of managerial positions”. Although it is difficult to substantiate claims of political interference in the recruitment process for lower level positions, the same study mentioned that it is widely believed that questions for written exams are given in advance to “preferred candidates”, giving them an advantage over other candidates.

It is also evident that ethnicity, which in the BiH context generally translates into political affiliation, generally overrides considerations of merit. This is especially true for managerial appointments. Party politics therefore continue to play a large role in the civil service. Patronage and favouritism is usually disguised as ethnicity. In this environment, management of the institutions is generally conducted according to party and ethnic affiliation, and there is significant political resistance to efforts to improve the management of institutions. The same study (page 57) continues: “Merit-based recruitment is still undermined by the constitutional obligations of proportional representation and ethnic balance”.

Consequently, in spite of the good-sounding legal arrangements, patronage and favouritism continue to be widespread practices in the recruitment, especially of top civil servants, but not only. After the March 2006 elections in RS all assistant ministers and secretaries were invited to resign by the new RS Prime Minister. Subsequent to that the RS Parliament amended the CS law (RS *Official Gazette* 49/06) to allow the government to appoint, under a renewable five-year management contract, management positions (assistant ministers and secretaries) through a procedure which renders politically-biased recruitment inevitable.

The FBiH attempted to follow suit in 2008 by drafting the relevant amendments to the Civil Service Law, aimed at weakening the role of the CSA. This reform has been temporarily halted by a vigorous intervention

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<sup>5</sup> See Radagic (2006), op. cit. page 198.

<sup>6</sup> See Foreign Policy Initiative BH (2007), *Governance Structures in Bosnia and Herzegovina*, Sarajevo, page 55. Available at <http://www.vpi.ba/upload/documents/Government.pdf>.

by the EU Special Representative and the Head of the EC Delegation, who sent a joint letter, dated 25 April 2008, addressed to the FBiH Prime Minister, in which they put into doubt the signature of the Stabilisation and Association Agreement (SAA).

The Public Administration Reform Strategy (PAR) adopted in 2006 by the Council of Ministers of BiH Common Institutions in agreement with all entity governments, seems to consider that technical obstacles remain to an improved recruitment system. Thus it states that: *“The current recruitment requirements overemphasize formal qualifications and seniority and give too little consideration to skills, capability, motivation, attitude and potential. This limits the ability of the administration and managers to identify and maintain high potential candidates and possible future leaders”*.<sup>7</sup> This diagnosis of the situation is correct, but incomplete, as it overlooks the political problems affecting recruitment in the civil service, which surely cannot be solved through mere technical improvements.

A balance must be struck between the conflicting requirements for staffing, namely ethnicity vs. a professional civil service based exclusively on merit. This must be achieved through effective mechanisms and strategies, management practices, and amending laws where necessary. The ethnic parity and proportional representation principles have eroded the merit principle almost entirely. This is particularly the case for higher positions, as parity representation is used to cover nepotism and politically motivated recruitment. As a result, the existing public administration staff, in particular in managerial positions, is politicised both at state level and in the entities. This is confirmed by the *State Audit Office 2007 Report*, which notes that some staff in state institutions were employed without contracts and in jobs that no one had accounted for.

However, as the PAR strategy rightly points out, there also are obvious technical problems in recruitment. All civil service laws prescribe, along with ethnic representativeness, open competition as the basis for recruitment and promotion. The procedures used in practice are rather lengthy and somehow unjustifiably expensive for participants, but if they were better respected they should in principle be sufficient to ensure a merit-based recruitment. Although application requirements were simplified in 2007 (fewer documents needed, costs lowered), the procedure still seems to be too long.

All civil service agencies are involved in recruitment. The current recruitment procedures in BiH Common Institutions, RS and FBiH include a professional examination as a requirement for tenure. In the BiH this consists of three parts: general multiple-choice questions, an essay and an oral examination. Part of the examination assesses specific knowledge about the position to be filled. In FBiH the procedure is similar. In RS the examination is similar, but is taken at the end of the probationary period. The professional examinations are recognised by the other jurisdictions. Taking these examinations or undergoing a recruitment procedure can be extremely costly, especially in the light of the country's average low income. As said, in 2007 some examination fees have been lowered.

No efforts have been made in the last two years by FBiH and RS civil service agencies to attract candidates from ethnic groups which are the minority in their respective territories. In RS, the situation was slightly improved with the repeal in 2006 of the CS law provision stating that a job applicant had to reside in RS. In Brcko, the recruitment procedure has been improved in the sense that applicants now face significantly reduced costs for applying, and the job interview is standardised and conducted by a committee, which in principle contributes to a more balanced and consistent assessment of interviewees. The selection committee consists of three permanent members selected via open competition and appointed for five years by the mayor, with a possibility of renewal. The remaining two members of the committee are designated by the department or institution recruiting the employee. The effectiveness of these arrangements to reduce politicisation remains to be seen.

### **Promotion**

The laws stipulate that internal competition for positions has priority over external open competition (Art. 19ff: BiH; Art. 43:RS; Art. 23: FBiH). It seems, however, that even an internal horizontal transfer (internal competition) calls for the candidate to submit a number of papers and credentials and is carried out like a completely new recruitment procedure, with written and oral examinations. This seems rather cumbersome and unnecessary as all credentials as well as performance appraisals should be already in the personnel registry of the respective civil services agencies. Discussions are ongoing to simplify the recruitment and promotion procedures, and some efforts have been made to reduce the number of papers and certificates to be submitted. In Brcko, promotion is not possible even if the post is vacant, as all posts must be filled

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<sup>7</sup> Strategy for Public Administration Reform, page 36. At <http://parco.gov.ba/eng/?page=1>

through open competition. However, horizontal career advancement to a higher salary step within the same post is possible and depends on performance appraisal results.

***Current recruitment and promotion mechanisms are not effectively contributing to the professionalism of the civil service. Although recruitment and promotion are publicly announced and procedures may often be transparent, this does not mean that the merit principle is abided by if the recruitment decision is too discretionary. This is because the recruiting authority is not legally compelled to choose the best candidate among those participating in the recruitment procedure, and this is the case in all territorial administrations in the country.***

### ***Rights and obligations, especially impartiality and integrity***

All civil service laws guarantee the social rights and basic freedoms of civil servants, e.g. the right to join a trade union, the right to strike (RS: Art. 85; FBiH: Art. 18; State: Art. 15). All civil service laws also require civil servants to be impartial, politically neutral (it is forbidden to serve on the management board of a political party, though not to be a member of a party) and ethical.

Obligations and incompatibility of duties of civil servants are defined in Article 16 of the Civil Service Law in BiH Institutions, Article 19 of the Civil Service Law FBiH and Article 87 of the Law on Administrative Service in the Administration RS, and impartiality in exercising of duties of a civil servant is defined by Article 14 and 16 of the Civil Service Law in Institutions BiH, Article 17 of the Civil Service Law FBiH and Article 86 of the Law on Administrative Service in Administration RS and Articles 8 and 10-15 CS Law Brcko.

These legal provisions regulate the separation of private from public interest. They require civil servants to act impartially and to avoid any behaviour contrary or inappropriate to the performance of their professional duties. They also require them to restrain from expressing their political beliefs in public and not to accept gifts or ask for rewards for themselves or their relatives, except for those rewards or gifts permitted under the law.

These provisions are accompanied by acceptably drafted disciplinary regulations. Articles 54-59 of the BiH CS law describe the disciplinary sanctions for civil servants. These include written warning and reprimand, suspension of the right to participate in recruitment or promotion open competitions for up to two years, punitive suspension of duties and salary for between two and thirty days, downgrading to a lower position and dismissal from the civil service.

In addition to the civil service laws there are codes of conduct for civil servants in the four administrations examined. The FBiH code applies to all levels of government, including entities, cantons, cities and municipalities. In RS, civil servants of local administration units have their own code of conduct approved by the Ministry of Administration and Local Self-Government in 2005.

In 2004 the Council of Ministers of the Common Institutions of BiH adopted a decision regulating civil servants' involvement in additional remunerated activities. Thus, activity outside the administration is possible if it is not incompatible with the duties of the civil servant. The RS CS law forbids any remunerated activity outside the administration, unless specifically authorised by the minister or the head of the relevant administrative body (Article 87-3). In RS civil servants are also obliged upon taking office to disclose all information on their property and on activities performed by their family members (Article 87-4). Similar provisions to protect impartiality exist in the RS 2002 Code of Ethics. This information is kept in the Civil Service Register and is confidential under the 2001 law on data protection.

There are some restrictions to post-public employment. Article 16 of the BiH CS law states that a civil servant released from office may not, within two years, be employed by an employer over whom, or join a company over which he exercised regular supervision. However, surprisingly enough this legal constraint only applies to civil servants who are released from office, not to those who leave the office voluntarily.

All civil service laws adequately regulate the accountability of civil servants (Art. 55: FBiH; Art. 54ff: State; Art. 70ff: RS). The RS law also regulates personal liability (Arts. 68-69). Citizens have a redress procedure and the opportunity to appeal to the courts against administrative decisions.

A law on conflict of interest in governmental institutions in BiH was imposed by OHR on 23 May 2002. This applies to elected officials, executive officeholders and advisors in the government of BiH, but not in the entities. Laws on conflict of interest at the entity level have not been adopted for the time being, which is striking given the fact that all laws are reproduced at entity level rather quickly. The 2001 election law established equal principles for disclosure of assets at the levels of BiH, entities, cantons and municipal,

however. The Central Election Commission (CIK) reviews the declarations of assets of elected officials and civil servants who fall within the scope of this law. Declarations of assets are of limited value, however, as long as land registries are not fully reliable and property rights are not fully clarified or finally resolved. In May 2008 the CIK announced that the BiH Foreign, Deputy Defence and Deputy Civilian Affairs Ministers were guilty of conflict of interest and pronounced them unfit to run for any directly or indirectly elected state function for a period of four years.

Section XIX of the BiH Criminal Code, which entered into force on 1 March 2003 by decision of the OHR, regulates criminal acts of corruption. The code describes both active and passive bribery as punishable. Thus this covers officials or responsible persons in BiH institutions, including foreign officials, who demand or accept a gift or any other benefit, as well as demand or accept promises about gifts or benefits. It is also prohibited to give or promise gifts or benefits to official or responsible persons in BiH institutions, or to mediate in this kind of bribery. Punishments include a prison sentence of up to 10 years. Along with accepting and giving bribes, and illegal mediation, Section XIX of the BiH Criminal Code regulates abuse of position or competencies; committing fraud during service; cheating during service; using public assets for private purposes; as well as other violations of official positions in BiH institutions.

FBiH and RS adopted in 2003 their own criminal codes. Brcko District has a separate criminal code. These codes are not totally harmonised with the BiH Criminal Code, although they regulate criminal acts of corruption and criminal acts during official capacity in Brcko, RS and in FBiH in a similar way. However, the RS criminal code differs from the others in that it defines corruption offences differently and punishes them more severely. Few people have been prosecuted for corruption-related crimes since the penal codes were enacted, despite the fact that year after year Audit Office reports describe improper behaviour that could well be considered as corruption.

Corruption is widespread in all public administrations. The most commonly-cited cases refer to public procurement, which is reported as one of the main sources of semi-legal or illicit revenue for civil servants and officials in the 2006 Audit Office Report (released in September 2007). Privatisation is another major source of corruption, but it mainly involves politicians, not civil servants. Health care and higher education are also fields where scandalous bribe-giving and taking have taken place.

There is a special Anti-corruption Prosecutor Office within the BiH Institutions. However, in the framework of the 2003 judicial reform, mainly imposed by the OHR, BiH replaced the inquisitorial model with the accusatorial model, by taking inspiration from the Anglo-Saxon world. As a consequence the investigative magistrates were removed from criminal investigations and replaced by prosecutors, who are not yet sufficiently trained in investigating complex economic crimes. In addition, prosecutors are now considered as autonomous state bodies appointed, except the foreigners, by the High Judicial and Prosecutorial Council of BiH. The current legal arrangement makes prosecutors perhaps too independent and too little accountable when it comes to deciding whether or not to open an investigation. Therefore many corruption cases may go unprosecuted. According to the BiH Ministry of Security, the mixture of different governance and judicial systems transplanted from abroad is creating a lot of confusion in the country.

In July 2006 a national strategy for the fight against organised crime and corruption (2006 to 2009) was adopted and complemented by an action plan, but little has been achieved to date. Recommendations to improve the anticorruption legislation and the functioning of the institutions were presented to BiH Parliamentary Assembly in December 2007 by Transparency International and the Open Society Fund, but they have still to be considered by the politicians. All strategies and action plans that have been adopted to improve the integrity system of the country have generally ended in failure. The main reasons are lack of institutional accountability, institutional co-operation and genuine political will, despite BiH having ratified many international conventions on anti-corruption: the United Nations Convention against Corruption (UNCAC), ratified on 26 October 2006; the Council of Europe Criminal and Civil Law Conventions against corruption (both ratified on 30 January 2002). However, BiH has not yet signed and ratified the Additional Protocol to the Criminal Law Convention.

***The impartiality of the civil service is not sufficiently protected because of the sheer politicisation that exists, mainly along ethnic lines. Ethnicity also hampers the principle of equal treatment of citizens by civil servants, which the latter are obliged to abide by. Although there are some flaws in the legislation, the integrity of the civil service is better protected from a legal viewpoint, although in practice it seems that bribery, abuse of office and malpractice by civil servants are difficult to prevent, punish and eradicate, and they are recurrently the subject of Audit Offices' reports.***

## 2.2 *Does the law fix the salary scheme and is the determination of individual pay transparent and predictable?*

### *Classification of civil service positions*

In the BiH Common Institutions managerial civil servants are classified into: senior executive manager, senior executive manager with a special assignment, assistant minister, assistant director and chief inspector, as well as head of internal organisational unit. Non managerial civil servants are senior advisor, senior official and specialist.

In the FBiH managerial civil servants are: director of local autonomous administration and autonomous institution, secretary of state service authorities, director of administration and institutions that are within the ministries, assistant director in state service authorities, chief federal and chief cantonal inspectors. Other non managerial civil servants are: head of internal organisational unit, inspectors, senior advisor, senior official and specialist.

In the RS senior civil servants are classified into: assistant minister, secretary to the ministry, inspector, head of the administrative organisation, deputy and assistant head of the administrative organisation, head of internal organisational unit (department, section, bureau, group, clerk office, accounting office, etc), senior advisor, senior specialist and specialist.

### *Salary Scheme*

There is no law on salaries of civil servants in the Common Institutions of BiH, but there is a much contested draft going through parliamentary proceedings for adoption, which will mainly raise politicians' salaries, but not those of civil servants. For the time being, remunerations are regulated by a Decision of the Council of Ministers of BiH on Salaries and other Remunerations in BiH Institutions. This decision regulates the salaries of ministers, deputy ministers, advisors, civil servants and employees in BiH institutions under the competence of the BiH Council of Ministers.

There is no law on salaries of civil servants in FBiH either. Salaries are regulated by a Decision on Establishing of Salary Grids and Coefficients for Salaries of Managerial and the Other Civil Servants in Federal Institutions of Civil Service (FBiH *Official Gazette* nos. 68/04, 15/06 and 7/08). Salaries of civil servants in cantonal institutions are regulated by cantonal governments' by-laws; in municipal institutions salaries are regulated by municipal councils' by-laws.

In RS the law on salaries of employees in administrative institutions (RS *Official Gazette* no. 118/07) regulates the salary system, grids and salary groups, as well as remuneration coefficients. This law entered into force on 1 January 2008 and effected a salary augmentation too (see below).

Each of the civil services uses a multiplier system, *i.e.* the system consists of a basic salary (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 various degrees of job complexity within the same class of positions. These supplements are determined by a government regulation for the various categories of position. The salary scale, excluding allowances, in each system is compressed. Each of the systems includes a 0.5% increment in salary for each year of seniority, up to a maximum of 20%. The FBiH civil service law stipulates that the primary base for salary calculation should be the same throughout the federation (Art. 39).

All systems provide for several personal allowances, such as transportation, food and family separation. At the state level, these allowances are relatively high. For example, staff living outside Sarajevo may double their basic salary through various additional allowances covering their commuting to that city. While the use of allowances has been effective in some respects, it is open to abuse and is potentially unnecessarily expensive for the employer, as staff tend to arrange their domestic circumstances so as to maximise their entitlements to various allowances whenever possible. There are still an excessive number of other supplements for employees and civil servants, *e.g.* for a warm meal and for transport. In addition, some supplements are paid to a smaller group of management staff out of the operational budget; their distribution is rather obscure and should be reformed.

For certain civil servants, a considerable amount of salary supplements can be received for joining a working group, recruitment panel or a jury for candidates taking the professional examination. Some of these supplements may well be justified. However, consideration should be given to increasing basic salaries instead of paying supplements for tasks that should be considered as belonging to the primary job content

and remit of the incumbent. According to the 2006 Audit Office Report, released in September 2007, a large amount of state money disappeared on various state commissions, about 70 of which were set up in 2006. In most cases, the members were politicians or civil servants, some of whom were involved in the work of several commissions at once. They were drawing the same amount of money annually in fees from this kind of work as they received in their regular salaries. One of these commissions, for example, was established to investigate the suffering of Serbs, Croats, Bosniaks, Jews and others in Sarajevo during the 1992-1995 war. The commission ran up a bill of EUR 150 000 in 2007, even though its activities amounted to no more than about five meetings.

Certain services — such as the police, customs and external audit — offer staff higher total remuneration, due to higher multipliers, special supplements or both. Salary levels tend to be higher in municipalities in FBiH than at the entity level.

In all administrations it is not possible to pay discretionary bonuses from salary savings resulting from vacant positions.

As already mentioned, a new salary law came into force in RS from 1 January 2008. The law was intended to make remuneration more transparent and comparable. The law has abolished supplements and integrated them into the basic salary. Some sources claim that the average increase of take-home pay for RS civil servants has been rather limited; others point to an average increase of 20%. The RS civil service agency stated that this new law on salaries has some flaws and will need amendments. They did not clarify what these flaws were, but it is most likely that for some positions the new law has reduced the actual take-home pay, as previously existing supplements were absorbed into the new salary.

This greater clarity of real salary levels in RS has led to a considerable number of complaints from civil servants of the Common Institutions of BiH, who now realise that their salaries are the lowest in the country. State level civil servants believe they should have the highest salaries in the country, a logic which one may or may not follow. In Europe there are examples of equal or lower salary levels in the central administrations.

According to State Audit Office data for 2007, the total amount spent on civil service salaries increased by about EUR 23 million over the previous year. Overall, about 65% of the state budget now goes on official salaries, which are high by Bosnian standards. The salaries of parliamentarians are especially generous, comparatively speaking, often exceeding EUR 1 800 a month. The monthly salary of a civil servant who is a head of section is about EUR 650, while average monthly salaries overall in the country are around EUR 350.

The new law on salaries in the BiH Common Institutions is said to increase politicians' salaries by 110%, while for civil servants the increase seems to be almost negligible, according to the Public Service Trade Unions of BiH, which have threatened to strike. Civil servants in BiH Common Institutions have had no salary increase during the past ten years according to the same union sources. In fact their salaries have been reduced twice since 2000. Salaries of civil servants in the RS, FBiH, including cantons, cities, and municipalities, are higher than those of civil servants in BiH institutions.

Brcko District's administration has always enjoyed better remuneration than any other administrative structure in BiH and this continues to be the case. Brcko's excellent geo-strategic position, with easy road and river connections to neighbouring Croatia and Serbia, has been the main factor behind the district's relatively vibrant economy. In addition, tax revenue in Brcko is not swallowed by entity budgets, except for the VAT which is collected at state level. These factors enable the district administration to pay better salaries and perks. The salary structure of administrative and professional staff is based on vertical salary grades and horizontal salary steps, which basically depend on seniority. Like any other municipality in BiH, Brcko's budget caters for salaries for public servants in the areas of education, health care and other services to the citizenry (fire brigade, police, etc.), in addition to civil servants and employees who work in administrative departments.

***The transparency of the salary system has improved in RS and Brcko, but continues to be rather chaotic in the BiH Common Institutions and FBiH. Low salaries in the BiH Common Institutions and excessive salary discrepancies between the state and entities are also further hampering the development of a professional and cohesive civil service across the country. Since the last assessment, salaries have increased in the RS and Brcko to reasonable levels, but not in the BiH Common Institutions or FBiH.***

### 2.3 *Do sufficient and reasonable mechanisms (basically mobility, training, and motivation) exist for good performance and career development within the civil service so as to make it attractive?*

#### *Performance appraisal*

Civil servants' performance appraisal is regulated by law (Art. 30: State; Art. 33: FBiH; Art. 49: RS; Art 59: Brcko). However, given the high politicisation coupled with the principle of ethnicity, there may be little room for any real impact of performance on promotion or other incentives. This in turn provides little incentive to apply the appraisal system adequately. Performance appraisals are supposed to be conducted at least once a year. The CS laws intend the performance appraisal to have an impact on career prospects; e.g. according to all laws, two successive unsatisfactory appraisals will start the dismissal procedure.

In the BiH Common Institutions, performance appraisal results must be taken into consideration for promotion within the same position. But the difference between payment steps within the same position is negligible, so performance appraisal is not an incentive and is not in used in practice. In FBiH the results of the performance appraisal have to be taken into consideration in requests for internal transfer or promotion to a higher position. Positive performance in an appraisal entitles a civil servant to a salary increase. In this way, only the FBiH CS law provides for a performance-related pay component based on performance appraisal (Article 40). In RS, performance appraisal is compulsory but has no consequences in terms of remuneration or promotion, which is perhaps wiser given the overall negative international experience with performance-related pay.

***Performance appraisal is to be done annually. As prescribed in the rulebooks, it is a rather sophisticated exercise. Managers are generally unable to do the job, e.g. setting objectives and monitoring achievements. This, coupled with the fact that performance appraisal has almost no noticeable impact on take-home pay or career development, means that performance appraisal is only required on paper, not in practice.***

#### *Mobility*

Mobility is not used and is not promoted. It is almost impossible across the country's administrations because of ethnic divides, but also because of differences in the civil service legislation, in particular the impossibility of internal transfer, and the enormous differences in salary levels between the entities and the state level add to this problem.

The division of positions in the administration along ethnic lines is justified by Article IX-3 of the BiH Constitution. This states that officials appointed to positions in the country's institutions shall be generally representative of the peoples of Bosnia and Herzegovina. In practice, this clause is interpreted as a three-way division of management positions, a practice that is also mirrored to a large extent in internal (and also external) recruitment to lower-level positions throughout the state institutions. As well as compounding ethnic parallelism, this system also frequently results in the best candidates for positions being overlooked in favour of candidates further down shortlists who are chosen to ensure ethnic homogenisation or sheer patronage. The intentions of senior management and ministers are often known in advance, discouraging candidates of another ethnicity from even applying for positions.<sup>8</sup>

In addition, the mobility possibilities that the legislation offers are not usually used for professional career enrichment, but rather for political and ethnic homogenisation. In order to keep staff loyal, ministers and other heads of office resort to the internal reassignment of civil servants: "the internal transfer of a civil servant from one position to a similar position can either be voluntary or imposed on the civil servant in question in accordance with objectively determined needs of the civil service for such a relocation" (Article 32-1 of the BiH Civil Service Law).

This provision is worded quite imprecisely, allowing this article to be applied for justified as well as unjustified purposes. "In practice, these provisions are used to effect an exchange of personnel among ministries when the time comes for a rotation of portfolios between representatives either of the constitutive peoples or between different parties".<sup>9</sup>

<sup>8</sup> See Foreign Policy Initiative BH (2007), op. cit., page 43.

<sup>9</sup> See Radagic (2006), op. cit., pages 198-199.

## ***Training***

Until a specific training institution is created, the CSAs and the Brcko Sub-Department of Human Resources are tasked with developing a training strategy and training curricula and implementing in-service training. In-service training to improve the performance of existing staff exists, but it is neither systematic nor fully demand-driven. For a few years training needs have been assessed and defined and donors have then been asked to deliver training. Usually, however, the provision of training is determined according to donors' priorities. Thus, the current delivery of training is mainly dependent on foreign donors, and more often than not it is supply-driven. Training programmes linked to the probationary period are explicitly mentioned in all laws.

The law on civil service in BiH states that training is a right and obligation of civil servants. A number of decisions delivered by the CSA and later adopted by the Council of Ministers (CoM) of BiH additionally regulate this domain. The CSA organises numerous training activities for different profiles of civil servants every year. In 2007 more than 2 500 civil servants participated in training. Credits for participating in training are available. A CoM decision established that civil servants have to collect a certain number of credits annually to obtain a satisfactory performance mark. However, there seems to be not enough training offered to allow all interested civil servants to earn these credits.

Training for BiH Common Institutions' civil servants has improved. There are more funds available for training from the budget (EUR 150 000), although not nearly as much as is provided by donors (close to EUR 4 million, including a 3 million IPA project). In 2007, the training budget doubled, from EUR 75 000 to EUR 150 000. There are some obligatory training modules, although in the past the CSA's training unit was not able to meet the demand for this obligatory training, which was induction, 4 days; managerial for senior staff, 8 modules of 1 or 2 days; and EU Integration matters, 3 days. Perhaps the increased funding will improve this situation. As the obligatory training gives credits necessary for promotion and salary increases, the CSA's inability to meet demand may create frustration.

Civil servants from the entities are also trained by the BiH Civil Service Agency, which allocates places to them in training courses. A memorandum of understanding with the other training units in the CSAs guides co-operation among them. Three-day training in EU Integration (EUI) was provided to 1 200 civil servants at state level in 2007.

The long-standing problem with capacity within individual institutions is still very much present. The mandatory procurement procedure is problematic because it lacks flexibility and, for example, compels the CSA to tender out and choose the cheapest offer for all trainings that cost more than EUR 1 500, which may not always be the best option everything considered.

Generally speaking, in the BiH Common Institutions training has gained credibility and popularity among civil servants due to the more efficient training needs analysis that is conducted, as well as an innovative system of Training Credit Hours (TCH). These require civil servants to attend training if they want to get the highest mark in the performance appraisal cycle.

In FBiH, civil servants have the right and obligation to receive professional training. According to the HRM rulebook on performance assessment, each civil servant is required to attend a training course if his/her supervisor decides that this training is relevant to their job. Between 2005 and 2007 the Civil Service Agency conducted professional and general training for 5 319 civil servants from the state institutions at all levels of government. In 2007, 1 975 civil servants participated in training. Yet the FBiH CSA receives the smallest amount of money for training from the entity's government in spite of being in charge of training for the highest number of civil servants across three levels of authority (federation, cantons and municipalities). This is unfortunate because five of the regional offices would have the capacity to offer much more training, especially at the cantonal and local level, if only more funds could be made available.

In RS there was a training strategy for 2003-2006, and a training strategy for 2007-2010 is now being implemented. The CSA's training department is responsible for training all entity staff, regardless of their civil service or labour law employee status. RS has considerably increased the training budget over the last two years. In 2006 training was fully dependent on donors, despite the requirement in the CL law that 3% of the payroll should be devoted to training. In 2007 the government allocated EURO 50,000 to the CSA for training and EURO 150,000 in 2008. This is planned to increase again in 2010. The RS training budget is thus becoming less and less dependent on international donors.

In RS, and also in other administrations, the training mainly focuses on so-called "soft" skills, e.g. training of trainers, time management, foreign languages, team building, etc. IT training is also provided, as well as EUI training. There is no training available on how to apply new legislation, how to draft a law or a decision,

budget formation and management, budget proposals or other topics relevant to civil servants' daily tasks. Another shortcoming is that most training is delivered by foreigners. Induction training, on the job training and specialist trainings are tendered out and then delivered by private sector institutions. The RS CSA has trained 10 instructors who are employed by the CS and who are experts in certain fields; the agency intends to enlarge this pool of their own instructors.

In Brcko, the Human Resources sub-department submits a training strategy and annual training plan to the district mayor. In the last two years, a total of 2 000 staff have participated in training in many different areas. The HR sub-department provided co-ordination and support to the large Civil Service Training Project (carried out by the United Nations Development Program, UNDP), which resulted in more than 100 employees being trained in four different areas.

The Public Administration Reform Strategy (PAR) requires that a countrywide Institute of Public Administration be set up. UNDP BiH, with the support of the PAR Co-ordinator's Office, has completed a feasibility study outlining three possible options for the future set-up of the institute. However, RS representatives rejected all three and instead recommended the development of four independent institutes in BiH (following the present division of the country). Given that the future of this initiative is very uncertain, perhaps it would be advisable to assess first whether a common Institute of Public Administration is necessary or not and which amount of value could it add to the already four existing training bodies.

***There are no sound mechanisms to motivate civil servants to perform well. The country's administrative and political structures make it very difficult to achieve results in terms of improved governance and are themselves therefore a disincentive to perform well.***

***Domestic authorities and international donors have relied too much on training as a sort of panacea to overcome those structural problems. However, on its own training is not an adequate instrument for state-building or for improving the governance of the country.***

***Furthermore, a key problem with training is that despite all efforts it remains too supply-driven and too geared towards developing soft skills, which are fitting, but not indispensable. These skills can be readily provided by foreigners.***

***Specific skills directly linked to the day-to-day work in the BiH politico-institutional context are generally overlooked, neglected or at best are not considered a priority by those who fund training.***

***However, it is positive that in the BiH Common Institutions training has gained credibility and popularity among civil servants due to the more efficient training needs analysis that is conducted, as well as to an innovative and more self-interested system of Training Credit Hours (TCH). These require civil servants to attend training if they want to obtain the highest mark in the performance appraisal cycle.***

### **3. Management of the Civil Service**

#### ***3.1 Are systems for personnel management and a cross-government structure established so as to ensure the application of homogeneous standards across the administration?***

Each of the CS laws called for the creation of a Civil Service Agency (CSA) as the central human resources management capacity. These agencies were to be created as statutorily independent bodies under, and answerable to, the Council of Ministers (BiH) or the government (FBiH, RS). The exception was Brcko District, which has a Sub-Department of Human Resources with roughly the same competences as the CSAs. All these agencies and sub-department have now been created and are operational. The FBiH CSA serves both the entity and the 10 cantons. It is the only CSA with a decentralised structure. It consists of a head office in Sarajevo and five offices in the federation, each serving two cantons.

The responsibilities of the various agencies are not fully harmonised. However, each is tasked with the central management of the civil service for its respective jurisdiction, especially developing uniform rules for recruitment and promotion and ensuring the implementation of the relevant civil service law. All three agencies are supposed to prepare necessary amendments to the civil service legislation based on their experience in implementing the law. As noted above, all the CSAs have a training department in charge of developing and discharging training.

Previous Sigma assessments have noted that a potentially important task for the agencies is to give opinions on the systematisation/classification of civil service positions. This includes opinions on new positions to be created, as well as on the annual rulebook (systematisation), which forms the basis for the annual personnel budget. However, with the exception of FBiH, this task is generally carried out in a much formalised way.

Usually the real content of the position is not evaluated, nor is it compared with similar positions in other administrative authorities, not even on a random basis. There seem to be several reasons for this. Primarily, the legalistic tradition may lead the CSAs to accept a classification if the submitted job description has been worded in line with the classification requirements in the law. Other important reasons may be the lack of job evaluation skills and a general lack of available staff.

Each agency is required to develop and maintain a civil service personnel registry. These have been established in the BiH Common Institutions, RS and FBiH. The registries contain all necessary HRM data, including those determining the basic salary for each position. RS has a CS registry which includes all the important data. This database is compatible with the registry at state level but not yet with the FBiH registry. The RS CS registry is now in its second implementation stage; it is now linked with all CS registries in RS and is updated daily. The government has issued a decree to enable the administration to exploit all available data. The personnel registries at the state level and in RS seem to be compatible and contain identical data, whereas the FBiH CSA's registry is incompatible with the other two.

Currently an IT project is underway to replace the different registries with a single, improved registry for the entire BiH: The BiH CSA has played an instrumental role in developing a Human Resource Management Information System (HRMIS) project. This aims to develop a modern information system for all levels of authority in BiH capable of storing information and generating various kinds of reports for decision-making purposes for every major HR area. At the state level and in RS the databases are linked to all the ministries; in FBiH the database is linked to the five department offices. Whether or not the future HRMIS will effectively become a single civil service personnel registry remains to be seen.

The FBiH CSA does not currently have much institutional support from the government. The government has stated that the agency has no right to propose amendments to the CS law or other laws it is implementing, and has *de facto* transferred such regulatory competences to the Ministry of Justice. This is contrary to the legal competences given to the agency when it was set up. The EU Special Representative expressed concerns about this development in the letter of April 2008 mentioned above. Despite this problem, the FBiH CSA has managed to establish itself both as an authority and service to all civil servants across the federation. It has embarked on a job analysis exercise to improve present job descriptions in the civil service; it has completed the revision of appointments in the federation in all but a few institutions; and it consistently advocates the need to develop HR capacity in individual institutions by calling for the establishment of modern HR units. Besides, a new rulebook on performance appraisal has been drafted to ensure more efficient performance monitoring as well as staff development. There are areas in which the agency could make improvements — training of civil servants at local level is certainly one of them. Individual institutions are making slow progress in introducing HR management tools and it seems that top management, in most cases, disregards the initiatives and advice of the personnel officers (*e.g.* in the case of a job analysis exercise).

The state level and FBiH laws provide for a Civil Service Commission as the review body for civil service matters. The commission reviews decisions made by administrative bodies or CSAs on the demand of a civil servant or an administrative body (Civil Service Laws: State: Art. 63; FBiH: Art.65). In the RS, judicial review and redress of civil service employment-related decisions are covered in Articles 88 and 89 of the civil service law. All civil service laws establish relevant appeal boards to deal with individual complaints by civil servants, especially in recruitment-related matters. The performance of these boards is not totally satisfactory. In RS the board's competencies are being revised, and in FBiH there are strong discrepancies between the CSA and the board because the latter wants managers to be freer to recruit without taking into account the formal recruitment processes.

A positive step is the establishment of the Public Administration Co-ordination Offices (PARCO) in 2006 within the BiH Common Institutions, entities and Brcko, under the responsibility of the relevant council of ministers, ministers or district council. The constant policy negotiations that these offices are set to undertake may allow for some sound institutional developments. They may also enable a better, more professionalised, civil service, if those in charge of these offices acknowledge that it is possible to have different public administration and civil service patterns within a country, yet to still remain a single country.

***At face value the management set-up for the civil services is adequate and the agencies are sufficiently staffed, even if some improvements are necessary. The current set-up is the result of relatively technocratic approaches, which decided that establishing “independent” agencies would guarantee the de-politicisation of the civil service. These approaches have proved to be insufficient if not counterproductive, as no politician holds responsibility or feels accountable for the civil service professionalisation policy, which makes the agencies very vulnerable to political attacks aimed at***

*undermining them. The recent attempt by the FBiH Government to downgrade the Federation's CSA is a good example, and should be a matter of concern.*

*Admittedly, human resource management tools need to be further developed to make management more effective. However, the main problems facing the country's civil services are not managerial, but political, as we have already said above. These problems will not be overcome through management alone.*

### **3.2 Are staff numbers and personnel costs controlled and published?**

As in all countries of the former Yugoslavia, there are strict staffing rules: each administrative entity has to submit a systematisation (rulebook), including positions and categories within the position, which together define the basic salary of a civil servant. The positions and position titles are regulated in the civil service legislation. The systematisations are prepared by each administrative authority individually. The draft has to be submitted to the respective CSA and Ministry of Finance (MoF) for an opinion.

Together with these opinions, the systematisation is submitted to the government for adoption. In principle, decisions about personnel as well as internal restructuring of an institution (e.g. abolishing and creating units) are only possible after the respective government adopts the systematisation. However, prior approval from the MoF is also usually required before starting a recruitment procedure to ensure that sufficient budgetary resources are available. In principle, this mechanism, together with the CS registries (which is the responsibility of the CSA at state and entity levels), ensures that approved staffing levels and personnel budgets are not exceeded. Funds are only released if a position is included in the approved systematisation and is actually filled.

The 2007 Audit Office Reports complain that state institutions have failed to exercise control over officials' fuel consumption, over the use of official vehicles, the payment of *per diems*, the use of mobile telephones or hospitality expenses. In some cases, the reports noted that the hospitality bill was unjustifiable and comprised "mainly the consumption of drinks".

*In conclusion, staff numbers and personnel expenditures seem to be relatively under control*

### **3.3 Do staff representatives participate in decision-making and control concerning personnel management matters?**

Public service trade unions were basically non-existent at the time of the last Sigma report (even though they were created in 2005). The proposed new salary law for the state level seems to have improved their visibility and co-operation, as well as their willingness to make their voices heard when working conditions in the public service are discussed.

The government did in the end consult with the trade unions on salary reform, but not during the preparation of the new salary legislation. Most unions put forward comments on the law on salaries, but they were not taken into account at all. The parliament did not hear the trade unions.

Trade unions' are organised by sectors mirroring the existing institutions. They are independent and fix the level of members' contributions individually. The unionisation level differs among institutions, but for some, such as the Indirect Tax Administration and the Attorney Generals' office, it seems rather high.

*There are emerging trade unions at the level of BiH Common Institutions and they are starting to make their presence more noticeable.*

## **Conclusions**

1. Overall the 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.
2. The status of civil servants in the existing legislation is not compatible with prevailing standards in EU Member States. Furthermore, the way it is applied prevents the country from developing a professional, politically-neutral and impartial, merit-based civil service.
3. Existing recruitment and promotion mechanisms and practices are not effectively contributing to the professionalism of the civil service.

4. The impartiality of the civil service is not sufficiently protected because of the sheer politicisation that exists, mainly along ethnic lines, which is likewise inimical to the legal principle of equal treatment of citizens that civil servants are obliged to abide by.
5. The integrity of the civil service is relatively well protected from a legal viewpoint, although there are some flaws in the legislation. However, in practice it seems that bribery, abuse of office and malpractice by civil servants are difficult to prevent, punish and eradicate. These are regularly the subject of Audit Offices' reports.
6. The transparency of the salary system has improved in RS and Brcko, but continues to be rather chaotic in the BiH Common Institutions and FBiH. Since the last Sigma assessment the situation seems to have positively changed in terms of remuneration levels in the RS and Brcko.
7. Low salaries in the BiH Common Institutions and excessive salary discrepancies between the state and entities are also hampering the development of a professional and cohesive civil service across the country.
8. Harmonisation of working conditions across all administrations in the country may not be politically feasible and might not be necessary either as a condition for increasing professionalism in the civil service. More professionalised civil services are also possible within fragmented countries governed by separate governments, provided that they are willing to still remain a single country.
9. Performance appraisal is a rather sophisticated exercise, as prescribed in the rulebooks. Managers are generally unable to set objectives or monitor achievements, however. This, coupled with the fact that performance appraisal has almost no noticeable impact on take-home pay or on career advancement, means that performance appraisal is only required on paper, not in practice.
10. Staff mobility across administrations is not used and is not promoted. One reason may be ethnicity, but the main reason is perhaps the differences in the civil service legislations, in particular the impossibility of internal transfer and the considerable differences in salary levels between the entities and the state level.
11. There are no sound mechanisms to motivate civil servants to perform well. The country's administrative and political structures make it very difficult to achieve results in terms of improved governance and are themselves therefore a disincentive to perform well.
12. The existing authorities and international donors have relied too much on training as a sort of panacea to overcome structural problems. However, stand-alone training is not an adequate instrument for state-building and for improving the governance of the country.
13. Furthermore, a key problem with training is that despite all efforts it remains too supply-driven and too geared towards developing soft skills. These skills can be readily provided by foreigners and are delivered almost everywhere in the world. Specific skills directly linked to the day-to-day work in the BiH politico-institutional context are generally overlooked, neglected or at best are not considered a priority by those who fund training.
14. At face value the management set-up for the civil services is adequate and the agencies are sufficiently staffed, even if some improvements are necessary. The current set-up is the result of relatively technocratic approaches, which decided that establishing "independent" agencies would guarantee the de-politicisation of the civil service. These approaches have proved to be insufficient if not counterproductive, as no politician holds responsibility or feels accountable for the civil service professionalisation policy, which makes the agencies very vulnerable to political attacks aimed at undermining them.
15. Human resource management tools need to be further developed to make management more effective. However, the main problems facing the country's civil services are not managerial, but political, as we have already said above. These problems will not be overcome through management alone.
16. The establishment of the Public Administration Reform Co-ordination Offices (PARCO) at the BiH level was a positive step. Establishing clearly its counterparts in the entities and in Brcko, and strengthening all of these co-ordination offices is a sliver of hope that better paths for public administration and civil service reform can be created, on condition that those responsible for these offices acknowledge the very political nature of the problems they are confronted with. They must seek politically feasible solutions broad enough to address the political, policy and managerial issues that exist in the area of civil service.